House of Commons
Political and Constitutional Reform Committee

Do we need a constitutional convention for the UK?

Fourth Report of Session 2012–13

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/pcrc

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The Political and Constitutional Reform Committee

The Political and Constitutional Reform Committee is appointed by the House of Commons to consider political and constitutional reform.

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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume.

Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Joanna Dodd (Clerk), Helen Kinghorn (Legal Specialist), Lorna Horton (Committee Specialist), Jacqueline Cooksey (Senior Committee Assistant), Jim Lawford, (Committee Assistant) and Jessica Bridges-Palmer (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Political and Constitutional Reform Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6287; the Committee's email address is pcr@parliament.uk.
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Do we need a constitutional convention for the UK?

Summary

The United Kingdom has been a successful political union. The ability of the foundations and rules of the UK to evolve and in doing so adapt to changing circumstances has been a great strength. The rapid pace of constitutional change over the last 15 years, including devolution, has altered our constitutional arrangements considerably—far more than many may have realised.

The devolution of power to Scotland, Wales, and Northern Ireland has allowed those parts of the Union better to determine their own economic and political priorities. For example, institutional arrangements now exist in three nations in the UK to express and demonstrate their own preferences on a range of issues from NHS prescription charges, and tuition fees, to the collection of Air Passenger Duty for long-haul flights.

England, despite being home to 83% of the population of the UK, is yet to join the other nations of the Union in having effective devolution. Outside London, most decisions about England are still taken centrally by the UK Parliament. It is worth bearing in mind that many decisions in the devolved parts of the Union are also taken centrally in the sense that they are made by the devolved Administrations and Legislatures for the whole of that part of the Union. Our report on Prospects for codifying the relationship between central and local government outlined a way in which devolution for England could be taken forward using local councils as the vehicle. We believe the English Question needs to be addressed swiftly. In this report, we suggest that among the options which the Government should consider is a national forum, or pre-convention, for England to discuss the most appropriate method to address the English Question.

A strong, lasting democratic settlement for the UK must be built upon two principles: those of devolution and union. That is to say, a broad acceptance of the role and powers of the Union, allied to a respect for different but agreed forms of devolution for the nations that make up the Union. This way, everyone in the Union will see that devolution is not an expedient but a founding democratic principle to be applied to all parts of the Union in the future. We welcome the development of bespoke devolution, rather than one size fits all, but the more this is within a context of an agreed role for the UK, the more sustainable the settlement will be.

There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee.

The impending 2014 referendum on independence for Scotland makes a consideration of the future of the Union all the more urgent. The arguments for or against Scotland remaining in the Union, or what might happen to the Union if Scotland were to leave, and our relationship with Europe, are beyond the scope of our inquiry. We do not suggest that any constitutional convention should report before the referendum on Scottish
independence. However, regardless of the result of the 2014 referendum on Scotland’s independence, there is, in our view, a need to consider both how the increasingly devolved parts of the Union interact with each other, and what we, as residents of the UK, want the Union to look like going forward.

We therefore suggest that the Government consider, among other options, preparations for a UK-wide constitutional convention, including decisions about its form and organisation, and the process of calling for evidence. If the Government chooses to take this option, the UK-wide constitutional convention should be able to take into account the debate from the pre-convention hearings in England and the referendum result in Scotland, and produce a preliminary report. Alternatively, the UK Government and devolved Administrations may form agreements themselves.
1 Introduction

Our inquiry

1. Over the course of the inquiry, we sought to establish whether there is a case for establishing a constitutional convention for the UK. We began in May 2012, by holding a seminar with interested parties to discuss the issues that we should pursue in our oral evidence sessions. The seminar was filmed and is available to watch on our website. Our oral evidence programme started in June 2012 and we visited each of the devolved Legislatures to gauge the opinions of political leaders, and sought evidence from experts on devolution and the constitution. We also sought, and received evidence on behalf of the Mayor of London and the London Assembly, as the only elected regional tier of government in England.

2. As well as looking at whether a UK-wide constitutional convention was necessary, we considered more detailed questions about the basis on which a convention should be established, its legal status, its composition, and how it should engage with the public.

3. We are grateful, as ever, to our witnesses, for their insights and advice in dealing with such a complex and wide-ranging subject as the state of the UK constitution.

A convention versus a commission

4. Some witnesses questioned why we were considering the case for a UK-wide constitutional convention, rather than an appointed commission. There are also other options for addressing constitutional change that we could have considered, including a debate and decision by Parliament, but the focus of our inquiry was on whether a constitutional convention was an appropriate forum for looking at and proposing constitutional change.

5. For the purposes of the inquiry, a commission is defined as a group of people appointed by the Government to investigate a matter of public concern and to make recommendations on any actions to be taken. Commissions have regularly been used to research and probe issues of constitutional importance. Indeed, in recent years there have been a number of commissions: the Calman Commission, which looked at further powers for Scotland; the Holtham, Richard, and Silk Commissions, which looked at devolved powers for Wales; the McKay Commission, which looked into solutions to the West Lothian Question; and the Commission on a British Bill of Rights, which looked at whether the UK should have its own Bill of Rights. However, despite the reams of recommendations from these commissions that the Government has implemented, or has indicated that it will implement, there has been no analysis of the combined effect that these changes have had on the constitution as a whole.
2 Is a convention necessary?

“Firstly, I am an Ulsterman steeped in the traditions of this place. Secondly, I am Irish, of this island. Thirdly, I am British, and finally, in a more diffuse way, I am European. It may make it easier for you to understand if you remove one of those elements but if you do you are no longer describing who I am.” John Hewitt, Irish poet.¹

In this chapter, we consider the case both for and against a UK-wide constitutional convention. We take into account the pace of constitutional change since 1997, and the effect that piecemeal devolution has had on the UK. We consider the relative stability of a constitutionally asymmetric Union, looking in particular at England, the only part of the Union yet to have its own devolved settlement, and discuss what problems the lack of a specific voice for England could cause a constitutional convention.

The pace of constitutional change since 1997

7. In his book, The New British Constitution, Vernon Bogdanor writes: “We have all been living through an unprecedented period of constitutional change, an era of constitutional reform which began in 1997 and shows no sign of coming to an end.”² The UK has undergone a significant amount of constitutional change in the last 15 years, and yet there has been no comprehensive attempt to assess how these changes have affected the state of the Union as a whole. Some of the biggest changes to our unwritten constitution since 1997 are listed below:³

- In 1997 referendums in Scotland and Wales paved the way for devolved Legislatures. The Scotland Act 1998 provided for the establishment of the Scottish Parliament; and the Government of Wales Act 1998 for the National Assembly of Wales. The first elections to both bodies were held in 1999, fundamentally changing the relationship between Scotland, Wales, and the rest of the UK.
- In 1998 the Good Friday Agreement, and subsequent Northern Ireland Act 1998, included provision for a devolved Assembly. The agreement was endorsed by the electorate and the first elections were held in 1998. Powers were devolved from December 1999. There were subsequent suspensions, but devolution was finally restored in 2007.
- Also in 1998, electors in the Greater London area voted in favour of a Greater London Authority, with a directly-elected mayor and Assembly, which was implemented through the Greater London Authority Act 1999. The first elections were held in 2000. To this day, London is the only part of England to have a devolved tier of government. The Greater London Authority Act gives the Greater London Authority the “power to do anything which it considers will further any

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³ List adapted from Constitutional change: timeline from 1911, Standard Note 06256, House of Commons Library, December 2012.
one or more of its principal purposes”. Its principal purposes are promoting economic development and wealth creation in Greater London; promoting social development in Greater London; and promoting the improvement of the environment in Greater London.


- The House of Lords Act 1999 removed the right of all but 92 hereditary peers to sit in the House of Lords.

- The Constitutional Reform Act 2005 enacted a number of changes including: (1) Reform of the role of Lord Chancellor, (2) Establishment of a Lord Speaker in the House of Lords, and (3) Creation of a Supreme Court.

- The Government of Wales Act 2006 made provision for further devolution to Wales.

- The Parliamentary Voting Systems and Constituencies Act 2011 provided for a referendum on whether to change the voting system for UK parliamentary elections and set out new rules for the redistribution of parliamentary seats. The May 2011 referendum rejected AV.

- The Fixed-term Parliaments Act 2011 set the date of the next general election at 7 May 2015, and provided for five-year fixed terms. There are two ways in which an election could be triggered before the end of the five-year term: if a motion of no confidence is passed and no alternative government is found, or if a motion for an early general election is agreed either by at least two-thirds of the House or without division.

- The Scotland Act 2012 gives the Scottish Parliament the power to set a Scottish rate of income tax to be administered by HM Revenue and Customs (HMRC) for Scottish taxpayers from April 2016.

8. Constitutions, both written and unwritten, are always subject to change. However, as the list above shows, the sheer volume of constitutional change that the UK has been subject to since 1997 has been implemented without a look at how each change has affected the constitution as a whole. The proposed 2014 referendum on Scottish independence will have profound consequences for the Union. Even if the Scottish people vote against full independence in 2014, it is likely that the devolution of powers to Scotland will continue. Michael Gordon and Brian Thompson, lecturers in Constitutional Law from Liverpool Law School, University of Liverpool, stated in their written evidence: “the implications of devolution are under-appreciated by ministers, officials, and parliamentarians”.

4 Ev w10
The failure of regionalism

9. It remains the case that all attempts to introduce the devolution of power in England outside of London have fallen short, despite good intentions.

10. In 1998, Londoners voted in a referendum in favour of the creation of a Greater London Authority, composed of a directly elected Mayor of London, and a London Assembly, to scrutinise the Mayor’s activities. Sir Edward Lister, the Deputy Mayor for Policing and Planning, told us that while devolved powers for London had been positive, there was still uncertainty:

   It is clear to the current Mayoralty that a world class city such as London needs to be as self-reliant as possible. This involves national government providing the city’s government with the widest possible set of freedoms and flexibilities. We should not have to go cap in hand to national government every time a major need arises in London.5

Sir Edward added that a constitutional convention:

   might well have value in cementing the role played by pan-London government and removing some of the uncertainties that can detract from it functioning as effectively as it should do.6

11. In May 2002, the Government published a White Paper, Your Region, Your Choice, outlining its plans for the possible establishment of elected Regional Assemblies for the English regions outside London. The Assemblies were expected to be elected by an Additional Member System similar to the systems used for the London Assembly, the Scottish Parliament and the National Assembly for Wales. The Regional Assemblies (Preparations) Act 2003 made provisions for referendums to be held to create such assemblies, and to simplify the structure of local government where this was done. Three such referendums were planned, for the regions of North East and North West England, and Yorkshire and the Humber.

12. On 8 July 2004, it was announced that the referendums would be held on 4 November, but on 22 July the then Minister, Mr Nick Raynsford MP, announced that only the North East England vote would go ahead on that date. This region was chosen because the Government thought it was the most likely to approve the proposal. However the voters rejected the Assembly by 696,519 votes to 197,310. This overwhelmingly negative vote was seen as an insurmountable obstacle to elected Regional Assemblies elsewhere in England. On 8 November 2004, the then Deputy Prime Minister, John Prescott, told the House of Commons he would not move orders for the other two regions within the effective time limit of June 2005 permitted by the Act.

13. Several of our witnesses offered reasons why regional devolution in England ultimately failed. Sir Merrick Cockell, Chairman of the Local Government Association, stated that the previous attempt at regional devolution imposed arbitrary regional boundaries without

5 Ev w28
6 Ibid.
paying enough attention to those living in those areas. Sir Merrick told us: “perhaps one of the difficulties with regionalism under the past Government was that other people decided what region you were in”. Ged Fitzgerald, Chief Executive of Liverpool City Council, stated that the failure of Regional Assemblies in England was inevitable as the public knew that the proposed Assemblies had no real power devolved to them. He stated: “what was on offer did not make sense to people”.

14. None of our witnesses proposed a return to regional devolution, and neither do we. The people of England have made it quite clear that they have no appetite for another layer of elected politicians. We wholeheartedly agree. There is another option for the devolution of power in England which involves no new elected politicians or additional layers of government, but rather utilises the existing political and operational infrastructure.

What is a constitutional convention?

15. The New Oxford Companion to Law, defines a constitutional convention as “a representative body, brought together to draft a new constitution or to design or approve changes to an old one”. In this inquiry, we are using the term slightly more broadly to refer to a representative body collected together to discuss constitutional change. The most famous constitutional convention is probably the meeting of delegates in Philadelphia in 1787, which led to the creation of the United States constitution, but there have been more recent examples, and we discuss the lessons that can be learned from them below.

16. The Kilbrandon Commission, which ran from 1969 to 1973, is an example of a commission which looked at UK-wide constitutional issues. The terms of reference of the Commission were:

To examine the present functions of the present legislature and government in relation to the several countries, nations and regions of the United Kingdom;

To consider, having regard to changes in local government organisation and in the administrative and other relationships between the various parts of the United Kingdom, and to the interests of the prosperity and good government and our people under the Crown, whether any changes are desirable in those functions or otherwise in present constitutional and economic relationships;

To consider also whether any changes are desirable in the constitutional and economic relationships between the Channel Islands and the Isle of Man.

The Kilbrandon Commission recommended devolved Legislatures for Scotland and Wales, and recommended that regional bodies should be established to advise on government policy.
17. Commissions are usually made up mainly of political appointees or academics, and although they may take evidence from the public, laypeople are not usually commissioners themselves. In contrast, constitutional conventions usually include significant representation from members of the general public.

18. If there is a need for a review of the constitutional relationships in the UK, this could be put into effect by a decision of the Government and devolved Administrations, or a commission or a constitutional convention.

**Constitutional conventions in other countries**

19. Constitutional conventions have been used in other countries for a variety of different reasons, such as revising or rewriting a country’s constitution, or to look at smaller constitutional changes, such as changes to the right to vote. We consider several examples of constitutional conventions in other countries and analyse whether their models could be successfully applied to the UK.

**The Philadelphia Convention**

20. The most famous example of a constitutional convention is probably the Philadelphia Convention, which took place from 14 May to 17 September 1787. Some 55 delegates from 12 of the 13 existing United States (Rhode Island did not send any delegates to the convention) gathered with the initial intention of revising the Articles of Confederation and Perpetual Union, but ended up drafting what became the United States Constitution. The Philadelphia model serves as an interesting historical example of where constitutional conventions can lead, but offers fewer lessons for the UK than the more recent examples of constitutional conventions. However, it is worth noting that the Philadelphia Convention had a clearly defined remit and only a small number of delegates.

**The Scottish Constitutional Convention**

21. The proposal to establish a constitutional convention in Scotland came from a 1988 report *A Claim of Right for Scotland*, which recommended that a convention should be established to draw up a scheme for a Scottish Assembly or Parliament. In January 1989, a cross-party meeting was held to consider proposals for a convention. At this meeting, the Scottish National Party expressed their concern that the convention would not consider the issue of Scottish independence, and later withdrew. The Conservative Party had already made it clear that they would take no part in the proposed convention, as they were not in favour of a devolved Parliament for Scotland. The convention held its first meeting on 30 March 1989, with Canon Kenyon Wright as the Executive Chairman, and reaffirmed the Claim of Right. The Claim of Right states that the will of the Scottish people is sovereign. Members of the Scottish Constitutional Convention included the Scottish Labour Party, the Scottish Liberal Democrats, the Scottish Democratic Left, the Orkney and Shetland Movement, the Scottish Green Party, the Scottish Trades Union Congress, Regional, District and Island Councils, and the Campaign for a Scottish Parliament. Membership also included the main Scottish Churches, the Federation of Small Businesses, ethnic minority representatives and the Scottish Women’s Forum.
22. The Scottish Constitutional Convention’s report in 1995 formed the basis of further proposals which were brought forward in a white paper, *Scotland’s Parliament*, by the Government in 1997. These proposals received considerable support in a referendum on 11 September 1997, with 74% of those voting favouring the Government’s proposals for a Scottish Parliament. A smaller majority of those voting supported giving Parliament the power to vary income tax in Scotland. The Scotland Act 1998 sets out the statutory framework of the devolution settlement and under its authority the Scottish Executive and the Scottish Parliament took on their full executive and legislative powers on 1 July 1999.

23. The Scottish Constitutional Convention was highly successful in achieving its aim. The Convention had a clearly defined remit of making the case for an Assembly or Parliament for Scotland. Nonetheless, the example of the Scottish Constitutional Convention shows that there is a need for clarity about the questions that the convention would seek to answer. Although the Scottish Constitutional Convention did not initially have support from all the political parties, support for its proposals grew over the course of the Convention’s six years of deliberations. However, any UK-wide constitutional convention following the Scottish model would have to be completed to a tighter timescale. It may be difficult to get political support for a convention which spanned more than a parliamentary term, as results would only be available to a future Parliament.

**Iceland**

24. In June 2010, an Act of Parliament was passed in Iceland which set out a process for constitutional reform. A National Forum took place on 6 November 2010. This was a group of 950 citizens randomly selected from the National Population Register, “with due regard to a reasonable distribution of participants across the country and an equal division between genders, to the extent possible”. The conclusions of the National Forum were then published.

25. The same Act provided for the creation of a Constitutional Assembly, which was to be an elected body which would revise the Icelandic constitution. Some 522 candidates stood, and the 25 members of the body were elected by Single Transferable Vote in November 2010. The election was invalidated in 2011 due to procedural technicalities, but (with one exception) the same Assembly that had been elected was then appointed by Parliament as the Constitutional Council, to have the same role as that intended for the Constitutional Assembly. The Constitutional Council was required to take the conclusions of the National Forum into account when drawing up the new clauses of the constitution.

26. The Constitutional Council published draft clauses on the internet for the public to comment upon. The Council also made use of new media to engage the public, with a Facebook page, a Twitter account, a YouTube page, where interviews with its members were posted, and a Flickr account containing pictures of the members at work. Meetings of the Council were open to the public to attend, and were streamed live on the internet. The draft constitution was completed by July 2011 and presented to the Icelandic Parliament, Althingi, for consideration. On 25 May 2012, the Icelandic Parliament voted in favour of

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12 Act on a Constitutional Assembly, Interim Provision, *Icelandic National Forum 2010*
putting the constitution drafted by the Constitutional Council to a national referendum. The national referendum was held and proposals agreed on 20 October 2012.13

27. The Icelandic Constitutional Convention is a good example of the use of multiple facets to a convention to gain widespread support amongst the public. However, due to the fact that the Icelandic population is significantly smaller than the UK population—some 319,000 compared to the UK’s 50 million—work would need to be done to ensure that a UK convention was representative, but also a manageable size. The use of social media, to ensure that the proposals of the constitutional convention were analysed by a wide range of people rather than a self-selected few, is certainly something that a UK-wide convention could adopt at little cost.

Citizens’ Assemblies: Canada

28. The Citizens’ Assembly in British Columbia in 2004 was set up to review and suggest replacements to the electoral system. The Government of British Columbia set the terms of reference for the Assembly, but agreed to consider the Assembly’s recommendations. The Assembly decided to recommend the adoption of the Single Transferable Vote to the British Columbia Government, and this was put to a referendum in 2005, which was subsequently lost. In a paper written for our Committee, the Centre for Political and Constitutional Studies at King’s College London commented on the British Columbia Citizens’ Assembly:

The Citizens’ Assembly sat over 11 months in 2004. It was composed of 160 randomly selected citizens with a basic quota of one man and one woman from each electoral district plus two aboriginal members. Initially members spent weekends learning about different electoral systems; then they took evidence during 50 public hearings attended by around 3,000 citizens and received approximately 1,600 written submissions. The Assembly then deliberated over different electoral systems and voted on options.14

29. While the reforms proposed by the British Columbia Citizens’ Assembly ultimately failed, the Assembly clearly managed to engage citizens of British Columbia. The ‘town hall’ meeting style, where citizens come together to discuss and raise new proposals for change, is one that a constitutional convention for the UK could use. It would be impossible for a UK-wide convention to give each constituency even one representative on the convention, as then it would become too unwieldy, but ‘town-hall’ style meetings could be a way of increasing engagement among the wider public.

30. Looking at examples of how constitutional conventions have worked in other countries shows that they are most effective when they have a clearly defined remit, contain representatives from a range of sections of society, and engage the public with their deliberations.

13 Referendum to Be Held on Icelandic Constitution, Iceland Review Online, 25 May 2012
14 Codifying—or not codifying—the United Kingdom Constitution: A literature review, Centre for Political and Constitutional Studies, King’s College London, 23 February 2011
The case in favour of a convention

31. We considered whether a UK-wide constitutional convention could be an effective tool for analysing our existing constitutional frameworks and for suggesting ways to strengthen the constitution. There are a number of logistical issues that would need to be solved before a UK-wide constitutional convention could be set up, which we consider later.

32. In his oral evidence to the Committee, Canon Kenyon Wright, Former Executive Chairman of the Scottish Constitutional Convention, stated that there were five questions our inquiry would need to answer: “The questions are: first, why do we need/want a convention; what is the problem? Secondly, what is it for—clear goals? Thirdly, who does it consist of? Fourthly, how does it work? And, fifthly, where is it going?” Much of the evidence we received argued that there was a case for establishing a constitutional convention for the UK, although opinions differed on what the remit of a constitution convention should be.

33. Professor Matthew Flinders, of the University of Sheffield, argued that the pace of constitutional change had stretched our constitution to breaking point:

A constitutional historian might argue that the British constitution has always been riddled with puzzles, anomalies and contradictions and this may well be true. The simple fact is, however, that the constitutional fault-lines that have always existed within the Westminster Model have arguably grown to become significant gaps—possibly even chasms—as a result of recent reforms. The old constitutional rules and understandings through which politicians and the public made sense of the political sphere no longer seem to apply. Moreover a number of issues on the political horizon—not least a planned referendum on Scottish independence—are stretching the constitutional elasticity of the Westminster Model to breaking point.

The First Minister of Wales, Carwyn Jones, strongly advocated a UK-wide constitutional convention, arguing that devolution had fundamentally changed our political institutions, and that the UK Parliament had yet to fully adapt to this change:

We are at a point where people do not know when the UK Government is speaking for England, for England and Wales, for England, Wales and Scotland, for England, Wales and Northern Ireland, or indeed, for the UK as a whole, which is why a convention is needed.

34. The Society of Local Authority Chief Executives (SOLACE) argued that a convention was necessary because:

there has been no overall vision or evaluation of the kind of country that these reforms were designed to help build. Each reform seems to have been enacted in isolation without a real idea of how it would impact on the others and there is little
clarity about the means by which any future decisions may be made. This, in our view, makes the need for a constitutional convention all the more urgent.\textsuperscript{18}

Professor Matthew Flinders concurred with SOLACE, stating that a constitutional convention was needed from a practical viewpoint, as “there are already a number of single-issue government-commissioned reviews underway and there is an urgent need to ‘join-up’ the outcome of those processes”.\textsuperscript{19} Dr Alan Renwick, of the University of Reading, argued that one of the benefits of a constitutional convention would be the scope to look at UK constitutional issues from the perspective of all parts of the Union:

There is a clear case for establishing a forum that would consider the Union in the round, rather than taking the perspective of just one part of it. What one part of the Union decides clearly has implications for others.\textsuperscript{20}

35. John McCallister MLA reiterated this viewpoint. He stated that there was a need for a constitutional convention to tidy up the loose ends of devolution:

It is very much internal housekeeping for both sides. How do we do things better? What are the new dynamics particularly now with three parts of the UK having devolved governments, as well as other regions of England or the capital? How do those bits all tie in together and best work together and define out the roles? When they clash who comes out on top, or is there a set of guidelines?\textsuperscript{21}

Lord Maclellan of Rogart suggested that a constitutional convention could help to ensure that all parts of the Union were treated fairly:

We have lived with an unwritten constitution for a long time. Where there is legal dubiety it can usually be resolved by the courts. I think the time has come to recognise that we need equitable treatment of all the nations of the United Kingdom but that the English question is very important.\textsuperscript{22}

This point was reiterated by Democratic Audit, in their 2012 audit of democracy in the UK, which stated that the lack of a coherent settlement for the UK as a whole could create problems for British democracy:

The successes of devolved governments in Scotland, Wales and Northern Ireland are the products of new constitutional settlements, from which the residents of England, by far the great bulk of the UK population, have been excluded. If significant, and sustained, improvements in British democracy are to be achieved, then a fresh constitutional settlement will be required for the UK as a whole.\textsuperscript{23}

36. Research published by the Electoral Commission in January 2013, in their report \textit{Referendum on independence for Scotland: Advice of the Electoral Commission}, on the

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proposed referendum question, also highlighted that people in Scotland wanted unbiased information about the pros and cons of independence. The report stated that those polled:

wanted more information before polling day and while they expected that campaign groups and the media would provide information in the run-up to the referendum, some also wanted objective information from an independent, neutral source. In particular they wanted unbiased information about what the pros and cons of each outcome were and what independence would mean in practice for Scotland.\(^\text{24}\)

A constitutional convention for the UK could be a neutral source of information about the benefits of the Union, and of an independent Scotland. However, it would be necessary to move very quickly if a convention were to be set up before the referendum on Scotland’s independence. We discuss timings later in the report.

**The case against a convention**

37. Not all our witnesses thought a constitutional convention was a political priority. Andrew RT Davies AM, Leader of the Opposition at the National Assembly for Wales, told us: “we need politicians to start delivering rather than constantly going to conventions, and actually start to look at this whole constitutional process”.\(^\text{25}\) He added: “often, no decisions of substance come out of those conventions and fora, and we muddle on”.\(^\text{26}\)

38. The Parliamentary Secretary at the Cabinet Office, Chloe Smith MP, in both her written and oral evidence, rejected the idea of a constitutional convention for the UK, stating that tackling the economy had to be the Government’s priority:

> It is important to recognise that public concern and Government policy is focussed on tackling the economic challenges as a top priority and it might therefore be difficult to justify a convention that looked at the whole of the UK constitution at the present moment.\(^\text{27}\)

39. We agree that a key goal of any Government is to steward a healthy and vibrant economy. However, for the economy to recover the Government will need to engage all parts of the UK, and it is worth considering whether devolving powers from Whitehall to local people could help to harness a UK-wide economic recovery.

40. **We do not believe that the Government is incapable of focusing on other issues, as well as the economic challenges facing the UK. Having a system of politics and a constitution that are ‘fit for purpose’ is a prerequisite for an inclusive and fully functioning economy.**

41. Those who oppose the need for a constitutional convention point to the political realities of the situation. Neither the Government, as made clear by the uncompromising evidence of the Parliamentary Secretary, nor the Scottish National Party, nor the

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\(^{24}\) The Electoral Commission, Referendum on independence for Scotland: Advice of the Electoral Commission, January 2013, 3.47

\(^{25}\) Q 63

\(^{26}\) Q 74

\(^{27}\) Ev 157
Conservative party in Wales, support the idea of a constitutional convention. In the absence of that support, it is, in the opinion of some, difficult to see how a convention could proceed.

42. It could also be argued that constitutional conventions presuppose that there is a written constitution, which there is not in the UK. We are currently exploring the need for a written constitution in a separate inquiry.

43. It is also worth emphasising that, in other countries where constitutional conventions have taken place, there has been overwhelming political support for changes to the constitution. However, as Professor Iain McLean, of the University of Oxford, pointed out in his written evidence: “The main problem for a proposed UK constitutional convention is that nobody in England, representing 85% of the population, seems to feel much urgency about it.” In his written evidence, Professor James Mitchell, of the University of Strathclyde, highlighted the difficulties that there would be in ensuring that the composition of any convention had legitimacy. He concluded that “it might prove as easy to agree on a new constitutional settlement for the UK as on how to constitute any Convention.”

44. There is also a danger that, without any support from the Government, a convention would inevitably become a talking shop, no doubt of interest to academics but with little public appeal, or connection with the political realities of the situation. Some believe that there is no prospect of there being a unanimous or near unanimous agreement for a constitutional convention, let alone the product from such a convention.

45. There is also concern about the timing of a convention. It is the view of some that any recommendation that preparations for a constitutional convention should start in autumn 2013 ignores the reality that the UK is currently in a desperate economic crisis, and is already preoccupied with the prospect of a referendum on independence for Scotland and a major reappraisal of the UK’s relationship with the European Union.

46. For all of these reasons, opponents of the need for a constitutional convention believe that, while constitutional matters are evolving very rapidly in some respects, now is not the moment further to review constitutional relationships within the UK.

47. There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee.
Federalism

48. It has also been stated that it would be impossible to have a constitutional convention in which all the constituent parts of the Union prioritised the same issues. Alan Trench, a fellow at the Constitution Unit, commented:

What is vital for Wales is of much less importance in eastern England. To the extent there is a ‘Scottish’, ‘Welsh’ or ‘north-east English’ interest in the Union, each of these is different. Trying to set up a convention to resolve these issues without being clear about what the interests of the various groups are, and how they relate to each other, will be impossible.\(^{30}\)

While it is likely to be difficult to resolve the political priorities of the different parts of the Union, if a constitutional convention had a clearly defined remit, we believe consensus should be possible, given time.

49. One of the key issues that a constitutional convention would have to consider would be whether it is time to look at a form of federal model for the UK. In his written evidence, the First Minister of Wales, Carwyn Jones AM, stated that the differing powers of the UK’s devolved institutions had already created an “asymmetric quasi-federalism”.\(^{31}\)

50. There has been a huge amount of incremental constitutional change over the past two decades. Much of it has taken the form of a response to specific pressure, which has meant that there has not been a strategic approach to the future of the UK. Failure to respond in a timely way to the natural desires of people to run their own affairs has been a contributory factor to antagonism towards Whitehall and Westminster. Devolution has tackled, and must continue to tackle, that problem. The failure to answer the English Question, and the reality that the largest nation of the Union is still micro-managed from Whitehall, has caused and will continue to cause tension with the rest of the Union. However, if the English Question is proactively addressed, it could pre-empt the next set of difficulties for the Union.

51. While there is not yet a constitutional crisis in the UK, it is better to identify and analyse potential weaknesses in our constitutional framework before a crisis arises.

52. The devolution of power from Westminster to the other parts of the Union is a principle, and not simply a political expedient. Some have argued that if devolved powers were extended to England, this would, in part, address the asymmetry of the current devolution settlements, and allow the UK to move forward and embrace the future as a quasi-federal union.

53. We call on the Government seriously to consider in response to our report the creation of a convention, involving members of the public, to examine the impact of the constitutional changes that have already taken place and to consider how, in the future, our constitution can best serve the people of the UK.

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30 Alan Trench, “A grand constitutional convention for the United Kingdom?”, Devolution Matters blog, 29 January 2012

31 Ev 147
The elephant in the room: England

54. During our inquiry, the issue of England being the ‘unfinished business’ of devolution was repeatedly raised. Many witnesses felt that the issue of ‘who speaks for England’ would need to be decided prior to, or at least alongside, a constitutional convention, in order for the convention to be successful. In this section, we explore whether there is an appropriate model for devolution in England.

55. England is the only part of the Union which is still heavily centralised. It is worth bearing in mind that many decisions in the devolved parts of the Union are also taken centrally in the sense that they are made by the devolved Administrations and Legislatures for the whole of that part of the Union. Sir Merrick Cockell, Chairman of the Local Government Association, stated that England was “the last part of the British Empire, still run, as we concede, in a way that might have worked with running India from the India Office”.32 Ged Fitzgerald, Chief Executive of Liverpool City Council, stated simply: “If you were designing a governance system for England, in our case as part of the UK, would you start with the system we now have? I doubt it.”33 The question is whether the centralisation of decision-making in relation to England is good or bad.

56. Tom Riordan, Chief Executive of Leeds City Council, detailed the problem that there is no specific focus on what is best for England. He stated: “one of the main anomalies is in Whitehall; the current structures do not have anybody with a specific mandate for England in Cabinet and yet there is for Scotland, Wales and Northern Ireland. You also do not have a specific Department mandated to work with England”.34 The First Minister of Wales, Carwyn Jones AM, added: “England needs a voice, and it could express that voice through a convention.”35

57. The Commission on the consequences of devolution for the House of Commons looked at “how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales”. However, there is currently no forum where the people of England can have their say about their place in the Union, and whether or not they wish to see a devolution of power similar to that which has taken place in Scotland, Wales and Northern Ireland.

58. Professor Robert Hazell, Director of the Constitution Unit, writing in 2006 for Publius, stated that the lack of devolution in England did not necessarily threaten the future of the UK:

There is no logic in the process of devolution which requires the English, too, to have devolution. England could remain a gaping hole in the devolution settlement without the system imploding. The devolution settlements already granted to

32 Q 128
33 Q 159
34 Q 152
35 Q 101
Scotland, Wales and Northern Ireland are not threatened by the lack of devolution in England. Asymmetry does not necessarily make the system unstable.36

59. However, Kirsty Williams AM, Leader of the Liberal Democrats in the National Assembly for Wales, stated that the lack of a devolved settlement for England made the whole of the UK’s constitutional settlement unsustainable:

It is ... essential that any convention establishes a durable settlement that provides not just for the existence of the devolved Parliaments but makes it possible for them to accrue greater areas of responsibility, especially over financial powers.

The unsustainability of the existing settlement is partly however a result of the precariousness of the English political settlement and the associated problems of the West Lothian question. The solution to this must be a political priority for the convention, and it must make it a key part of its work pattern.37

60. William Rennie, Leader of the Scottish Liberal Democrats, also thought that the lack of desire for devolution in England was preventing the UK from becoming more federal:

The missing link in all of this is the same passion and desire for change in England and, as much as we want it, in order to get a truly federal system we need to have change south of the border in terms of that passion.38

61. Professor Iain McLean, of the University of Oxford, argued that the proposal to hold a convention could be threatened by a lack of interest in England. He stated that, while the UK had plenty of constitutional issues that should be addressed, such as House of Lords reform, the West Lothian question and the status of EU law in the UK, the real problem with holding a constitutional convention was England: “The main problem for a proposed UK constitutional convention is that nobody in England, representing 85% of the UK population, seems to feel much urgency about it.”39

62. There is some evidence that interest in devolution in England is increasing. In February 2012, the National Centre for Social Research published a paper on the English Question: How is England responding to Devolution? Using data from the British Social Attitudes Survey, the paper charts how attitudes towards how England is governed have changed. It suggests that there is an increasing minority who would be interested in a new constitutional settlement for England: 25% of those presented with the statement “England as a whole to have its own new parliament with law-making powers” in 2011 agreed with it. This was up from 18% in 1999. Some 12% of respondents were in favour of English Regional Assemblies. While a slim majority of those asked, 56% of respondents, favoured the statement “England governed as it is now, with laws made by the Westminster Parliament,” this had decreased from 62% in 1999.

37 Ev w15
38 Q 179
39 Ev w13
Do we need a constitutional convention for the UK?

Attitudes towards how England should be governed, 1999–2011

<table>
<thead>
<tr>
<th>With all the changes going on in the way different parts of Great Britain are run, which of the following do you think would be best for England?</th>
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<tbody>
<tr>
<td>England governed as it is now, with laws made by the UK parliament</td>
<td>62</td>
<td>54</td>
<td>57</td>
<td>56</td>
<td>50</td>
<td>53</td>
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<td>49</td>
<td>53</td>
<td>56</td>
</tr>
<tr>
<td>Each region of England to have its own assembly that runs services like health</td>
<td>15</td>
<td>18</td>
<td>23</td>
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<td>21</td>
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<tr>
<td>England as whole to have its own new parliament with law-making powers</td>
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Base: 2718 1928 2761 2897 2709 2684 1794 928 859 982 980 913 967

Source: National Centre for Social Research, The English Question: How is England responding to Devolution?

Devolution to local government

63. We published our report on Prospects for codifying the relationship between central and local government in January 2013. The report was the culmination of a two-year inquiry into whether local government should be given greater freedoms to act on behalf of its communities. We argued that there was a strong case for considering greater legal and financial freedoms for local government. However, the report makes it clear that local councils should not be compelled into devolution, but could choose—or not choose—to access additional powers from a menu of options.

64. We welcome the Government’s commitment to its localism agenda, and note the steps it has taken so far to devolve power to local communities, including the powers set out in the Localism Act 2011. The general power of competence—which, according to A plain English guide to the Localism Act, “gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited; they will not, for example, be able to impose new taxes, as an individual has no power to tax”—is a broad new power which some have said could revolutionise the way local authorities act. The removal of the vast majority of council ring-fencing, and the measure to allow local authorities to retain a proportion of business rates, have also helped to give local councils greater autonomy over how they spend their money, allowing them to focus on priorities in their local areas. This general trend of the decentralisation of power to local government means that local authorities are getting used to having greater freedoms.

65. The representatives from local authorities that we spoke to were in favour of the devolution of power from Whitehall to local government in England. Tom Riordan, Chief Executive of Leeds City Council, stated simply that power in England should be devolved
to local government as "the basic point is that we think we can do better than Whitehall". While, Sir Merrick Cockell, Chairman of the Local Government Association, stated: "it is time, not to break up the system or head in the direction of an English Parliament or something like that, but to re-craft a grown-up relationship with local government".

66. In his book *The English Question*, published in 2006, Professor Robert Hazell, Director of the Constitution Unit, stated that the devolution of power from Whitehall to local government in England could be an answer to excessive centralisation:

> England is now the most centralised of all the large countries in western Europe. Famously insular as well as pragmatic, the English remain unaware of that. The main alternative advanced as the answer to excessive centralisation is to restore powers and functions to local government ... Most of the proposals are perfectly feasible. What is lacking is any evidence of political will in central government to let go.

This sentiment was reiterated by Graham Pearce of Aston University and Sarah Ayres of Bristol University in their written evidence:

> ... transferring powers from Whitehall to the sub-national level is viewed as a way of enhancing government and responding to the growing sense of alienation on the part of many people in different parts of the country.

67. In his oral evidence, Professor Gerald Holtham, who chaired the Independent Commission on Funding and Finance for Wales, agreed that the devolution of power in England to local government was the most logical step: "I don’t see any alternative ... I think local government is the only way to decentralise within England." He also reminded us that historically local government did have greater autonomy over its own affairs, and created prosperous communities during that time: "I’m sure that if local authorities had their powers restored, and their tax powers restored, that the better ones would do a much better job." It is clear that not all local councils would necessarily be in a position to accept devolved powers from Whitehall tomorrow. Capacity building would be needed in many cases. However, local authorities already have many of the staff and much of the governance structures needed to make this a reality.

### A pre-convention for England

68. Many of our witnesses stated that one of the key issues with a UK-wide constitutional convention was that the English Question—the issue that the people of England, outside of London, are governed by Westminster, with little authority to propose local solutions that benefit their own communities—had not yet been discussed by the people of England. In order for a UK-wide constitutional convention to be successful, such a discussion will need...
to take place. However, any discussion of the future of England is clearly for the people of England alone. The discussion should be mindful of the impact on the Union.

69. However, evidence received from Sir Merrick Cockell, Chairman of the Local Government Association and Ged Fitzgerald, Chief Executive of Liverpool City Council, detailed in an earlier section of the report, suggested that the failure of regional government was less because the English do not want devolution but at least in part because the Government of the day had imposed an arbitrary regional structure on England, with few or no law-making powers. When giving oral evidence, Nigel Smith, Director of VoxScot, which provides strategic advice for referendum campaigns, told us:

It won’t surprise you that I was a supporter of English regionalism post 1997, and as soon as I read John Prescott’s Bill I said, ‘This will lose and it will lose for one simple reason: that it hasn’t got enough powers’ … When you came to the north-east then you had a situation where the public, when you did the top of the head polling, were pro the idea of a north-east assembly but not when actually presented with the proposal. I told John Prescott’s senior civil servant fairly early on that the people would oppose this referendum for the simple reason it was going to be a playground for politicians—that is my phrase—and this is absolutely a killer.47

70. Several witnesses suggested that a specific pre-convention for England, running before, or alongside a UK-wide constitutional convention, would be helpful in allowing the people of England to discuss what they wanted from the Union.

71. Lewis Baston, of Democratic Audit, told us:

There may well be a case for a discussion within England about its constitutional arrangements prior to a UK convention. This could take the form of a pre-convention among the English representatives to the UK convention. Scotland, Northern Ireland and to a lesser extent Wales have had extensive formal discussions: in the context of referendums in 1979, 1997 and forthcoming in Scotland, 1979, 1997 and 2011 in Wales, and 1998 in Northern Ireland. England has not yet had a formal opportunity to establish the questions, both internal (in the relationship between centre, region and locality) and in its relationships with the other parts of the UK and UK political institutions.48

72. This sentiment was echoed by academics Graham Pearce and Sarah Ayres, who stated that, “consideration of the government of England should form a key element in the terms of reference for any Convention charting a constitutional settlement for the UK”.49

73. This pre-convention, or national forum, for England should involve representatives from each constituency and local authority in England to discuss what form of devolution, if any, might be appropriate. This discussion should include consideration of the case for devolving powers to local government, as set out in our report on Prospects for codifying the relationship between central and local government. If an English pre-convention...
recommended that England should have a devolved settlement involving the transfer of more powers to local government, local government would already have done some of the necessary groundwork to absorb those powers.

74. Dr Robin Wilson, an academic, suggested that an English Parliament would not solve the tensions caused by the asymmetrical nature of the devolution settlements:

> I don’t think you can solve the English question without regional devolution, if for no other reason than Robert Hazell’s long-made point that, if you had an English Parliament, you would be talking about a kind of Prussia within Germany in the UK context that would hugely dominate UK governance, and that doesn’t seem to me to be a feasible prospect.\[^{50}\]

However, he added that if England were to use the existing asymmetrical structure of the Union as a blueprint, then it may be possible to find a model that allowed English local authorities to devolve a range of powers, or not, according to local wishes:

> I am not for a moment saying that we have to have a kind of gridiron solution for the UK that tears everything up and puts down a new kind of structure that is a federal arrangement, for instance, where everything is exactly the same. By the nature of the evolution of the UK historically, you would have to have some degree of asymmetry in the arrangements and facility to draw down powers, and some capacity for different authorities to exercise powers of general competence, which they might or might not want to utilise, in a context where framework legislation was passed at Westminster and local and regional authorities below that level could do various things in that context. That gives you the kind of flexibility you are thinking about rather than enforcing a one-size-fits-all solution on it.\[^{51}\]

75. It is our view that a solution for England that allows local authorities to choose, or not choose, devolved powers from a menu of options agreed between local authorities in England and Government, would be the preferred option for English devolution. Our report on the Prospects for codifying the relationship between central and local government outlines a way in which such devolution could be brought about.

76. **We recommend that the “English Question” be addressed without delay. Of all the tectonic plates within the Union, it is England which most needs to be lubricated and adjusted to the new reality of an effective Union, within a key framework of national competences. The Government should now, with all urgency, create a forum, or pre-convention, for the people of England to discuss if, and how, they wish to follow in the footsteps of Scotland, Wales and Northern Ireland and access substantial devolved powers, clearly defined in statute, for their local communities. The Government should consider whether such a forum might be conducted before a UK-wide constitutional convention and involve representatives from all parts of England.**
3 Remit and composition of a constitutional convention

“Government without a constitution, is power without a right” — Thomas Paine.\(^52\)

**Remit**

77. We have analysed the evidence and believe it makes a strong case for a UK-wide constitutional convention. However, in order to proceed further we must consider what the remit of a constitutional convention should be. A clear remit would be key to the success of a UK-wide constitutional convention.

78. Our witnesses had a range of suggestions on an appropriate remit. Ruth Davidson, Leader of the Scottish Conservatives, suggested an “open remit, rather than have the stated aim at the end of it of what was going to happen before you even started”.\(^53\) The Constitution Society advocated that a convention should “propose the future constitutional relationship between the United Kingdom and its component elements”.\(^54\) Professor Matthew Flinders, of the University of Sheffield, advocated a two-stage process, starting with a Select Committee inquiry to focus on:

- a fairly tight and narrow debate about territorial devolution and multi-level governance as a first step towards advocating a (second stage) far broader constitutional convention—possibly in the form of a parliamentary commission of inquiry—that would report in 2015.\(^55\)

79. A minority of witnesses suggested that a UK-wide constitutional convention should be convened to create a written constitution for the UK. Canon Kenyon Wright, former Executive Chairman of the Scottish Constitutional Convention, suggested that there was a “need for a written constitution defining the relationships of the four nations”.\(^56\) Dr Robin Wilson suggested that a constitutional convention would be a good vehicle for exploring the merits of a written constitution for the UK:

First, if one accepts the premise that there should be a written constitution for the UK, and I do, I cannot see any other way of reasonably arriving at it that would carry the necessary legitimacy and enjoy the benefits of the wisdom of crowds, unless there was some broad participatory arrangement to deliberate on it. A constitutional convention of some form would do that as an instrument.\(^57\)

80. Unlock Democracy took a pragmatic view, stating:

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\(^{52}\) Thomas Paine, *The Rights of Man*

\(^{53}\) Q 264

\(^{54}\) Ev w2

\(^{55}\) Ev w1

\(^{56}\) Ev 135

\(^{57}\) Q 345
Whilst we support a convention process that would lead to the creation of a written constitution for the UK we believe the most pressing matter that should be considered by a constitutional convention is the impact of devolution on the UK.\footnote{Ev 138}

81. We are concerned that a UK-wide constitutional convention with an open remit could struggle to reach clear conclusions. The complexity of the UK’s constitutional relationships is such that it may be best for the Government to try to solve these issues first. While there is a case to be made that the evolving devolution settlements have altered our unwritten constitution to such an extent that it may be best to revise and codify it in a written document, we believe further work is necessary fully to examine this option. We are exploring this issue further in our inquiry into mapping the path to codifying, or not codifying, the UK’s constitution.

**Devolution of financial powers**

82. One issue that would need to be discussed when resolving the English Question is financial devolution. The devolution settlements have allowed the people of Scotland, Wales and Northern Ireland to determine the priorities for their areas. The devolution of financial powers has been part of this. A discussion could take place about whether England, within a devolved settlement, should have access to the tax-raising powers that Scotland possesses, and that are proposed in Wales. Any discussion on the future of England should of course, be discussed, and agreed by the people of England before a UK-wide constitutional convention looks at the issues.

83. The Scotland Act 1998 introduced the Scottish Variable Rate (SVR), which gave the Scottish Parliament the power to raise or lower the basic rate of income tax by up to three pence in the pound. This power has never been used. The Scotland Act 2012 gives the Scottish Parliament the power to set a rate of income tax for Scottish taxpayers, and will come into force from April 2016.\footnote{HM Revenue and Customs, Devolved taxation in Scotland, retrieved 31 January 2013, \url{http://www.hmrc.gov.uk/news/news-calman.htm}} The Scottish rate of income tax will be established by reducing the basic, higher, and additional rates of income tax levied by the UK Government by 10 pence in the pound and adding a new rate set by the Scottish Parliament. If the Scottish Parliament chooses to set the rate at 10%, there will be no change from the UK tax rates.

84. In Wales too, the concept of retaining a proportion of existing income tax has been proposed. Part 1 of the Silk Commission’s report, published in November 2012, recommended that the UK and Welsh Governments share the responsibility for income tax in Wales by 2020.\footnote{Commission on Devolution in Wales, Empowerment and Responsibility: Financial Powers to Strengthen Wales, November 2012, p 4} It stated:

> there should be new Welsh rates of income tax, collected by HMRC, which should apply to the basic and higher and additional rates of income tax;
the basic, higher and additional rates of income tax levied by the UK Government in Wales should be reduced initially by 10 pence in the pound. Over time the Welsh Government’s share could increase if there is political consensus.\footnote{Empowerment and Responsibility, p 9}

Unlike in Scotland, if the Silk proposal were accepted, Wales would be able to vary the basic, higher and additional rates of income tax by different amounts. The Silk Commission report also recommended the full devolution of business rates to Wales.\footnote{Empowerment and Responsibility, p 7} It was reported by the BBC that these proposals, if implemented would “make the Welsh government responsible for raising around 25% of its budget”.\footnote{“Commission calls for Welsh government income tax powers”, BBC News, 19 November 2012 http://www.bbc.co.uk/news/uk-wales-politics-20346118} The proposals would give Wales greater power to raise its own finances and involve no new central government funding.

85. It has been reported that the Government is also considering Northern Ireland’s call for a reduction in corporation tax in order to compete with the Republic of Ireland’s 12.5% corporation tax rate.\footnote{“Cameron urged to cut Northern Ireland’s corporation tax rate” The Guardian website, 20 November 2012 http://www.theguardian.co.uk/uk/2012/nov/20/cameron-urged-cut-northern-ireland-corporation-tax} On 21 February 2012, the Treasury announced that it would soon be devolving the power to set Air Passenger Duty rates for long-haul flights departing from Northern Ireland.\footnote{HC Deb, 21 February 2012 col 71WS} The Northern Ireland Assembly’s Air Passenger Duty (Setting of Rate) Bill passed in the Northern Ireland Assembly on 6 November 2012. The Finance Minister, Sammy Wilson MP MLA, stated:

The Executive committed in the Programme for Government to reduce the Air Passenger Duty for direct long haul flights to zero. The legislation passed today delivers on this commitment and is good news for our economy in these challenging financial times.\footnote{Northern Ireland Executive website, “Finance Minister Sammy Wilson has welcomed the abolishment of Air Passenger Duty on long haul flights from Northern Ireland”, 6 November 2012 http://www.northernireland.gov.uk/news-dfp-061112-air-passenger-duty}

86. England, since it does not have a financial settlement of its own, has been left behind. Liverpool City Council’s Chief Executive, Ged Fitzgerald, stated that his council was reliant on central government for the majority of their spending, which left local people marginalised. He stated: “of our spend—our revenue budget—91% is determined by National Government. That makes the ability of local people to exercise a real, relevant view on what we prioritise and what we spend more marginalised.”\footnote{Q 159}

87. In our report into the \textit{Prospects for codifying the relationship between central and local government}, we looked at the possibility of assigning a portion of the income tax take in England to local councils in England, in place of some of the central government block grant, as an attempt to give councils greater autonomy. An examination of the English Question could consider whether a system of tax assignment to local councils in England would help to address the differences between heavily-centralised England, and the
devolved Administrations. We heard evidence from Professor Gerald Holtham, Chair of the Independent Commission on Finance and Funding for Wales, and Alan Trench, a fellow at the Constitution Unit, and are confident that tax assignment for England is, in principle, a feasible option. Alan Trench, when asked if there was any reason why tax assignment could not work in England, answered: “Not as such, but you have to decide what assignment is going to achieve ... it may give you a greater degree of public involvement but it will not directly promote responsiveness”.68

88. The UK Government and the devolved Administrations, or a UK-wide constitutional convention, could also consider whether there is a need to modify the current formula-based funding mechanism—the means used by the UK Government to determine funding for the devolved Administrations. Sir Merrick Cockell, Chairman of the Local Government Association, criticised the current formula-based funding mechanism:

> It does have bizarre consequences, particularly at a time of less money ... We are not going to be able to avoid looking at the symmetry of funding and its fairness and must try to work out something that is actually based on need rather than an artificial formula.69

Andrew RT Davies AM, Leader of the Opposition in the National Assembly for Wales, stated simply: “we all understand that the Barnett Formula has reached its sell-by date”.70

89. **We recommend that the Government or a constitutional convention analyse whether England should be given similar devolved tax arrangements to those taking shape in Scotland, Wales and Northern Ireland, and consider the feasibility of tax assignment.**

**A formal or informal convention?**

90. The evidence of previous conventions suggests that a UK-wide constitutional convention would not necessarily have to be set up by the Government. The Scottish Constitutional Convention, for example, was not set up by the Government, and yet gained widespread support over the years.

91. However, the Constitution Society argued that an informal constitutional convention would be of little value:

> An informal convention on the future of the Union would be of limited value. The participants would be effectively self-selecting and would consist mainly of those who favoured change. It is predictable that some political parties and interest groups would decline to take part.71

92. Unlock Democracy, an organisation campaigning for greater transparency in Government, suggested that only a convention with a clear legal status would succeed in

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68 Q 571  
69 Q 129  
70 Q 62  
71 Ev w2
engaging the public, and suggested that the UK follow Iceland’s model for a constitutional convention:

One of the key factors in making public involvement in constitution making successful is that the process must be genuinely independent of government, and have a clear outcome. This means that it must have a clear legal status. Public engagement succeeds when there are defined stages to the process and it’s known from the outset what will happen to the findings. This could be going straight to a referendum or reporting to Parliament before being put to a referendum.72

93. We considered whether the Good Friday Agreement could cause any legal issues for a UK-wide constitutional convention. Mike Nesbitt MLA, leader of the Ulster Unionists in the Northern Ireland Assembly, thought not:

I don’t see it as a barrier to having discussions. A constitutional convention could come up with recommendations that would run contrary to the Belfast agreement, but it would depend to some extent on those specifics.73

94. It would be best if either the Government undertake the work, or appoint a commission or set up a constitutional convention. The legal status of any work undertaken, and the process involved, should be clear at the outset. The Government should make a commitment in advance to report any proposals resulting from a convention or a commission to Parliament and be clear about whether a referendum would be necessary before the proposals could be implemented.

Composition

95. It may be better to undertake this work within the scope of the Government. On the other hand, how a constitutional convention should be composed is an important question, as a convention that was not felt to be representative might lack legitimacy. The example of the Scottish Constitutional Convention suggests that a UK-wide convention would not necessarily require the involvement of all political parties in the UK in order to go ahead, although it would be difficult to proceed without ‘buy-in’ from all the devolved Administrations and Legislatures.

96. There are many different ways in which a constitutional convention could be composed. Many witnesses expressed the opinion that any convention would need to be inclusive, find ways to engage the wider public, but not be so big as to be unwieldy. The First Minister of Wales, Carwyn Jones AM, stated that “the challenge for the convention is to ensure that it is not just the great and the good, which royal commissions tend to be... but also that it is not so big that it becomes unwieldy”.74

97. Professor James Mitchell, of Strathclyde University, commented that the key challenge would be getting agreement from those who had most to lose from a new constitutional settlement:

72 Ev 138
73 Q 401
74 Q 99
It is always easy to secure the support of winners in any settlement but losers' consent is important. This may require compromises to be reached which may be best achieved outside the formal Convention. Given current constitutional arrangements with devolved governments in three components of the UK, there will be a need to accommodate a territorial dimension in membership. 75

98. We have been clear throughout the report that we believe that it is essential that the public are part of the composition of the constitutional convention. Leanne Wood AM, Leader of Plaid Cymru at the National Assembly for Wales, stated that a constitutional convention would be useful only if it included the public:

In principle, Plaid Cymru believes that the idea of a convention looking at evolving relationships in these islands and in Europe is positive given the need for radical change. However, it is imperative that they are ‘open source’ constitutional conventions, like the recent one in Iceland, with a real role for the ordinary citizens in suggesting how we reshape our democracy. 76

99. Democratic Audit stated that direct election could be one way of engaging the public in a constitutional convention:

Direct election for a proportion of the constitutional convention might well be considered. The precedent of the Australian convention in 1998, which involved direct election of half the delegates, may be useful. While turnout was relatively high (47%) in Australia even without being a combined election, it may be wise in the UK context to run any convention election alongside another poll (European or General elections being the all UK options). 77

100. The Electoral Reform Society stated:

Whilst direct citizen involvement is the starting point, there should be defined roles and methods of participation for elected representatives, constitutional experts and civil society organisations either through submissions or direct advisory roles. There are a number of different models to consider. The Irish constitutional convention will be two thirds members of the public and one third elected representatives. By contrast the Icelandic process specifically excluded party political representation. 78

101. Some believe the arguments point strongly to the need for a constitutional convention. There is a choice about whether a constitutional convention should be directly elected, or include a mix of appointed and elected delegates. Questions of composition may come rapidly into focus when the remit of a UK-wide convention has been agreed. There is not just one type of successful convention. However, we believe a successful convention would involve representatives from all parts of the Union. We are clear that the convention must have a strong element of public participation if it is to be credible. We believe that the public should be represented among the members of the
convention, but we also believe that there are a number of useful precedents for involving the wider public. Using social media, as Iceland did in its constitutional convention, would be a comparatively low-cost way of ensuring engagement by citizens across the UK. Given that the UK has a lower rate of internet use than Iceland, 83% compared to Iceland’s 95%, use could also be made of public meetings so ordinary citizens could contribute to the work of the convention.

**Decision making**

102. A key task is to ascertain how the convention would deliberate on proposals, and whether agreement would need to be unanimous in order for a proposal to be adopted.

103. In his oral evidence, Canon Kenyon Wright stated that a convention which required a consensus on proposals was a formidable task. The Scottish Constitutional Convention, which had a relatively narrow remit, took six years to formulate its proposals. He told us:

> I had to chair the Executive for six long years before we produced our scheme. Consensus means you have to have time to achieve it, but it took us six years. Again and again, to be quite frank with you, I would have loved to have been in a situation where at the end of a meeting I could say 'Right, let's take a vote now'. We couldn't. We could only say 'Go away and sort this one out'. There were times when that was very difficult, but it was done. Because it was done, we have a new kind of politics in Scotland.

79

104. The Electoral Reform Society suggested that proposals could be accepted if they were agreed by a majority of the Union: “If the convention were to proceed by majority voting, care would need to be taken that representatives from each of the constituent nations had a voice. A majority from each of the regions might be necessary.” Unlock Democracy concurred, adding that “it would be necessary that the proposals had at least the support of the majority of each national group.” The Constitution Society suggested that “Simple majority voting might be the best approach in an assembly where the randomly-selected participants enjoyed an inbuilt majority”.

82

105. How the delegates of a UK-wide constitutional convention take decisions will be key to its success. Requiring unanimous agreement might lead to gridlock and risk the timescale for the convention becoming prolonged. However, we are not convinced that simple majority voting is a satisfactory way of proceeding on proposals of a constitutional nature. At the very least, we would want to see decisions supported by a majority of the representatives from each of the parts of the UK.

106. The Governments and Legislatures of all the nations of the Union would be key participants in the convention and the public debate. It would be expected that all the political institutions and parties would take the long view on the future shape of the Union.
Timing

107. Our inquiry has been conducted against the backdrop of the forthcoming referendum on Scottish independence, which will take place in the autumn of 2014. The prospect of the referendum, and its possible outcomes, has helped to focus people’s minds on the need for a forum in which to discuss the future of the Union. It has also given the inquiry an increased sense of urgency, and inevitably questions of timing have arisen. Our witnesses were split on whether it would be possible to hold a convention before the referendum.

108. Esther Roberton, the former co-ordinator of the Scottish Constitutional Convention, stated that a constitutional convention for the UK was urgently needed given the potential implications that the referendum on independence for Scotland could have on the whole of the UK:

The UK is coming to a crossroads with the prospect of the referendum on independence for Scotland in 2014. If Scotland were to vote in favour, this would create perhaps the biggest constitutional upheaval the UK has ever seen. For this reason, I believe that there is an urgent need for a public debate about the potential implications, not just for Scotland but for the whole of the UK. A Constitutional Convention would be one method of approaching this but there may be others. With less than two years till the referendum, time is short and experience would suggest that a Convention would take some time to be established. The key issue for me is that the debate is established urgently and in a form that engages with the widest possible audience.

109. The First Minister of Wales, Carwyn Jones AM, argued that a constitutional convention should take place before the referendum because otherwise “we run the risk of visiting constitutional issues after what might be a referendum that produces a result that no-one expects.” However, Leanne Wood AM, Leader of Plaid Cymru at the National Assembly for Wales, stated:

Timing is clearly an issue: a UK constitutional convention is not possible before the Scottish independence referendum, as it is unclear whether the UK as currently constituted will continue to exist. A post-referendum constitutional process of some description will be necessary either to discuss the arrangements for a successor state or the UK-wide implications of Scottish devo-max.

On balance, we do not believe there is time to set up a constitutional convention, and for such a convention to report, before the referendum on Scottish independence in 2014. However, there is no time to waste and the run up to the referendum should be used to carry out the groundwork necessary to set up such a convention.

110. International examples suggest that conventions can be completed within one to two years. The Icelandic constitutional convention sat over seven months, drafting an entirely new constitution during that time, while the British Columbia Citizens’ Assembly

83 Ev w18
84 Q 83
85 Ev w15
deliberated on a change in the voting system over 11 months. The Royal Commission on the Constitution, also known as the Kilbrandon Commission, looked at UK-wide constitutional issues, and took four years, reporting in 1973. Some believe that a UK-wide constitutional convention could report in under a year. However, since it would take time to set up a convention, the Government should begin work without delay on resolving the English Question. It would be best if either the UK Government and the devolved Administrations undertake the work, or jointly appoint a commission, or set up a UK-wide constitutional convention.
4 Conclusion

111. The rules and principles of the UK’s constitution have evolved over hundreds of years. They should continue to evolve, based not on what is politically expedient, but on the concept of subsidiarity, with clear and broadly accepted roles for the Union as a whole, and for the devolved nations of the Union. Changes over the last 15 years have continued to alter our political and constitutional arrangements at a rapid pace. Some believe that the time is right to step back and consider what effect these constitutional changes have had on the UK as a whole, and what the future of the Union could look like. In short, it is time to conduct a comprehensive review so that the Union can work well in the future. The forthcoming referendum on Scottish independence, and the need to answer the “English Question”, reinforce the need to consider what the Union will look like in five, 10 and 50 years’ time.

112. There is some argument for a convention to look at the future constitutional structure of the UK. The Government’s options should include whether it should examine the case for a convention to look at the future constitutional structure of the UK, because of the impact of the incremental political and constitutional change that has taken place over the past two decades, and the effects of devolution—including the lack of a devolved settlement in England—on relations between the different elements of the UK and how it functions as a whole. Were Government and Parliament to accept such a proposal, any convention should be tasked with recommending a way forward for relations between the different parts of the UK in the 21st century, and should take account of the work of the recent Commissions that have looked at aspects of the devolved settlements, including the Commission on Devolution in Wales, the Commission on the consequences of devolution for the House of Commons, and our own report on Prospects for codifying the relationship between central and local government, which explored the devolution of power to local councils in England. The precise remit of any such convention should be a matter for consideration and agreement by the UK Parliament and the devolved Legislatures.

113. However, the English Question—the fact that England, unlike the other parts of the Union, is still governed centrally, and, outside London, does not have its own devolved settlement—must be addressed first. Given that measures to resolve the English Question could have a profound effect on the UK Parliament, any proposals and subsequent changes should be considered with caution. The future constitutional position of England needs to be clarified, and possibly work started on a UK-wide constitutional convention, although it is far from clear whether Parliament, as a whole, would vote for such a convention.

114. We urge the Government to begin the preparatory work now by swiftly resolving the English Question—both in terms of English votes in Westminster and the lack of a devolved settlement for England itself—then moving to establish a Government forum, a commission or a UK-wide constitutional convention once that work has begun. The conclusions should be published after the referendum, enabling any convention to take the result into account. We are aware that the Government’s current opinion is understandably that a convention is not a priority. It would be unfortunate if work in this area were merely to take the form of a reaction to a referendum in one part of the Union,
rather than to involve listening at length to views from all the UK nations. We believe that the future of the Union is the property of all those who live in the UK. Securing the involvement and consent of us all will mean that the continual evolution of our Union will be supported and sustainable.

115. Being able to adjust to changing circumstances and needs, and reconciling the twin complementary principles of devolution and union are key to a successful United Kingdom in the 21st century and beyond.
Conclusions and recommendations

Is a convention necessary?

1. None of our witnesses proposed a return to regional devolution, and neither do we. The people of England have made it quite clear that they have no appetite for another layer of elected politicians. We wholeheartedly agree. There is another option for the devolution of power in England which involves no new elected politicians or additional layers of government, but rather utilises the existing political and operational infrastructure. (Paragraph 14)

2. If there is a need for a review of the constitutional relationships in the UK, this could be put into effect by a decision of the Government and devolved Administrations, or a commission or a constitutional convention. (Paragraph 18)

3. Looking at examples of how constitutional conventions have worked in other countries shows that they are most effective when they have a clearly defined remit, contain representatives from a range of sections of society, and engage the public with their deliberations. (Paragraph 30)

4. We do not believe that the Government is incapable of focusing on other issues, as well as the economic challenges facing the UK. Having a system of politics and a constitution that are ‘fit for purpose’ is a prerequisite for an inclusive and fully functioning economy. (Paragraph 40)

5. There is a range of very different opinions. This is true, not only among the witnesses but also among the members of our Committee, some of whom do not accept either the need for further review of constitutional arrangements or that a constitutional convention would be the right vehicle for any such review. We have debated our report carefully, but all our recommendations to the Government must be considered with the caveat that they do not represent the unanimous view of the members of our Committee. (Paragraph 47)

6. There has been a huge amount of incremental constitutional change over the past two decades. Much of it has taken the form of a response to specific pressure, which has meant that there has not been a strategic approach to the future of the UK. Failure to respond in a timely way to the natural desires of people to run their own affairs has been a contributory factor to antagonism towards Whitehall and Westminster. Devolution has tackled, and must continue to tackle, that problem. The failure to answer the English Question, and the reality that the largest nation of the Union is still micro-managed from Whitehall, has caused and will continue to cause tension with the rest of the Union. However, if the English Question is proactively addressed, it could pre-empt the next set of difficulties for the Union. (Paragraph 50)

7. While there is not yet a constitutional crisis in the UK, it is better to identify and analyse potential weaknesses in our constitutional framework before a crisis arises. (Paragraph 51)
8. The devolution of power from Westminster to the other parts of the Union is a principle, and not simply a political expedient. Some have argued that if devolved powers were extended to England, this would, in part, address the asymmetry of the current devolution settlements, and allow the UK to move forward and embrace the future as a quasi-federal union. (Paragraph 52)

9. We call on the Government seriously to consider in response to our report the creation of a convention, involving members of the public, to examine the impact of the constitutional changes that have already taken place and to consider how, in the future, our constitution can best serve the people of the UK. (Paragraph 53)

10. We recommend that the “English Question” be addressed without delay. Of all the tectonic plates within the Union, it is England which most needs to be lubricated and adjusted to the new reality of an effective Union, within a key framework of national competences. The Government should now, with all urgency, create a forum, or pre-convention, for the people of England to discuss if, and how, they wish to follow in the footsteps of Scotland, Wales and Northern Ireland and access substantial devolved powers, clearly defined in statute, for their local communities. The Government should consider whether such a forum might be conducted before a UK-wide constitutional convention and involve representatives from all parts of England. (Paragraph 76)

Remit and composition of a constitutional convention

11. We are concerned that a UK-wide constitutional convention with an open remit could struggle to reach clear conclusions. The complexity of the UK’s constitutional relationships is such that it may be best for the Government to try to solve these issues first. While there is a case to be made that the evolving devolution settlements have altered our unwritten constitution to such an extent that it may be best to revise and codify it in a written document, we believe further work is necessary fully to examine this option. We are exploring this issue further in our inquiry into mapping the path to codifying, or not codifying, the UK’s constitution. (Paragraph 81)

12. We recommend that the Government or a constitutional convention analyse whether England should be given similar devolved tax arrangements to those taking shape in Scotland, Wales and Northern Ireland, and consider the feasibility of tax assignment. (Paragraph 89)

13. It would be best if either the Government undertake the work, or appoint a commission or set up a constitutional convention. The legal status of any work undertaken, and the process involved, should be clear at the outset. The Government should make a commitment in advance to report any proposals resulting from a convention or a commission to Parliament and be clear about whether a referendum would be necessary before the proposals could be implemented. (Paragraph 94)

14. Some believe the arguments point strongly to the need for a constitutional convention. There is a choice about whether a constitutional convention should be directly elected, or include a mix of appointed and elected delegates. Questions of composition may come rapidly into focus when the remit of a UK-wide convention...
has been agreed. There is not just one type of successful convention. However, we believe a successful convention would involve representatives from all parts of the Union. We are clear that the convention must have a strong element of public participation if it is to be credible. We believe that the public should be represented among the members of the convention, but we also believe that there are a number of useful precedents for involving the wider public. Using social media, as Iceland did in its constitutional convention, would be a comparatively low-cost way of ensuring engagement by citizens across the UK. Given that the UK has a lower rate of internet use than Iceland, 83% compared to Iceland’s 95%, use could also be made of public meetings so ordinary citizens could contribute to the work of the convention. (Paragraph 101)

15. How the delegates of a UK-wide constitutional convention take decisions will be key to its success. Requiring unanimous agreement might lead to gridlock and risk the timescale for the convention becoming prolonged. However, we are not convinced that simple majority voting is a satisfactory way of proceeding on proposals of a constitutional nature. At the very least, we would want to see decisions supported by a majority of the representatives from each of the parts of the UK. (Paragraph 105)

16. The Governments and Legislatures of all the nations of the Union would be key participants in the convention and the public debate. It would be expected that all the political institutions and parties would take the long view on the future shape of the Union. (Paragraph 106)

17. International examples suggest that conventions can be completed within one to two years. (Paragraph 110)

18. However, since it would take time to set up a convention, the Government should begin work without delay on resolving the English Question. It would be best if either the UK Government and the devolved Administrations undertake the work, or jointly appoint a commission, or set up a UK-wide constitutional convention. (Paragraph 110)

Conclusion

19. The rules and principles of the UK’s constitution have evolved over hundreds of years. They should continue to evolve, based not on what is politically expedient, but on the concept of subsidiarity, with clear and broadly accepted roles for the Union as a whole, and for the devolved nations of the Union. Changes over the last 15 years have continued to alter our political and constitutional arrangements at a rapid pace. Some believe that the time is right to step back and consider what effect these constitutional changes have had on the UK as a whole, and what the future of the Union could look like. In short, it is time to conduct a comprehensive review so that the Union can work well in the future. The forthcoming referendum on Scottish independence, and the need to answer the “English Question”, reinforce the need to consider what the Union will look like in five, 10 and 50 years’ time. (Paragraph 111)

20. There is some argument for a convention to look at the future constitutional structure of the UK. The Government’s options should include whether it should
examine the case for a convention to look at the future constitutional structure of the UK, because of the impact of the incremental political and constitutional change that has taken place over the past two decades, and the effects of devolution—including the lack of a devolved settlement in England—on relations between the different elements of the UK and how it functions as a whole. Were Government and Parliament to accept such a proposal, any convention should be tasked with recommending a way forward for relations between the different parts of the UK in the 21st century, and should take account of the work of the recent Commissions that have looked at aspects of the devolved settlements, including the Commission on Devolution in Wales, the Commission on the consequences of devolution for the House of Commons, and our own report on Prospects for codifying the relationship between central and local government, which explored the devolution of power to local councils in England. The precise remit of any such convention should be a matter for consideration and agreement by the UK Parliament and the devolved Legislatures. (Paragraph 112)

21. However, the English Question—the fact that England, unlike the other parts of the Union, is still governed centrally, and, outside London, does not have its own devolved settlement—must be addressed first. Given that measures to resolve the English Question could have a profound effect on the UK Parliament, any proposals and subsequent changes should be considered with caution. The future constitutional position of England needs to be clarified, and possibly work started on a UK-wide constitutional convention, although it is far from clear whether Parliament, as a whole, would vote for such a convention. (Paragraph 113)

22. We believe that the future of the Union is the property of all those who live in the UK. Securing the involvement and consent of us all will mean that the continual evolution of our Union will be supported and sustainable. (Paragraph 114)

23. Being able to adjust to changing circumstances and needs, and reconciling the twin complementary principles of devolution and union are key to a successful United Kingdom in the 21st century and beyond. (Paragraph 115)
Formal Minutes

Monday 25 March 2013

Members present:

Mr Graham Allen, in the Chair

Mr Christopher Chope

Stephen Williams

Draft Report (Do we need a constitutional convention for the UK?), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 115 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (previously reported and ordered to be published on 14, 21 and 28 June, 10 July, 4 and 18 October, 1 and 8 November 2012 and 14 March 2013).

[Adjourned till Thursday 18 April at 9.45 am]
## Witnesses

**Thursday 28 June 2012**

Peter Facey, Director, Unlock Democracy, and Lewis Baston, Senior Research Fellow, Democratic Audit

**Thursday 12 July 2012**

Andrew R. T. Davies AM, Leader of the Welsh Conservative Group

Carwyn Jones AM, First Minister of Wales and Leader of Welsh Labour

**Thursday 6 September 2012**

Sir Merrick Cockell, Chairman, Local Government Association

Ged Fitzgerald, Chief Executive, Liverpool City Council, Will Godfrey, Strategic Director for Corporate Services, Bristol City Council, and Tom Riordan, Chief Executive, Leeds City Council

**Thursday 4 October 2012**

Willie Rennie MSP, Leader of Scottish Liberal Democrats, Scottish Parliament

Nigel Smith, Director of VoxScot, strategic advice for referendum campaigns, and Professor James Mitchell, Strathclyde University

Ruth Davidson MSP, Leader of the Scottish Conservatives, Scottish Parliament

Johann Lamont MSP, Leader of Scottish Labour, Scottish Parliament

**Thursday 18 October 2012**

Lord Maclennan of Rogart, Co-Chair of the Liberal Democrat Parliamentary Party Committee

Canon Kenyon Wright, Former Executive Chairman of the cross-party Scottish Constitutional Convention

**Thursday 1 November 2012**

Dr Robin Wilson

Mike Nesbitt MLA, Leader, Dr Christopher McGimpsey and John McCallister MLA, Ulster Unionist Party
### Thursday 8 November 2012

**Miss Chloe Smith MP**, Parliamentary Under-Secretary of State, Cabinet Office, and **Ciaran Martin**, Director, Constitution Group, Cabinet Office

Ev 101

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### Thursday 17 January 2013

**Paul Silk**, Chair of the Commission on Devolution in Wales, and **Professor Noel Lloyd CBE**, Member of the Commission on Devolution in Wales

Ev 110

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### Thursday 28 February 2013

**Professor Gerald Holtham**, former Chair of the Independent Commission on Funding and Finance for Wales

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**Alan Trench**

Ev 130

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<td>Ruth Davidson MSP, Leader of the Scottish Conservatives</td>
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## List of additional written evidence

(published in Volume II on the Committee’s website www.parliament.uk/pcrc)

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<td>Dr Claire Sutherland, Lecturer in Politics, Durham University</td>
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Do we need a constitutional convention for the UK?

7 Professor Iain McLean, Oxford University
8 Leanne Wood AM, Leader of Plaid Cymru
9 Kirsty Williams AM, Leader of the Welsh Liberal Democrats
10 James Ware
11 Law Society of Scotland
12 Esther A Roberton
13 SOLACE
14 Simon Cramp
15 Nicola Sturgeon MSP, Deputy First Minister, Scottish Parliament
16 Katie Ghose, Chief Executive, the Electoral Reform Society
17 Sir Edward Lister, Chief of Staff and Deputy Major for Policing and Planning

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# List of Reports from the Committee during the current Parliament

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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Oral evidence

Taken before the Political and Constitutional Reform Committee

on Thursday 28 June 2012

Members present:
Mr Graham Allen (Chair)
Sheila Gilmore
Andrew Griffiths
Fabian Hamilton
Simon Hart
Tristram Hunt
Mr Andrew Turner
Stephen Williams

Examination of Witnesses

Witnesses: Peter Facey, Director, Unlock Democracy, and Lewis Baston, Senior Research Fellow, Democratic Audit, gave evidence.

Q1 Chair: Thank you very much for coming, gentlemen. Forgive us for being a bit delayed. I stupidly raised the issue of House of Lords reform, which I will not do again.

Peter Facey: I didn’t hear any howls.

Chair: You didn’t have your ear to the door in that case.

Peter, Lewis, welcome. Would you like to make some sort of opening statement to start us off?

Lewis Baston: Okay, I shall make an opening statement. You have our written evidence. Thank you very much for accepting that. I shall give you a slight preview of the contents of the fourth general audit of British democracy, which is to be published soon.

There are a number of problems that need addressing. The obvious one is the way that the asymmetric devolution has taken place, with increasing change taking place between the different levels and issues such as the fact that we may end up with such a thing as Welsh law, as opposed to English and Welsh law.

There are a number of changes and unanticipated consequences of the way devolution has proceeded since we started out that need addressing. There is the issue of England as well—the nature of England, not only within the United Kingdom but its internal arrangements and the balance of power within England. We have a discussion about localism. We also have the decline in the foundations of representative democracy and we have phenomena like the decreasing trust and decreasing engagement of the public in politics—so there are a number of serious issues out there. We should be open minded about the way in which one might go about addressing these issues—whether to bundle them all together into one big discussion or parcel them out a bit. In particular, the position of England is an interesting one. There may be a case for having a specifically English dialogue. I will come back to that if I may and if you are interested in questioning.

Past UK practice has tended to involve elite-level arrangements: Speakers’ conferences on particular things, such as the relationship between the Commons and the Lords 100 years ago, boundaries in the 1940s—all these sorts of things. Elite-level settlements like that, possibly the day has passed for these. They do not seem to address the desire for participation and deliberation that exists. We have had directly elected forums on two occasions in Northern Ireland; we have had a political opposition or civil society forum constitutional convention in Scotland; and we have also had a process of constitutional change through legislation and referendum. So we have all these processes that have been happening. Looking overseas, conventions have often been about either writing one from scratch after a revolution or independence or so on—obviously we are not in that position but there are many examples of that. Another one, which I think is increasingly relevant to the UK, is settling issues of intergovernmental relations between different tiers of government, each with an element of sovereignty. That has been the sometimes unhappy experience of constitutional conventions in Canada. There are also occasions where they have been given a special task, such as the Australian convention in the late 1990s.

We are in favour of the idea of a convention. We think it would be useful. We think it would be good to involve the public in these issues. We are thoroughly open minded about the ways and means of doing this, what is discussed and whether it is general or specific, and we very much welcome the Committee’s interest in the subject and look forward to reading the report that will no doubt clarify a lot of people’s thinking.

Thank you.

Peter Facey: The United Kingdom is now over 300 years old. In that time, particularly in the last 20 years, the nature of that state has changed fundamentally. We have had a large amount of constitutional change, but it has always been changes to individual bits. We have not at any point sat down and had a holistic view of how this state, this country, is governed and how it is going to be governed going into the future. There is a danger that—rather like a kind of woollen jumper—you are pulling bits of it and actually what we are doing is fraying it. We have an opportunity now to have a look at the central questions of what is the United Kingdom for and how is it to be governed, and to try to join up the dots. If we do not do that type of process, then we are doing a process that is a kind of laissez-faire free-for-all, where individual bits will get pulled in individual directions and there will be no central overview of the nature of the state. I am a fan
of flags, and particularly at this point where, logically speaking, that nice big Union Jack over there flying over Parliament could potentially not exist in three or four years’ time—I expect it will, but we are at a point in the history of the United Kingdom where we may end up having a completely new state where the Union Jack does not exist, and the United Kingdom as it exists now does not exist—I think it is an important point to look at what is the United Kingdom and why it is here.

Q2 Chair: I have a logistical question that you can help me with, Peter. When the Committee sat down and said, “Well, we are obviously going to go to Scotland and hope to see the First Minister, and go to Northern Ireland and see Mr McGuinness and Mr Robertson, and we are already booked in to see the First Minister of Wales, shortly in Cardiff; and of course in England we are going to see—” and there was quite a long pause around the table. Who do we see in England?

Peter Facey: I think that is one of the problems in a convention. Looking at the future of the United Kingdom, ultimately there is a blank in the middle that is called “England”. You basically have to see yourselves, or those of you who represent English constituencies, because effectively we have had processes to decide the constitutional nature or the futures of Scotland, Wales and Northern Ireland, but we have not had that process in England. The danger, if you simply waited for that process to happen in England, is England is 80% of the United Kingdom and, therefore, that would then affect the whole. One of the central questions is going to be: how do you represent the interests of the people who live in the 80%, in a way that gives them the same freedoms that the people in Scotland, Wales and Northern Ireland have, if they want them, and at the same time settle the issues that need to be settled in terms of the nature of the UK? It is like the Council of the Isles. Again, with Council of the Isles, if you look at who is represented, my Mum, who is Manx, is represented. The UK Government is represented. There is nobody there for that kind of hole. You might as well have one of the old maps, which was kind of the world, and where England is, “Here be dragons”. It does not exist. I am not a classic English nationalist, but if we are talking about the future of the United Kingdom, you have to take into account the interests of the people who live in England. I think one of your big challenges will be: what do you do about that group? Maybe you have a session yourselves, where you sit down and you do it but ultimately that is one of your big challenges.

Lewis Baston: Yes, I would agree with that very much. It is one of the reasons why, when talking about whether we were to have a convention, we ended up thinking about direct elections as a way of ensuring representation from England. For your own purposes, I realise that is not much help in the immediate term. Political England is an institutional vacuum, and I think we should fill it because, increasingly, it exists in the minds of people. In the immediate term, yes, English Members of Parliament and some local authority leaders—of course we have one region of England that does have regional government, i.e. London. Yes, that is probably it.

Q3 Fabian Hamilton: As you know, the Silk Commission is looking into further devolution in Wales, and we will be going to Wales in the next few days, as the Chair said. The McKay Commission is reporting on the West Lothian/English question. You have mentioned the idea of a constitutional convention, is it really necessary? From what you say, it is, but please expand.

Lewis Baston: Yes, I believe so. I would expand by saying that, as Peter said, there has been a lot of incremental bit-by-bit progress on various issues, and Silk and McKay are further examples of that pattern, rather than an overall look at them, particularly with McKay, which I think is a good committee—a very expert, academic committee. But, as far as public participation and consent for change, it is the start of a process rather than the end in itself. I am sure its report will be a work that will start a dialogue about the West Lothian question and England in Parliament, rather than conclude it. Hopefully, it will sharpen up some of the terms of debate. I think it is a debate that should involve the public in general, so I would say constitutional conventions are better, in that they can take an overall view of the various different questions that have been raised and they can involve the public rather more than expert committees, although expert committees must be part of the process to structure the dialogue that takes place.

Peter Facey: I am probably even more critical than Lewis on this. I think the Silk process is an important part of the Welsh evolution. Let us be clear, I would say that the McKay process is not looking at the English question or even at the West Lothian question, but it is looking at the impact of it on this place. So it is not looking at devolution in England and it is not looking at English governance, it is purely looking at how you deal with it within the House of Commons and Parliament.

Q4 Fabian Hamilton: So it is very narrow?

Peter Facey: It is extremely narrow. If you walk down any street in England and ask, “The McKay Commission, what is it?” if you found one in 1,000 people who had the faintest clue what it was you would be doing well. In fact, as someone who purports to be a Methodist, I am not a betting person, but that is a bet I would probably be willing to take. We need to recognise that these are a continuation of looking at it from the bits. I am sure they will do good reports, but if you believe that there is a question that we at least attempt to look at it in the whole then this is not the way to do it. Yes, we need these, but we do need to look at how we stay together as a United Kingdom, if that is what we decide we want to do. Personally, I am a unionist. I believe that the Union is a positive thing. Therefore you do need to look at the Union and not just at the individual bits, and have a process for that.

Q5 Fabian Hamilton: My next question is on how we carry out this process. This afternoon I am going to Iceland where, by Act of Parliament, in 2010 they
established a national forum. I think 950 citizens were selected on to that national forum. The recommendations have come through and in October of this year they are going to have a referendum, and I hope to bring back a little more information about all that when I get back. Is that the way we should approach a constitutional convention here? Should we have an Act of Parliament that sets up a convention or should it be far more informal? How do you think we should set about it if we were to have such a convention?

Peter Facey: I think for the UK it needs to be properly registered in an Act of Parliament. The only body that can in some way speak for the UK is the UK Parliament, and if you have a process that isn’t rooted in statute the danger is that there is no process—that you end up having a convention that produces another worthy report. As you know, constitutional and political matters are political with worthy reports and conferences. If you are going to engage the public in a serious process, then you need to have something where you know what the outcomes are. You know what the process is at the very least. If you just do it informally: firstly, I don’t think you will have the money to do it well and you will just end up having another report; secondly, I don’t think you will actually be able to convince people to engage in that process, because they will not believe it is real. If it is not going to be that, then it might as well be run by civil society or an academic body as a project. That is a worthy thing, but that is not a constitutional convention in the sense I believe.

Q6 Fabian Hamilton: Isn’t there a problem though? In a country like Iceland, 950 people are a huge proportion of the 300,000 population, and the equivalent proportion here would be hundreds of thousands of people. It would be completely unmanageable. How do you ensure that you get a representation of all the different views and opinions that are out there in all the different regions of England?

Peter Facey: First of all, let’s be honest, it is extremely challenging. It is a lot easier to do these processes in small states, where you can bring people together, than it is in a state of over 60 million people. That does not mean we don’t need to do it; it just means we have to be more careful about how we do it. I don’t think you will actually be able to convince people to engage in that process, because they will not believe it is real. If it is not going to be that, then it might as well be run by civil society or an academic body as a project. That is a worthy thing, but that is not a constitutional convention in the sense I believe.

Q7 Fabian Hamilton: You have thrown some people out of the jungle, yes. Peter Facey: Yes, if you don’t have some central process, you have to accept that probably you are going irrevocably in a looser direction—that may be a positive, but it means it is an unplanned process—rather than attempting to have some degree of planning. I think states, like companies and families, should at least try to do some planning.

Lewis Baston: I would agree with a lot of Peter’s argument there. As far as Act of Parliament or some other mechanism is concerned, it depends a bit what we are trying to do. I think it would be perfectly possible to have an updated version of a Speakers’ conference that would include representation from the devolved Parliaments—and hopefully some sort of representation of the diversity of England—to sort out a few ground rules about how bits of the UK relate to each other, about how you go about independence and further devolution and all these sorts of things. You can have a better conversation like that under the auspices of a super-Speakers’ conference, which you can call a constitutional convention. If you are going further and trying to have a big national conversation, trying to take a holistic view of all the different constitutional issues—and of course if you go for something like direct election to staff the thing with—you will need an Act of Parliament.

Q8 Fabian Hamilton: If we set up a constitutional convention through Act of Parliament, what do you think should be the terms of reference? For example, should the convention be tasked with proposing a new constitutional structure for the United Kingdom, or should it simply be about an agreement between the different components of the UK, or ways in which relations could be improved or changed between the different components in the UK? How do you think those terms of reference should be designed?

Lewis Baston: Again, I think there are arguments on each side of this question. If one is having a broad exercise of the sort that would involve a deliberative assembly, its terms of reference should perhaps be left to itself. Scoping out of what needs to be done could indeed be part of its initial terms of reference and the idea of producing a broad framework. Obviously if you have a smaller souped-up Speakers’ conference, that could be given very precise terms of reference. There is a danger in creating a big body such as has been done in Ireland, with a mixture of sortition and appointment with specific terms of reference, because that body will then come under pressure for its terms of reference to expand. If you are looking at the electoral system and you are looking at the place of religion in the constitution, people will increasingly say, “Why aren’t you discussing this? Why aren’t you discussing that?” and this process is starting in Ireland. There are risks in trying to draw a fence around the terms of reference of a big public
There are plenty of examples from around the world where it has been done well, where—like Iceland, like South Africa—you involve people at different levels, at different stages in the process, and you actually give people an opportunity to help shape it and then at the very end to endorse it. If you are thinking of having one of the Government’s roadshows, where a minister goes around the country or a committee goes around the country, you have a few public events, you have an open consultation process and then you have a report on it, that is not a national conversation. If you are talking about something that is grander than that, which involves people having to shape the conversation at the first stage, taking people through a learning process and then at the end public deliberation on it, then that is what I would say a national conversation is.

**Lewis Baston:** I would agree with that. I think the idea of deliberation is important. For instance, contrast things like the AV referendum and the 1979 Welsh referendum. These things were just launched at people as referendums without much prior discussion, without a sense that these are issues that people had kicked around themselves, whereas, for instance, the Scottish referendum in 1997 and the Northern Ireland referendum in 1998 were preceded by an extensive period of interest and deliberation in the media, among people and among civil society generally, so there was a sense of broader participation. I think the Welsh referendums in 2011 and 1997 probably falls a bit between the two stools, but there is a difference between launching into a campaigning referendum situation and a process that involves deliberation. The Icelandic process seems admirable. Sections of the draft constitution were just farmed out and people could comment over the internet on it, and people did. That may be something you can only do in a small and highly educated state, but there are ways and means.

**Q7 Simon Hart:** But isn’t the truth really that national conversations are not an accurate reflection of national views, because they tend to attract an awful lot of noise from a relatively small amount of people. Having been through two—if not more—referendums in Wales, there was an attempt to have a national conversation and there was a loud and lengthy national conversation between a very few people who dominated the media, which is Cardiff-based anyway. But most people don’t give a damn—they find most of this stunningly boring. I am gripped by the idea of a national conversation, although I am still not quite sure what it is—it is tantalisingly vague—but how do you make it sexy? How do you make people get up early in the morning and say, “I must go out and have a conversation today about some constitutional minutiae”?

**Peter Facey:** Part of the problem is you are talking about constitutional minutiae. You are going to people with solutions and saying, “Here is the solution. ‘Yes’ or ‘No’?” In the case of the Welsh process, bluntly, the Welsh devolution was designed within a particular small section of the Labour Party. It was given to the Welsh people to say “Yes” or “No” to, and they had a process. We have never had even the kind of process that Scotland had in Wales. You never had a
constitutional convention. You didn’t really have civil society coming together. You didn’t attempt to have the stage before where you actually looked at the problem and said, “What are the solutions?” and then went through. If we are going to have a national conversation, it cannot start with, “Here is the solution, ‘Yes’ or ‘No’?” That is not a national conversation. That may be a legitimate way of doing a referendum or anything else, but if you want a national conversation about this we have to start with, “Okay, this is the UK, what is the problem?” It may be that the constitutional convention ends up saying, “There isn’t a problem”. You have to give it that freedom to do it and you take people through it. People are not necessarily interested in the minutiae, but they may be very interested in the basic question about where power lies in the UK, who decides on this or not, or whether the UK exists or not. You have to start where people are and take them through a process.

The reason why government does this badly is because ultimately it is scared about starting a process that is an open book. It likes to have consultations and processes where you know what you are having the conversation on and you know this is the limit of it. Then they say, “Okay, part of a genuine national conversation, in the way that Iceland has done it or the way others have done it, is that you don’t know where it is going to end and you have to accept that. If you are not going to do that, then, to be honest, let’s do something completely different.

**Lewis Baston:** Yes, I would agree with that. This is part of the reason why we ended up suggesting in our evidence to take or leave some very radical options, like leaving the agenda open to the body to decide, or direct election. These are all ways of trying to move power, make the process look potentially edgy and radical rather than just a little establishment chat, pleasant as those are. As Peter said, in terms of making it sexy, it is about power. As Henry Kissinger said, “Power is an aphrodisiac,” and if we are talking about power and where it is, exercised people will be interested. If we are talking about what sort of legal processes and parliamentary resolutions need to be done, people will not be interested. Power, yes they will.

**Q12 Simon Hart:** Let’s say we are going to do all this stuff. How does it proceed? Do you have to establish consensus, do you have to have unanimity? How do you make the thing work in a way that the outcome is not a significant disappointment to a large number of people who took part in this conversation?

**Lewis Baston:** Yes, unanimity would be nice but one cannot expect that. Although, in practice, sometimes these deliberative bodies end up producing a majority report supported by a very large majority of the people because the people have been taken through the deliberative process. The British Columbia Citizens’ Assembly on the electoral system produced a very clear majority for its overall report, somewhat to people’s surprise. The vast bulk of the Assembly endorsed it. I think there are two elements here. One is the general public discussions going on, in which you can’t expect unanimity. You can expect some decent options to emerge and hopefully you can get, through discussion and deliberation, a decent majority for something. The other element of it is reaching agreement between the different UK Governments. There probably we can hope for some sort of consensus to emerge. There are almost two levels of the discussion, and we should expect slightly different things out of each of them.

**Peter Facey:** I think consensus can be added to your list for a national conversation. What is a consensus? We now know from the Lords’ debate that a three-party manifesto is not regarded as a consensus, so what is a consensus? If we are looking for unanimity, maybe that is a completely different conversation.

**Chair:** I have never called anyone to order yet. Peter; I don’t want to start with you, but do not take us there.

**Peter Facey:** Okay. If we are looking for a consensus in power politics, I think getting a consensus is extremely difficult to do. The best you can expect from a constitutional process is that there is a clear majority in favour. The reality is one of the things you have to decide is what happens to the report of the constitutional convention. If it cannot produce a clear majority, the ability to deliver its recommendations afterwards is a lot weaker, so the stronger the majority in the constitutional convention, the stronger the report is going to be. If it is kind of 49/51, the reality is I don’t think you are likely to end up with its recommendations being adopted, either by Parliament or through a referendum. But I don’t think you should sit there and say, “You have to have unanimity.” Unless we are all going to become Quakers, I think there is no chance of it happening. Anybody who has watched Quaker decision making knows that takes a very, very long time. I don’t think in this case you could keep a constitutional convention going for that length of time.

**Q13 Simon Hart:** Two more very quick questions, if I may. First of all, explain to me how you can have a national conversation—now that that phrase is catching on—about constitutional arrangements, particularly things like devolution, without having a national conversation about the economic and social consequences? In many respects, what engages people’s interest in Wales isn’t the minutiae of the constitution but what economic impact that is going to have. Earlier on you confessed to being a little establishment chat and, thank goodness, Where I live, a lot of businesses are very concerned about the constitutional direction in which the Welsh Government is heading. They are not interested in the constitution but they are interested in the economic and social consequences. Should we separate those two things when we are talking about all of this stuff?

**Peter Facey:** You can try to have a conversation about political and constitutional structures removed from the economy, removed from all the other things but I think it is a hopeless attempt. If you achieved it, you would probably involve very few people in that process. Does that mean you have to discuss at each stage which economic policies you are going pursue? You need to at least discuss the consequences of it and the fact that you are accepting that there will be different policies in different places, and the
consequences of that going alongside it. We have to recognise one of the dangers in the conversation happening in Scotland at the moment is they are having a conversation in Scotland around: is Scotland £500 better off or worse off for being in the Union? As an Englishman listening to that conversation, part of it is that if you have that type of conversation and they decide that Scotland is £500 better off being in the Union, does that mean I am £500 worse off? We have to be careful we don’t have that type of conversation. We need to have a conversation premised on the United Kingdom is a positive thing. We want to continue the question about what the structure is.

Q14 Simon Hart: We are already doing that. That is exactly the conversation that is going on.

Peter Facey: Are we?

Simon Hart: Yes.

Peter Facey: Where is the conversation in England about the structure of the United Kingdom, about how it works? We are having a conversation in Scotland, purely in Scotland, about whether or not they want to be independent or not. We are not having a conversation about the nature of the United Kingdom, about where power lies within it and what its structures are. That conversation is not going on. We are purely having a conversation about whether you want to leave the door open or not and is it better for you to leave the door open? As someone born into the United Kingdom, living in England, I have no part in that conversation. I am watching them decide to leave the room or not. I am not discussing my constitutional future or what that structure should look like going forward. My son, who is six, learnt the national anthem for the Queen’s Jubilee. That may become completely irrelevant in a few years’ time, but his parents and his community have no say in that. So we are having a conversation in Scotland; we are not having a conversation in the United Kingdom about it.

The reason why the Welsh First Minister is constantly talking about the subject is that, if you are coming from Wales, the consequences of that decision in Scotland are huge—there will be a massive impact. We are not having that conversation, collectively as a group of islands, on how we continue to govern ourselves if we stay together. What we are having a conversation on is: “I want this, and if I can’t have it I’ll leave.” That is not a national conversation, in a UK sense.

Lewis Baston: I would like to add, in reference to your question about other matters—economic, social and so on—that if one is having a discussion about the appropriate relations between different tiers of government and the limits on government, then it is reasonable to talk about where economic decision making should take place. We also have frameworks about equality, human rights and so on—the state and the citizen. As I say, if we are to have a convention, I would like a very open discussion and those matters should certainly be part of it. It was very much part of the process in Northern Ireland when they were constitution making in the late 1990s and throughout the 2000s, so, yes.

Simon Hart: I have a couple more questions. Can I possibly come back later?

Chair: Of course, Simon.

Q15 Sheila Gilmore: The difficulty perhaps we have in all the discussions about a constitutional convention in an awful lot of the UK is that the English in particular appear to be disinterested. In the most recent British Social Attitudes survey it showed only 25% of respondents favoured an English Parliament. Very few favoured regional assemblies and when we did put that to the vote, it was resoundingly defeated. People just do not seem that interested in this concept. Maybe people perceive in England that Westminster is the English Parliament.

Peter Facey: The first thing I would say is there are other surveys of attitudes that give a very different view from the survey you quote. If you look at the IPPR report on attitudes towards England, certainly in terms of the hardening of English identity, it believes and says that there is now a growing trend of people considering themselves to be either English or equally English and British, and that a recognition of that needs to have a political nature to it. I would agree about the two solutions that you outlined of regional assemblies and an English Parliament: I happen to support neither of them. That does not mean I am happy with the nature of the governance of England; it just means I reject those solutions.

It is also worth noting on the regional assemblies: before everybody says that they were resoundingly rejected, that we had two referendums, and one was passed, and one failed. So we just need to recognise that the scorecard at the moment on regional assemblies is 1–1. I am not saying that that means that we should go down that route; I happen to think that historic counties and cities is a better way of devolving power in England than artificial regions. But let’s not rewrite history.

If England does not have a discussion of how it is to be governed, and is not allowed to have an open discussion about it—as I said, it would probably lead towards some of the things that this Committee has talked about in its code for independent local government; but we need to have a conversation that allows us the same freedom that there is and was elsewhere in the United Kingdom—I think long-term there will be a problem as more and more people consider themselves and call themselves English as distinct from British.

My son’s friends at his primary school don’t actually use the word “British” at all. They think of themselves as English. He uses the word “English.” When I say “British”; he looks at me with a blank face. The word he uses is “English.” He hears “England”, he speaks “England.” I am not saying he has a political constitutional view of the world. He doesn’t; he is six. His view from the survey you quote. If you look at the IPPR research on political England pretty convincing that
there was such a thing as political England. It lacks any institutions to represent it. One of the oldest challenges, which was the challenge in 1939 from Leo Amery, “Speak for England, Arthur.” He meant Britain or the United Kingdom, but nobody is there speaking for England. There is no sense of a figurehead person in England, institutions for England. Perhaps conceivably England doesn’t need them as such. Perhaps enhanced local government, city regions and so on, is the way to go to reflect the way England is a plural entity. But we have not even really started to have that conversation. England is a vacuum as far as discussion is concerned. We are still vague about the terms of reference of any look at what political England should be. I speculate—I don’t want to set up too many new institutions here this morning—about whether there is a case for an English conversation, an English convention to get England’s ideas sorted out before participating in a UK convention.

Q16 Sheila Gilmore: Is there a fundamental problem with the size differential that we have? I think from an outside England perspective, a lot of the feeling is—you said that more people use the word “English” than people who call themselves British. You might have used “British”—that, in England you almost deliberately use “English.” They see it as interchangeable—that Westminster is interchangeably an English Parliament and a British Parliament. But I don’t think from a Scots or Welsh perspective people would necessarily think—

Peter Facey: If I go back to the 1980s, I think you are right. As long as you were right that there is this interchangeability, then probably you could go along with England being represented by the UK, and you could have a process where the UK Government effectively does the job for that part of the United Kingdom. What is happening, if you look at the stuff on identity, is that a growing group of people perceive themselves to be distinctly different—English, not British—in a way that has not been there in the past. It is not a majority, but there is a kind of growing sense, since devolution, of there being a place called England that is distinct from Scotland, where things happen differently here on healthcare, on social care and on lots of other things, and you can’t now use the words “British” and “English” interchangeably. I am clear, I am British. I am clear that what being British is includes intimately people from Scotland, Wales and Northern Ireland—and some of my friends would say Cornwall—in that conversation. In the same way that a Scot does not mean “Devon” when they say “Scotland”, they mean Scotland, when you now talk about “England” there is a growing sense that you are talking about the geographic area and the people of it. Yes, football has helped and, yes, other things have helped but there is a growing sense of identity. Does that mean it needs to have a national institution like the symbols of Englishness. But, as I say, I think England is only starting out on a national process. Scotland obviously has been a separate polity for a long time; Wales has been created as a political entity almost before our eyes in the last 20 years. England is only at the start of that process and I think it is important that people engage with it and recognise it.

Lewis Baston: Yes, I accept there is that perception and I accept that there is a reality behind it, and that manifestations of English nationalism are quite often aggressive. I don’t think it is necessarily the case. I don’t think the English are bad people who are in incapable of generating their own civic nationalism in a way. Part of the problem is that people have been afraid to talk. People who aren’t on the nationalistic right have been afraid to talk about what makes England good. There are ambiguities. For instance, the category of English who are least keen on being labelled English are ethnic-minority people. There is a sense that there is a whiff of ethnic identity about English, which I don’t think there is really in Scotland. Most people in the Scottish discourse are very clear that Scotland is an inclusive civic identity rather than an ethnic one. I don’t see any reason why Englishness should not be an inclusive identity as well. I think it has been that people are reluctant to engage with it. For instance, within the political parties, you can talk about the Welsh Conservatives, the Scottish Labour and so on, but there is no sense that there is English Labour. Stephen’s party is slightly different in that there is an English Liberal Democrat party.

Stephen Williams: Unfortunately.

Lewis Baston: But for most of us there is a “don’t go there” attitude to political England. So I think it has been a bit left to people who would make ill-use of England as being quite a reactionary, perhaps even quite a right-wing notion? Maybe that is very unfair, but probably from parts of the UK that are outwith England, the growth of English identity is seen as quite, maybe, threatening.

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you are not allowed to express it, then the danger is you will get exactly what you want. You will get the English Defence League.

Mr Turner: That is what they want. They want those things and that is why they support them. It is not the other way around that being right-wing is a bad thing. being right-wing is a good thing.

Sheila Gilmore: We might have to disagree with that.

Peter Facey: I would say that the English identity is no more right-wing than any other identity, that someone on the centre left could be proud to be English. Billy Bragg is an expositor of English identity, and I would be interested to hear if anybody here thinks that Billy Bragg is at all right-wing. I would like to meet you if you do, because it will be an interesting conversation.

Chair: We may ask him, but if we can just stick to the constitutional convention just to help the Committee through some of these issues.

Q18 Sheila Gilmore: There is an issue of outside perception and that can influence whether people want to have some of these conversations. As Andrew said, there are some very nice people who are right-wing— not wanting to cast aspersions. It is also the perceived power balance. This is drawn from the state that you have chopped up into relatively equal pieces. We have a profoundly unequal position here. How far does that obviously make constitutional discussion difficult?

Peter Facey: Which is why in the past, when the question of an English constitutional convention has been raised, we have said that you need to have a UK process alongside an English process. You can have a constitutional convention in Scotland and not necessarily dominate everything else, but if you have a constitutional consensus in England, where England itself decides purely on its own institutions, the consequences for the other parts of the United Kingdom are extremely profound because of its size and dominance within the state. The choice is: how do we have this conversation? If I am right, the conversation is happening and will happen over a period of time. The question is: how do you frame it? I think that having a conversation about the future of the United Kingdom, in which there is space for an English conversation but it is within a framework for the UK, is the best way to protect the interests of the other parts of the United Kingdom and to have a conversation about this state called the United Kingdom.

If you don’t do that, over time you will get pressure for the English-only conversation. I think that would be more worrying if you are coming from Cardiff and Belfast and Edinburgh than having one for the whole of the United Kingdom. The alternative choice is not to have a conversation at all, and hope that the English go to the pub or go to the garden centre and ignore the whole thing and don’t do it. That is a choice, but, looking at where things are now, I would say that would be a mistake.

Q19 Sheila Gilmore: Canon Kenyon Wright, who was involved in the Scottish Constitutional Convention prior to 1997, has said that he thinks there is a fundamental conflict between the Scottish and the English constitutional understanding of traditions. Do you think that is true?

Lewis Baston: The English idea of parliamentary sovereignty is one that does not travel to Scotland, and the sense of popular sovereignty and constitutionalism is stronger in Scotland than it is in England, clearly. I think that is right. We de facto moved away from—if we were ever really fully there—a position of unalloyed parliamentary sovereignty in a unitary state. We do not really have that any more, if we ever did. It is clear that Scottish and Northern Irish institutions, and probably increasingly Welsh ones as well, have a foundation that is separate. We also have the EU and human rights and so on, which have been accommodated within a framework that does not quite negate parliamentary sovereignty but isn’t there. On the English matter, and referring to your last question, we were trying to do something quite unusual, which is to construct an equitable multinational state where one partner is much bigger than all the others. The record of such things in the past has not been terribly good. I can think of the USSR, Wilhelmine Germany and Yugoslavia, none of which are entirely happy. We are trying to do something quite new here. The English question of how to fit in an equitable devolved UK is a difficult one. I am in favour of the maximum discussion and deliberation about it.

Q20 Sheila Gilmore: I would just like to comment that, in my view, this notion of some separate Scottish constitutional thinking is vastly overrated.

Peter Facey: I would agree with Lewis, but I don’t think most people have a strong sense of a constitutional convention in Scotland or in England. There are plenty of English people who believe in popular sovereignty and actually think we are a multinational state and do not understand or, if they do understand, do not agree with parliamentary sovereignty. I am very proud to sit here as someone who regards himself as English. I think parliamentary sovereignty is a load of twaddle. I have never seen it. Officially you are the most powerful people on the planet. I do not think constitutionally, in reality, that is true. You think that is true?

Chair: Just to take Sheila’s thought a little bit further, if we go towards looking at a constitutional convention will it be practical to negotiate such a thing with the devolved Assemblies in Northern Ireland, Scotland, Wales and whoever will speak for England, or is that just something that will prove impossible to negotiate? Is it a sensible path to pursue at all?

Lewis Baston: My view would be that it should be possible. I guess one has to park the Scottish situation for a bit. Depending on the way the referendum goes in Scotland, Scotland may have no interest in participating in UK institutions. If Scotland remains
in the UK, practically, there will have to be a framework in which we all get along together. If Scotland leaves the UK state, I think the situation of the residual UK is something that needs a lot of basic thought. In a sense, an independent Scotland would not just mean creating one new country, it would be creating two new countries, really, because the residual UK is going to have to be a very different beast from the state we have at the moment.

Peter Facey: I think it is necessary to do. I don’t think it is easy. You also have to recognise that in some ways what you can’t do, in a UK constitutional convention, is rewrite the constitutional settlements that are now in place in Scotland, Wales and Northern Ireland. We are trying to join them back together while accepting that they have happened. You also have to legitimately accept that if the English wanted to take the same level of powers for themselves, in whatever way they decide to do it, that they have that right as well. That means we are doing something quite difficult because we are actually trying to knit together after we have already devolved. But I think it is essential that we try. Otherwise, as I have said before, you are in a process where, by its very nature, power will shift outwards and we will probably be sitting here—well, some of us will be sitting here—having a conversation about how we actually govern England.

One of the questions we have to recognise is that if the UK is in a difficult position, in terms of marrying a nation that is 80% of it and freeing other distinct parts, the history of units where England and Wales or England and Northern Ireland are joined is even worse. The history of the Kingdom of Serbia and Montenegro is not a very long one. Scotland leaving the United Kingdom will be the founding blocks of the United Kingdom leaving, and you would be reforming something in a completely different way. You would then be having a conversation in England of whether or not English taxpayers wanted to pay for Wales, wanted to pay for Northern Ireland, when Scottish taxpayers have basically said they do not want to pay and contribute to people in Wales and Northern Ireland. I think that would be a very different conversation. I would prefer to have that conversation now to having it after a 2014 referendum.

Chair: That is one of the reasons we are having this conversation now. We see a referendum coming up and whichever way it goes we would like Parliament to have a view. It may be a view that is not listened to but this Select Committee is determined to put something out there ahead of that, rather than to react once the referendum has happened. No doubt we will have to do that as well, but we will try to get some thinking out there in the year before a referendum takes place so that we are all prepared for that.

Q22 Stephen Williams: That was where I was going to start from. Is there any urgency about this? I guess from what Peter was just saying he thinks that there is urgency. I wonder whether such a convention would be better left until we are faced with a “Yes” vote in Scotland. If there is not a “Yes” vote in Scotland, then we do not need to have it.

Peter Facey: Very briefly, I would say the direction of travel seems to be—and I think this would be reasonable—that Scotland, whether it votes “Yes” or “No”, is likely to get greater devolution. That devolution is then likely to be matched by a desire in Belfast to take the same and to Wales to take some of that as well. So, regardless of whether Scotland votes “Yes” or “No”, the fact is, if we consider the present way the UK is governed, we are not going to stay where we are. The one thing we can safely say is there is no way we are going to stay where we are today, and in 10 years’ time it is going to be exactly the same. It will change. The question is whether that change is planned or not. I think there is an argument for having that planned and having the thinking done. Also to be fair to the Scottish voters, the voters should know what the nature of the United Kingdom is likely to be if they vote—as personally I hope they will do—to stay within the United Kingdom. Leaving it so that all you are having at the moment is a conversation about in or out in Scotland is a mistake. The rest of us who are not in Scotland also need to have a conversation about the nature of it ourselves. If anybody in this room thinks that the United Kingdom’s governance structures are now set in stone, and are going to stay exactly as they are today, you are on something because they are just not. I have not met any academic or any person looking at it who thinks that where we are now is sustainable.

Lewis Baston: Whether “Yes” or “No” in Scotland, there will be further questions for us here in England and in the UK, however defined. I guess, in terms of your question about timing, it is whether those questions are sufficiently different; we have to wait until that fork in the road as far as Scotland is concerned before starting on it. My own view would tend to accord with Peter’s, that we should really start before, that there are enough issues in common, depending on which way you go, and that it is important that the decision in Scotland isn’t taken in a complete vacuum. As English, as Welsh, as Northern Irish, we are stakeholders in this matter as well and it is reasonable to start talking beforehand.

Q23 Stephen Williams: Do you not think there is a danger—Sheila might be the only person who knows the answer to this, and she is not a witness so she can’t answer—that a UK constitutional convention in 2013 will distort the results in Scotland because it might be seen as big brother next door interfering in their debate?

Peter Facey: As long as it is clear and explicit that Do you not think there is a urgency. I wonder whether such a convention would be better left until we are faced with a “Yes” vote in Scotland. If there is not a “Yes” vote in Scotland, then we do not need to have it.
Edinburgh and then takes Aberdeen—there may be a fiction writer out there—but I don’t think anybody thinks it. We have accepted the idea that this is a union held together by consent and if the people want to leave it they can. As long as we make that clear, I think it is perfectly rational and sensible to have a conversation about the nature of a UK that Scotland is staying in, as long as Scotland has a full part in that conversation.

The question is: do you say, “We will have a conversation after you have decided”, in which case we may be having a conversation that is in crisis mode—I always think conversations in crisis mode are not good conversations and not good processes—or are you saying to Scotland, “If you stay in, we’re not sure what is happening”, so you are not giving any certainty. There is no good way of doing this, but I don’t think simply postponing it and saying to Alex Salmond, “Have your conversation and then the rest of us will have a conversation if you decide to do it”, is a sensible way forward.

Q25 Stephen Williams: But it would be a conversation without a say, wouldn’t it? I am not sure in that context how I would engage the people of Bristol in such a conversation, and in the urgency of the Scots making a decision when nobody in my seat or anyone else around the table, apart from Edinburgh, will actually have a say in it. Indeed the Scottish people who are working in my office here in Westminster are deeply upset that they are not going to be able to have a say in it.

Peter Facey: If you have a conversation about how the UK is governed, your constituents will—if you have a conversation about the nature of the UK, where power lies in it, you have to have a conversation about the process at least, what the right of England is to have its own power. There are quite a lot of people from the south-west of England who would want to see more decisions taken locally in Bristol, in Somerset, or, where I come from originally, in Devon. I think there is that. If we have this conversation purely about the Scots, you are right we should not have it. But I am not suggesting a conversation that is, “Should the Scots leave or not?” I am suggesting a conversation about the nature of the UK. What is it? What is this thing I am a citizen of? How is it going to be governed going forward? It is 300 years since we founded it, what is it going forward? My wife is Australian. In Australia, there is a clearer sense of the nature of Australia, in terms of its structures and where it lies, than there is in the UK. I think at this point we probably need to have it. Does it need to be about everything? No, but we are at a juncture in the UK about whether our future lies together or separately. If it lies together, how are we going to get along together as people on these islands and within a wider framework of what we want to do within the European Union? I can’t think of a better time or a more important time to have that conversation.

Q26 Stephen Williams: I can just foresee a situation—because we all enjoy this sort of thing—where we would be sat on this convention having these wonderful conversations about city regions, in Leeds, Nottingham, Bristol or wherever, and how we might do things differently, and then someone will say, “Well, hadn’t we better wait until the Scots have made their mind up, because everything changes?” As a Welshman, one of the reasons why I hope the Scots will vote “No” in the referendum is that I think my home country will be massively disadvantaged if Scotland votes to leave.

Peter Facey: Bluntly speaking, if you are talking about something under a constitutional convention, you are talking about something that will probably take us two years to set up. So the likelihood is that a constitutional convention—

Q27 Stephen Williams: It will be after anyway?

Peter Facey: I hope that it will be set up before you have the vote so there is a process there. But the idea that it will have finished by the time the Scots vote—if we wanted to do that we should have started two years ago. We have not. It is 2012 now. The referendum is in 2014. Your report will be out later this year. If the Government decided it was an absolute priority, you would be legislating for it in 2013 if you were moving at a record pace for the UK Parliament. Therefore, you would be talking about setting up a constitutional convention at the end of 2013, beginning of 2014, if it is through that. That does not mean that there does not need to be conversations within the wider society before that process happens. But the idea that this is going to happen tomorrow—legislation takes time and Parliament does not move that quickly.

Lewis Baston: I would add that the pragmatics of it suggest that, if you are having a serious intergovernmental discussion, as opposed to a broad conversation, we are going to have to wait until after the Scottish referendum because, presumably, the Scottish Government will take no interest in discussions about what the future of the UK is until they have had their referendum. So, yes, I think the conversation stage, possibly particularly in England and also within Wales—the First Minister has been very keen to start—needs to start. An intergovernmental conference would have to be afterwards.

Q28 Stephen Williams: The Chairman has asked me to move this on a bit, so a more fundamental question now. While sat here, I have been having flashbacks to about five years ago when I was on the Education Select Committee. We used to meet in this room. I used to sit in this seat. We were doing an inquiry into citizenship in the context of the curriculum and the then Chancellor, Gordon Brown, had made some speech, preparing the ground for a Scotsman becoming Prime Minister, about the nature of Britishness. More than anything, isn’t that what we need to resolve—who we are—rather than how we govern ourselves? There is no particular consensus about that.

Chair: You have 15 seconds.

Stephen Williams: Unless we get some consensus on that, how we will have different cabinets,
constitutions, voting systems and so on, does not really engage with people at all.

**Lewis Baston:** I take the point. On the other hand, shall we say the lack of conclusion to that discussion of Britishness is a bit of a sobering one?

Q29 Stephen Williams: The Americans are American, aren’t they? They resolved that in 1789, The Australians are Australian, whether they are from New South Wales or Victoria. But are we British?

**Lewis Baston:** In a sense, this is a bit of an English problem, isn’t it? Because Welsh and Scots feel comfortable with multiple identities and there are different identities there. Britishness is a multinational thing. Within England it seems to have a slightly more inclusive connotation than Englishness, in terms of ethnicity and so on. The problem is that discussion started by Gordon Brown didn’t seem to really lead anywhere, possibly because the English didn’t feel it was important. In a way, if you are Welsh, Scottish, Northern Irish, or members of minority nations within Britain, it is clearly important and it is the sort of thing you work out. Whereas I think the English are rather lazy about it.

**Chair:** Peter, can I ask you to be fairly quick on this, as I have three colleagues who still have not asked a question.

**Peter Facey:** I am not a fan of the last Government’s Britishness conversation. It seemed to be attempting to have a single identity, which meant that you were having a conversation on Britishness in England but you were not having the same conversation in Northern Ireland or in Scotland and Wales. The English had to be British and everybody else was having a conversation about other things, and I don’t think it works that way. If you go to places like America and you ask somebody, “Are you Texan?” they have a clear idea of what a “Texan” means and that it actually means something.

My wife is from Western Australia. Trust me, the Premier of Western Australia has a very clear view of the interests of Western Australia, as distinct from the interests of Australia. He is Australian, yes, but Sandgropers—as they are called—have a clear sense of identity. Clearly they have a chip on their shoulder about everybody on the east—they want to take their money so they don’t like it. We are a multinational state. I am from Devon; I am proud of it. I am English, I am proud of that as well. I live in Cambridgeshire, I am very proud of that, and I am also British. The idea that I should take one identity, because Gordon Brown says I should, and wear it uniformly is ridiculous.

**Q30 Tristram Hunt:** Let’s drill down into how it is going to work. We have heard that in Iceland there were 950 members. In your ballpark, how many people would it involve? I know this isn’t written in stone but just give us a sense of it. How many people would it involve? What is the relationship between those elected and those randomly selected? Will there be delegates? Is there space carved out for the Welsh, Northern Ireland, the Scottish and English? Just give me the framework.

**Lewis Baston:** In the brief sketch I had, I was envisaging something like 100 to 150 directly elected on a regional basis—the nations and regionally within England. We have about 100 to 150 of them: 50% of the Assembly, as was the case in Australia, an element chosen by lot—I am pragmatic about the way of doing that—and other elements obviously because we are an intergovernmental—

Q31 Tristram Hunt: Sorry, 150?

**Lewis Baston:** 150-odd directly elected.

Q32 Tristram Hunt: Another 50 chosen by lot?

**Lewis Baston:** Say another 50 chosen by lot, and then 100 appointed from the parliamentary and governmental and local government units, so 300 in totality.

Q33 Tristram Hunt: Yes, okay. So 25 England, 25 Wales, 25 Northern Ireland and also Scotland—parliamentarians?

**Lewis Baston:** Parliamentarians, local government figures.

Q34 Tristram Hunt: Local government as well?

**Lewis Baston:** Yes. I would wish particularly in the English context for government beyond the centre to be included.

Q35 Tristram Hunt: Sure. Would those be selected by party or would those be institutionally put forward? How does that work?

**Lewis Baston:** I think they should be there as representing institutions. As I note, they should not be mandated by those institutions. I would wish the constitutional convention to work in a deliberative way and not have to have people representing things, reporting back.

Q36 Tristram Hunt: But you are going to have a self-fulfilling prophesy, aren’t you? Those who do not have a problem with the woolen jumper unravelling and a Burkean conception of what a constitution is, will not necessarily be putting themselves forward through a more rationalist Robespierre vision of how you do it.

**Lewis Baston:** Sure.

Q37 Tristram Hunt: Apart from those chosen by lot, you will end up to a degree with those who want the end—

**Peter Facey:** We have taken a slightly different view. The fact is there is no perfect way of doing this. There are lots of different models. You can choose your model and each one comes with its own problems. On the whole, we have said that it should be around 200 people in total, because it needs to be small enough to actually have a conversation with itself.

Q38 Tristram Hunt: These are public concerns. This will be in Church House, open gallery—

**Peter Facey:** It needs to have different stages in the learning process, and to go out as well, not just being in our ivory tower. On the whole, we have gone for
the majority being chosen by lot, so effectively a grand jury.

Q39 Tristram Hunt: Who guides them? What is the committee that is guiding their processes?
Peter Facey: Normally there is a secretariat. You have to work out how you put experts in. The reality is there is no such thing as a neutral expert, so which experts you put in, how you put them in, affects it. We have said that a third should be from existing elected officials and that effectively, in the case of Scotland, Wales and Northern Ireland, they should be chosen from their Parliament. Their Parliaments should decide how they are represented. In the case of England, because there is nobody to represent England, what we have said is that the parties should decide. It should be divided on what the basis of the parties’ vote is in England, but the parties should then decide on who represents them.

Q40 Tristram Hunt: And those parties that do not have Members of Parliament, like UKIP?
Peter Facey: Yes, personally I would include them, but the problem is if you look at UKIP on the last general election, their percentage of the vote at the election is very small. Again, this is the difficulty of what you do about England. The advantage of letting the parties choose is you could choose MEPs, MPs and councillors and the parties could decide the mix themselves. I think, in trying to work out who speaks for England, it is just too difficult to say who does, because the reality is nobody does. You have to make the best you can, and I think leaving it to the parties and saying, “Okay, you choose electoral representatives from it but you decide yourselves whether there should be a more localist or national party”—

Q41 Tristram Hunt: What if a party does not want to participate? What if the Conservative Party takes the view that we have a conservative belief in constitutionalism and we—
Peter Facey: If the Conservative Party does not want to take part, then I do not think a constitutional convention would actually happen. If what is the largest governing party in the United Kingdom decides it does not want a constitutional convention to happen, you are not going to get it.

Q42 Tristram Hunt: That is just a hypothetical. I think all of those problems can be overcome. Then it is set out in statute so it is a Government Bill. Where does the conversation end? Do each of the devolved Administrations sign up to what the constitutional convention comes out with, or is this a sort of process?
Peter Facey: You have to say that this is a process. You have to accept that this is the UK Parliament and Government setting up a process for the United Kingdom. I do not think you can do it on the basis of asking each part of the United Kingdom to sign it and opt into it. You are not going to give Devon the right to opt in or opt out.

Q43 Tristram Hunt: No, but what if the convention comes up and says, “Well, actually, we believe in a more coherent United Kingdom and that means withdrawing, for example, tax-raising powers from Scotland”?
Peter Facey: That is why I said at the beginning in terms of my evidence that you have to accept the nature of the settlements that have already happened. I do not think you can take away from Scotland without going to Scotland and giving the right to accept or reject. If you are going to say, “The price of the continuation of the United Kingdom is the abolition of the Scottish Parliament” I think you have to accept that the Scots have some say in that.

Q44 Tristram Hunt: Essentially, this becomes a process for the transition toward federalism? This becomes a process of managing federalism, does it?
Peter Facey: Bluntly, I think we are heading towards a quasi-federal state. We now have Parliaments and Assemblies in Scotland, Wales and Northern Ireland, which have law-making powers, which are in the process of getting tax-raising powers, which are protected by referendums so that the centre cannot take their powers away. On any kind of definition, that is a quasi-federal state. We are no longer a unitary state.

Q45 Tristram Hunt: But we should not kid ourselves about what the nature of the constitutional convention would be, because there would be an awful lot of people who have a different conception of what the state should be, and this is actually about how we manage going forward into a federal framework.
Lewis Baston: Yes, the agenda that faces us is how to cope with this sort of asymmetric quasi-federal thing that we have. There are different coherent arguments to it, but the practical politics and constitutional thing is that we cannot go back; we cannot revert, if we ever were one, to a uniform unitary state. It is about managing how to run an asymmetric quasi-federal state, yes.
Peter Facey: The convention could, of course, come up with a solution that says that we move back to a unitary state. That would give the option then to the people in Scotland and Wales and Northern Ireland, whether or not they wanted to accept that or not. I do not think it would. I do not think you should write into it and say, “It has to be this”. The political reality is unless you are going to go to Scotland and basically say, “Your choice is to stay in the unitary state or leave”—

Q46 Tristram Hunt: Yes, I think we have it, but it is basically managing a conveyor belt. Finally, in terms of public engagement, I think we are all quite interested and excited by this, but if you are going to get delegates and things, was it British Columbia where they did the delegate elections at the same time as the general elections, or—
Lewis Baston: No. In BC they had a semi-random process; they sent out invitations to a random sample to participate. People who were interested enough to then turn up to a meeting chose among their number
at the meeting. You actually did get a kind of sifting of people who just were not interested, would not turn up to the meeting. Ireland is intending to do a fully random version. We shall see how that works.

Q47 Tristram Hunt: Are we generally of the opinion that the Irish one is going into the sands?  
Peter Facey: Irish political commentators seem to be of that opinion. It is not because of the nature of the convention, i.e. the mixture of appointed and non-appointed. It is the fact that the Government is basically removing issues from the convention. What are left are fairly minor technical issues.

Q48 Tristram Hunt: I do not understand what they are trying to get to the root of because I would have thought the Irish political system is relatively—  
Peter Facey: At the last general election in Ireland there was a lot of conversation about the need for political reform, about the nature of the state, about the role of the Catholic Church, about whether or not you need a second chamber or not—  
Chair: Multi-member constituencies.

Peter Facey: Constituencies, the nature of the electoral system, all those things.

Q49 Tristram Hunt: Incredibly technical political science?

Peter Facey: It is.

Lewis Baston: It is a load of political science issues.

Peter Facey: They had some meaty issues. For instance, one of the big issues at the election was whether or not there should be a second chamber. The Government has decided that that should not go to the constitutional convention, so they have taken that out. They have already had a couple of referendums. They have left a number of technical issues that are even more technical than the electoral system. You have constitutional technicalities being put into this process, which is why lots of people who were calling for a constitutional convention are now going to say, “If you are going to take away all the big issues, what is the point of doing it?”

Q50 Mr Turner: I must say I do not think this will work and I do not even want it to work particularly. There are so many points one can follow up, but let us start with one of them. Do you know what “garden centre unionists” means?

Peter Facey: No.

Q51 Mr Turner: It is the majority of unionists in Northern Ireland who have nothing to do with politics. In a way, that is true for the whole of England, I think. Most people are not interested in politics. They will go and vote and that is the end of it. In both those countries, or rather in one province and one country, they cannot have proper elections, or rather they can have proper elections but they are not allowed to disagree. Is that going to be changeable? Is that not the responsibility of your convention? Is that something for the Ulster people?

Peter Facey: If you are doing it on the future of the United Kingdom, the bit where we all join together, then you have to say that those issues—I have a lot of sympathy with what you say—are for the people of Northern Ireland to decide in terms of their structures. They have had a long constitutional process that is not at an end through the peace forum and through the Belfast Agreement, and there are people in Northern Ireland who are making the point that the present constitutional framework is a crisis framework and not—

Q52 Mr Turner: So that is a local issue?

Peter Facey: Yes.

Q53 Mr Turner: Fair enough, because I think the same is true in England. In fact, it is not England. We are a local country, a lot of local communities within one England. I do not think there is any way you can sort it out except where people want to come together themselves. For instance, say we have Cornwall, which may or may not be English, but at least you can understand it being a local decision rather than part of a national decision. That is why I felt you were giving a dangerous and irrelevant conversation about Bristol, because Bristol is as far from Cornwall as it is from London. Let us abandon this idea of regions, accepting the—

Peter Facey: I agree with you.

Mr Turner: I realise, yes. But we seem to keep coming back to these problems of regions. Regions are okay for London and they are not okay for—

Peter Facey: We get caught up in the language. What is a region? Is Essex a region? Essex has 1.3 million people.

Mr Turner: Yes, but it is a county. That is what we mean by a county.

Peter Facey: Okay, call it a county, call it a region—

Mr Turner: No, I am sorry, it is a county. It is not a region. That is a fact.

Peter Facey: There is a geographic place called Essex, which is a county and some of our counties are shires—I will be careful here with the historian on the panel—which have existed for a long time. The way you described England is the way personally I would describe it. Anybody who knows my views will know I am an ultra-localist. I think we in England have to have the right to have a conversation about the nature of how we are governed. I do not think that means that we have to take the view that we will have the same political institutions that are right for Scotland, Wales and Northern Ireland. I am not an advocate of those because I think that there is a danger that what you would do in England would be for the comfort of our cousins in Scotland and Wales and impose centralism on England. But that does not mean that we do not have the right to them if we want them. It means that we have a right to a space to decide on how England is governed.

I do not think you can have the complete conversation about the nature of the governance of England in a UK constitutional convention. What you can have is a group of people who have responsibility to think about whether there needs to be an English process or not, and whose job is to protect the rights of the people of England to have that conversation if they want to have it.
Q54 Mr Turner: But the danger is, you see—I think the figure cited was 200—that does not include the Isle of Wight. My constituents in my island could be completely ignored. Having people from the south-east would not represent us in any way. I do not know who would be representing them in the south-east. The south-east is fortunate not to have a large county in the middle of it, but in the west country, the chances are Bristol would have four or five people because it is easy for them. It is the Cornwalls and the Isle of Wights and probably the Norfolks and the Cumbrias that are ignored.

Peter Facey: Which is why we have suggested that the random solution is actually better. You cannot have 200 people, or fewer than 200 because of the other nations, who represent the diversity of England. Again, we need to recognise that England itself is going to have to have a conversation as to how it is governed and what role here is to look at the UK institutions and not necessarily work out what a settlement for the Isle of Wight is. Ultimately I would like to see a settlement in England that allows powers to be drawn down to the communities of England if they want them, so that the people of the Isle of Wight can decide from a menu of things what it would like to have and we do not assume that what works in Cambridgeshire or, for that matter, what works in Manchester, should work on the Isle of Wight. But that is a conversation that we within the space that is England need to have. With all due respect to friends from Scotland, Wales and Northern Ireland, I do not know why the people of Edinburgh need to be involved in that.

Q55 Mr Turner: Exactly, and that is why I think it is necessary to have a very brief conversation for England, but we do not need to involve Scotland or Wales or Northern Ireland. It would actually be quite convenient to do it at the same time as their referendum. We have a group of people who do represent us and we do not represent us in any way. I do not know if the law is being ignored, and the English Members of Parliament—so we can do it here. If they need an extra person, okay, they can have two whom they appoint or whatever. But the point is you have to do it through something that exists. You could do it really randomly. The problem is 90% of those would not be bothered. They might if the law required them on the basis of population. Peter, I think in your presentation you also talked about whether you should have a blank sheet of paper when you look at what the convention should be discussing. If you were surmising what the man on the Clapham omnibus would like the convention to discuss, what are the top three or four issues you think that he would want us to debate? That is what both of you.

Peter Facey: I have never been good at necessarily attempting to speak for the man on the Clapham omnibus or even on the Cambridge to Royston bus. I think the central question has to be: do we want, collectively as a people of the United Kingdom, to keep the UK state? If the answer to that is “Yes”, what things should we collectively do? How can we work together and what things should we decide apart? In the case of where I live, we are having new towns being built, effectively. Is that a decision that should be taken by the UK Government? So Scottish MPs should decide on it, or is that something that should be taken lower? Should the UK decide on the education system in Northern Ireland? So what sort of decisions do we make collectively and what is it we do apart? Ultimately, it will also come down to who pays for what bits, because basically if you are on the Royston bus—well, you would not be on the Royston bus, because it only runs once a week. If there were a daily Royston bus, you would be concerned about your fuel duties, who pays for it, what services you are paying for and where it is. If we are going to have a grand process, then it needs to be the grand questions of: do we want the UK; if so, what is the UK for; what things do we collectively do together and what things do we do apart—that conversation. If you want to have a more narrow conversation, I would not suggest you have a constitutional convention in the sense we have done. You do other things that could involve the public in it. You could involve the public in quite narrow issues in lots of ways. But if you are asking me the big
question, the big question is basically: does that flag exist, do we want it to exist, what does it represent, how is it governed and what is its future?

**Lewis Baston:** Yes, what is the UK? What does it do? What is it for? That is obviously the key one. If you are talking about a Clapham omnibus, yes, I keep coming back to this vacuum that is England, political England and the need to work out something about that. There has to be some sort of conversation about funding. If you look at opinion polls, one of the most pro-Scottish independence regions is the south of England, because there is a perception—and we can argue about how justified it is—that the south-east funds the rest of the country. There is also the perception in the rest of the country that the south-east sucks the life out of the rest of the country. There are issues to do with—not only within the UK but within England—this sort of funding balance and resentment. It is real stuff. I think that is right, you would have to explain these wrinkles. But you raise a good point.

*Chair:* Is there a sort of legal counsel attached to the convention to sort of consider. Whether you have some sort of explicit process whereby, as with the Human Rights Act, you would implicitly mean withdrawal? How do you cope with that situation? I do not have an answer. My thoughts was prompted by your question just now, but I do not think the European one would be the issue that you say, “We are not going to do it because of this”.

**Q58 Andrew Griffiths:** If what you are saying is true, that you have to have a discussion about Europe and our relationship with Europe as part of the convention, it would be crazy to ignore it. Isn’t that the reason why a convention will never happen because no Prime Minister is going to cede that decision and the power to make that call to a convention?

**Peter Facey:** To a large degree it is an irrelevance, in the sense that I think we are on a process towards having a referendum on it anyway. The more that you try to play King Canute about it, the worse it is going to get. There are lots of reasons not to have a constitutional convention. You have some sort of explicit process whereby, as with the Human Rights Act, you have to flag it up and say, “We are knowingly going beyond EU law here, otherwise it would be interpreted in some way as being compatible with the EU.”

**Q59 Andrew Griffiths:** I suppose what I am saying, though, is that the convention would force the hand of the Prime Minister, and that this is something where a Prime Minister would want to be on the front foot and doing at their own volition rather than something that was forced on him by a convention.

**Peter Facey:** If you went around political commentators and politicians and asked them, without publishing their views afterwards, whether or not within 10 years or 15 years we will end up having some sort of constitutional convention. You would worry about constituencies, and you worry about the pressure from politicians, MPs, newspapers, the media, the public, the constituents, and the pressure of events is more likely to produce that than any constitutional convention.

**Lewis Baston:** I take the point that I think was implicit in your question, that in preparing a report at the end of the constitutional convention the report of the recommendations of the convention might be incompatible with EU law, membership of the EU, possibly, full stop. What do you do in that eventuality, because in a sense approving the convention report would implicitly mean withdrawal? How do you cope with that situation? I do not have an answer. My thought was prompted by your question just now, but it is something that obviously in setting it up you have to consider. Whether you have some sort of explicit process whereby, as with the Human Rights Act, you have to flag it up and say, “We are knowingly going beyond EU law here, otherwise it would be interpreted in some way as being compatible with the EU.” It is a complicating factor. You would probably need some sort of legal counsel attached to the convention to explain these wrinkles. But you raise a good point.

**Chair:** Colleagues, thank you very much. The witnesses, too, thank you so much for your contributions today. You have started the
constitutional convention conversation in microcosm, whether it is a national one or something else. We have had some great philosophy as well as politics this morning. It is a forerunner of something that we could all have on a much wider basis, so it has been very interesting. What we will do—and we always do this anyway—is make a point of circulating this sort of interaction to future witnesses and, indeed, to the senior politicians we are going to see in Wales, Scotland, Northern Ireland and hopefully, when we have figured out who it is, in England. Thank you so much.
Thursday 12 July 2012

Members present:
Mr Graham Allen (Chair)
Paul Flynn
Simon Hart
Mr Andrew Turner

Examination of Witness

Witness: Andrew R. T. Davies AM, Leader of the Welsh Conservative Group, gave evidence.

Q60 Chair: A very warm welcome. We are a sizeable chunk of the Political and Constitutional Reform Select Committee from Westminster. I apologise to the witnesses, because they are sitting a long way away from us. That is not our doing, as I would far rather you were here next to us, but, apparently, in order to capture all your words, you have to be right in line with the cameras. It does not help with the conversational feel that I think is important.

Andrew R.T. Davies: It is like a Hollywood film.

Chair: Like on the Hill. However, set that aside, because we are here as friends and colleagues, and we want to hear what you have to say. We want to learn from you and your experience.

I have to read out some health and safety things here. I welcome the public to the meeting. I think we have a member of the public here. The meeting will be bilingual. Headphones can be used for the simultaneous translation from Welsh to English on channel 1 or for amplification on channel 0. Please turn off your mobile phones and any other electronic equipment. In the event of a fire alarm, follow the directions of the ushers. Right, that has got all the formalities out of the way.

Andrew, you are very welcome. It is wonderful to see you again. It was great to catch up with you last time when we made a point of coming here to meet people and establish relationships. We have been in touch subsequently, which has been excellent. You know that we are here to explore this issue of the need for a constitutional convention, not least because of the various institutions. There is also the issue of health and education, for example, which are devolved to the Northern Ireland and Wales have Assemblies. We are looking at the Silk Commission at the moment. Most people seem to be all commissioned out, to be honest with you. The big issue is what England does in the current era in which we live. Scotland has a Parliament and Northern Ireland and Wales have Assemblies. We are responsible for 20 devolved fields here, and we make primary legislation, and so I feel that the tools are here to do the job. What people are crying out for is for politicians to get on and do the job, to be honest. It is for England to sort out how it sees the political settlement evolving in England. A lot of what we have required here in Wales has happened. Yes, there is a big discussion around the financing of devolution and, today, there is a report out about taxation, for example. However, I think that that is separate from the primary legislation, and so I fully appreciate what we are looking at in Scotland, regarding the proposal to have a referendum in 2014, but I do not want to prejudge the outcome of that, and I think that it is too early to be discussing these proposals.

Q61 Mr Turner: Regarding the First Minister’s calls for a constitutional convention, what are your views on having a constitutional convention as far as Wales is concerned, and also as far as the UK is concerned?

Andrew R.T. Davies: In my paper, I outline the fact that, since the set-up of devolution, we seem to have had various conventions and fora looking at how devolution has evolved here in Wales. There was the Richard Commission, then the Holtham Commission, which is concerned, and also as far as the UK is concerned?

Chair: Fantastic, Andrew. Thank you again. I will now bring in Andrew Turner.

Q62 Mr Turner: So, to summarise, you are saying that, in relation to Scotland, it is too early, and that we need to have the referendum first and follow on from that. In relation to Wales, you are saying that you have the tools to do the job and it is now a matter of getting on and doing it. In relation to England, you are saying that it is our job to decide what is going to happen, rather than that of the UK.

Andrew R.T. Davies: At the moment, I do not think that people know. As I understand it, a commission is being set up at the House of Commons to look into this very issue. However, there is a big question about how we resolve the issue of MPs voting on matters over which their constituents have no say, because health and education, for example, are devolved to the various institutions. There is also the issue of financing and the financing of devolution. That is a constant debate and discussion that goes on in this
institution, but I think that it is separate from the political convention and we should try not to mix them up, to a point. There is a uniform response from the political parties here: we all understand that the Barnett formula has reached its sell-by date. As my paper says, what I believe as a politician is that what people actually want to see is their politicians making decisions and improving the social and economic aspects of their lives. I believe that the tools reside here to do that in the fields in which we have competence.

Q63 Paul Flynn: You are against having a convention, and you were disparaging about the previous ones, of which there have been rather a lot. However, do you agree that the process of devolution and the accretion of powers to Wales has resulted from those bodies? We are in a situation that is continually moving, and one in which there will be a vote in Scotland. Could you look into your crystal ball and tell me what your party’s view is likely to be if there is a vote for devo max in Scotland, and also if there is a vote for independence?

Andrew R.T. Davies: I would not say that I have been disparaging about the previous conventions here in Wales, because I think that they have been necessary to review the original settlement, as the Richard Commission did. The Government of Wales Act 2006 emanated from what Richard did. Then, we had the All-Wales Convention, which looked at primary law-making powers. We have had Holtham looking into the financing, and at the moment, we have part one of the Silk Commission. We still have part two of Silk to come. I would not have used the word ‘disparaging’, as I do think that those bodies were necessary at the time. However, I believe that we need politicians to start delivering rather than constantly going to conventions, and actually start to look at this whole constitutional process. From a Welsh perspective, I believe the situation is in balance at the moment. From a Scottish perspective—we are looking at the UK here obviously—yes, we know the referendum is coming in 2014, and I believe that it would be premature to bring a convention together that would almost be trying to prejudice the outcome of that referendum. If the outcome of the referendum was in favour of independence, it would merely be signalling the intention of the Scottish people for those negotiations to start. It would be opportune to consider then, but it is premature at the moment to be going down this convention route and looking to establish one imminently. In your earlier meeting on 28 June, there was a strand of thinking from some evidence that was given that we need to be doing it now because the way in which the parliamentary process works is very cumbersome and slow and it would take time to get it off the ground.

Q64 Paul Flynn: Would you, in the light of the experience in Scotland, argue that if Wales wants devo max, it should start to campaign for independence?

Andrew R.T. Davies: No. I am a unionist at heart, and I do not believe that there is any desire for independence in Wales. I believe firmly in the union and believe that the Scottish people want to retain the union. Polling is indicating that at the moment, albeit their perfect right to enter into this discussion and have the referendum if that is what the devolved Government had in its manifesto; that is the democratic right of the Scottish people. However, I believe that the union overall is strong enough to maintain itself, but there is a big discussion to be had about what England wants to do in the coming years.

Q65 Paul Flynn: Even after another two years with this present Government, do you think the enthusiasm for independence will increase or decrease?

Andrew R.T. Davies: I am not that au fait with Scottish domestic political life or opinion because my focus is on Wales. However, I believe that the strengths and merits of the union far outweigh any thoughts of independence or potential benefits that the separatists would identify as being beneficial if you went independent.

Q66 Paul Flynn: The AV referendum was dominated by lobbyists with money and people were told that if AV came in, there would be less money for looking after babies and for buying equipment for soldiers. So, the public was informed that AV would mean people killing babies and killing soldiers and many people voted on that basis. Does this fill you with enthusiasm for the wisdom of crowds who are influenced by lobbyists who are paid by vested interests?

Andrew R.T. Davies: I do not recognise the picture that you painted there. I appreciate that we are all entitled to our own views, but from my participation in the AV referendum, which was obviously held the same day as the Assembly elections, those were not the views that were being expressed in any shape or form. Maybe that was in that parallel universe that you are frequenting.

Q67 Paul Flynn: Those were the adverts at Vauxhall Cross that I used to see every morning as I came into work. If a convention is set up, and in spite of your opposition, how would you like to see it manned, or womanned— who should be on it and who should take the decisions?

Andrew R.T. Davies: If you look at my paper, it states that, at this time, I do not think it would be opportune to have a convention. Obviously, situations change and that is the nature of public and political life and the way in which countries evolve. Is that not how the United Kingdom came into being? There is evolution, but I do not think it is opportune at this time to deflect from the job in hand, which is the far bigger job that people are telling us they want done, rather than putting a political convention together, given, as I have said, all the conventions that we have had here in Wales. You can talk about what is going on in Europe, and there are the discussions that we have all seen unfold this week about the House of Lords in the House of Commons. As I said, from my own perspective and my group’s perspective, we believe that there is a big issue about England deciding what it wants in the current environment. That is the elephant in the room rather than a UK convention at this moment, which my paper makes quite clear.
Q68 Paul Flynn: Would you like to be ahead of the curve for once in your party rather than the position that you had, which has always been behind the curve? You are the least creative of all of the parties on the subject of devolving powers.
Andrew R.T. Davies: I do not think that the Conservative Party has ever been behind the curve; that is why we have been the most successful political machine in the western world.

Q69 Paul Flynn: In Wales?
Andrew R.T. Davies: Ultimately, we are a successful political organisation that gauges the mood of the public. I think that if you asked the opinion of the public, its priorities would not be related to this particular issue.

Q70 Paul Flynn: For two periods while I have been in Parliament, you have not had a single Welsh Member of Parliament. Is that an example of your success?
Andrew R.T. Davies: That was before I got involved.
Chair: I would like to know more about this history, but perhaps not just at the moment. Have you finished, Paul?
Paul Flynn: Yes.

Q71 Chair: I do not want to put words in your mouth, Mr Davies, but I think that you are saying that you are not opposed in principle to a constitutional convention if those other issues are first looked at.
Andrew R.T. Davies: Yes, but also, as I said, there needs to be an emphasis on what exactly England is considering doing given the political climate that we live in: with a Parliament in Scotland, an Assembly in Northern Ireland and an Assembly here in Cardiff. In my view, that is the question that needs to be resolved before we move into the territory of considering a convention.

Q72 Chair: I fully understand, but you do not have an opposition in principle to the concept of a constitutional convention if those other issues are first looked at.
Andrew R.T. Davies: I am open-minded about the issue itself.
Chair: That is helpful.

Q73 Paul Flynn: Who do you think should speak for England?
Andrew R.T. Davies: It is not for me to appoint people to speak for England.

Q74 Chair: Perhaps I could speak for myself, Paul, and I will call you to speak when you indicate that you want to come in.
Just to tease out another point, Mr Davies, one reason that people are suggesting that we should consider this a little earlier than normal is because, like you, we are representing a legislature; in other words, we are representing the Westminster Parliament, and one issue in our mind is that government will always make a decision about these things and the media will always make its views known, but, from our point of view, we would like Parliament to have a view. In a sense, I would like that opportunity for you here, so that you can express a view rather than everyone reacting to this tide of decision making that could occur without us—without anyone in the legislatures being that involved in it. I offer that by way of an explanation as to why it might be useful to consider some of these things ahead of the Prime Minister making the decision.
Andrew R.T. Davies: The examples of some of the speeches made this week in the House of Commons show that when people are able to express those views, you see the political world come to life and shown at its best. Many comments were made in the House of Commons this week, but certain results did not go the way that people would have expected them to have gone.

Q75 Chair: You are tempting me into one of my favourite areas, which is how wonderful Parliament could be if we weren’t under the yoke of governments of all colours. That is something we need to think about outside the Committee rather than in our focus on a constitutional convention.
Let us theoretically say that there is a constitutional convention: how do you see that working here? Do you see it empowering people or voters here? What might the mechanisms be to allow for a wider sampling of people to be taken rather than leave it to Prime Ministers and First Ministers?
Andrew R.T. Davies: ‘Empowering people’ are wonderful words, are they not? They are used all of the time in the political cauldron. Sadly, that has not been achieved via devolution in Wales. I refer to this in my paper. The highest turnout we see is in the low 40s. For the most recent referendum that we held here, the turnout was in the low 30s. People are craving for decisions to be made and the British model always used to be that you take decisions and then face the electorate. There is a quandary here in that modern politicians always talk about empowering people, offering referenda and having discussions, conventions and fora, but the general public tends not to participate in the first instance. Often, no decisions of substance come out of those conventions and fora, and we muddle on. I perceive that what people want is for other people to take issues by the scruff of the neck and make decisions, then offer themselves up for election. They can then be judged on that basis.
Over the last 10 years, we have had two referenda, or three, if you count the AV referendum. In this institution, we had the one that set it up and the one on primary law-making powers. A generation ago, people would probably only have had one referendum in their lifetime. There is a perception that we are going to empower people and engage with them, but some of the routes that modern politicians have explored have failed to do that significantly, on the basis of turnout and people’s responses when they have been offered the chance to engage.

Q76 Chair: That dialogue will continue. My anxiety is that whatever way the referendum goes, the day
afterwards a Prime Minister will feel obliged not to sit and suggest that there should be a few months’ contemplation. Rather, the day afterwards, he or she will say, ‘Right, people wanted independence, so this will happen now’, or, ‘They voted against independence—though some have voted for it—so this is what we will do’. Then we will all be in a situation of reacting. Therefore, part of undertaking this sort of dialogue early is to give us the opportunity to influence that process.

**Andrew R.T. Davies:** The response will come down to the level of maturity of the individual who occupies the seat. Ultimately, we all still inhabit these islands and we all have to get on. We are all economically interdependent. If a referendum were to go the wrong way, in my mind, which is in favour of independence, it would be a signal to the governments to begin that process, rather than waking up on that Friday morning—I think that the referendum will be held on a Thursday—to a Scotland that is suddenly independent. There is the space to do it. I very much hope that Scotland will maintain its links with the union and that we carry on being the United Kingdom, because it is through that union that we have strength in these islands.

**Chair:** The First Minister is here, so we should wind up but, Andrew, did you want to make a quick point? Paul, have you finished?

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**Ev 20 Political and Constitutional Reform Committee: Evidence**

12 July 2012 Andrew R. T. Davies AM

**Q77 Paul Flynn:** I am surprised that we did not see you in London yesterday, but I hope that we will see you there in the future. I am still not certain about your attitude. The political weather will change if there is a vote for independence and it is a runner. Do you not think it would be sensible to prepare for this with a convention to get the groundwork in, so that we know what our choices are if that takes place?

**Andrew R.T. Davies:** There is no doubt that timing is all-important, but there are bigger priorities for us to be focusing on. While the discussion may take place through these fora, it would be premature to establish a convention now or in the near future, as I believe has been suggested to you in previous evidence. People are mixing up the financial aspects with the constitutional aspects in this discussion. Paul will not mind keeping the First Minister waiting.

**Chair:** Thank you, Mr Davies, for your time. My apologies again: I had not realised that you were immediately outside the room, so please forgive me. It is great to see you again, Andrew. If there are additional things that you want to throw our way—notes or thoughts—please feel free to do so. Our consideration of this will go on for at least four or five months, so we would be pleased to receive anything additional that you want to send our way. Thank you for your time.

Andrew R.T. Davies: Thank you.

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**Examination of Witness**

Witness: Carwyn Jones AM, First Minister of Wales and Leader of Welsh Labour, gave evidence.

**Q78 Chair:** First Minister, welcome. Thank you so much for sparing some of your very valuable time to see us this morning. We are looking forward to talking to you. We are the Political and Constitutional Reform Select Committee. We are visiting Cardiff, Edinburgh and Belfast, among other places, to see what people’s views are. We are concerned, a convention could look at what sort of settlement would be appropriate for Scotland, given constitutional aspects in this discussion. Paul will not mind keeping the First Minister waiting. Paul will not mind keeping the First Minister waiting. Paul will not mind keeping the First Minister waiting. Paul will not mind keeping the First Minister waiting.

**Chair:** Thank you, Mr Turner. Yes, please. May I ask you, first of all, just in a summary, what is it that you want to be in this absolutely beautiful, stunning building. I could never come here enough. We brought the Committee here very early on. We are the baby of the select committee structure in Westminster. I think that we came down here within a few months of our being created just to make the connections with our parliamentary colleagues here. We are delighted to be back here. Andrew, would you like to kick us off?

**Andrew R.T. Davies:** Thank you.
somewhere on the line between independence and the status quo. However, of course, we have to bear in mind that any change in the relationship between one part of the UK and another has the capacity to affect all of the UK.

In Wales, of course, the Barnett formula is a particularly hot issue. It affects the whole of the UK. We know that any changes in the constitutional relationship between the Scottish Parliament and the UK Parliament are bound to have an effect on Wales in terms of the powers that should then be looked at as far as the National Assembly for Wales is concerned.

Q80 Mr Turner: That implies that you believe that there should be a convention now, or very soon, rather than after the Scottish referendum.

Carwyn Jones: Correct, yes. I believe that the convention should begin before the referendum. I say that because it would make clear to the people of Scotland, for example, what is on the table. In 2014, people will be asked to vote for or against independence, when it is clear that there are other alternatives that the people of Scotland may well wish to explore.

As somebody who passionately wants Scotland to remain part of the UK, I think that it is important that work is done beforehand by such a convention in order to offer alternatives to the people of Scotland, rather than simply independence or the status quo. That does not mean that I am particularly supportive of a multi-question referendum, as that would muddy the waters, unless the consequences of any combination of results were explained to the people of Scotland. Nevertheless, if we look at the example of the Scottish Constitutional Convention in the 1990s, we see that it offered a constitutional way forward for the people of Scotland short of independence. Doing that for the whole of the UK is a more effective way of ensuring the stability of the UK in the future.

Q81 Mr Turner: So, what you are saying is that there will be a referendum, which will offer independence and non-independence. What is there in between? It is either ‘yes’ or ‘no’.

Carwyn Jones: At the moment, the status quo is what exists in Scotland. The polling evidence suggests that the Scottish people want to move beyond the status quo, but not as far as independence.

Q82 Mr Turner: In other words, ‘no’ to independence.

Carwyn Jones: Yes, that is what the opinion polls clearly show.

Mr Turner: So, the result would be a ‘no’.

Carwyn Jones: However, that also means that the people of Scotland, to my mind, also want to have something between the status quo and independence. At the moment, they are being offered something after the referendum, but, in fact, as far as Scotland is concerned, I believe that if work was done beforehand, whether on devo max or devo plus—there are some different models—there could be an alternative that the people of Scotland could consider. The difficulty that I have with the situation in Scotland at the moment is that what I believe is the majority view in Scotland, in other words, somewhere between the status quo and independence, is not being given a voice. A convention could help to add to that voice, ensuring greater autonomy for Scotland but also ensuring the place of Scotland in the UK.

Q83 Mr Turner: I am a little confused. It seems to me that we have ‘yes’ and we have ‘no’. ‘No’ includes all the possibilities that you are expressing and staying as we are in Scotland. You wish to do bit of work for Scotland, but surely that is a Scottish affair, not a UK affair.

Carwyn Jones: The position of Scotland in the UK, while a matter entirely for the people of Scotland, has significant consequences for the rest of the UK. As I sit here as First Minister of Wales, I know that if Scotland were to leave the UK, there would be serious consequences for Wales. So, clearly, we sit in a position of passively sitting back and saying, ‘Well, of course, it is entirely a matter for the people of Scotland, and we have no interest’. My view is quite clear: I wish Scotland to remain part of the UK, and I will campaign for Scotland to remain part of the UK, even though I recognise that it is a decision for the people of Scotland. The difficulty is this: we run the risk of visiting constitutional issues after what might be a referendum that produces a result that no-one expects. The reason why I say that is that, given the fact that a large number of people in Scotland are on that line between the status quo and independence, if there is nothing more concrete that they can look at as an alternative for Scotland, they will swing towards independence rather than the status quo. That is something that I am certainly keen to avoid.

Q84 Mr Turner: I see. What do you think about England, because England, I suspect, believes that there are some things that would need to be sorted out in England before the establishment of a convention that looks after Scotland, because getting England sorted out will attract the attention of English voters much more than what is going on in Scotland or, for that matter, Wales will.

Carwyn Jones: That would depend on what kind of constitutional issues need to be sorted out in England.

Q85 Mr Turner: One example is the West Lothian question: who should vote on English matters in England? Devolution to shire counties and big cities is another example. Those are matters that are English that I believe it is very important that we get on with and sort out. Although they affect Scotland, it is much more important that those matters are sorted out now, rather than leaving them until after a referendum. There is a series of issues, and it seems to me that yours are further down the line than those English matters.

Carwyn Jones: The issue of the West Lothian question is a prime example of the bit-by-bit approach to constitutional reform, which I do not believe works. I will explain why. The West Lothian question is not about English votes on English laws. For example, when it comes to criminal justice and policing, they are matters for England and Wales. If it comes to other
areas of law, they are matters for England, Wales and Northern Ireland. If you look at social security, it is a matter for England, Wales and Scotland. The West Lothian question cannot, in my mind, be resolved given the current structure that we have. We either have a UK Parliament or we do not. To my mind, it cannot sit as a different body according to what legislation it is considering at the time. Therefore, the West Lothian question is not about English votes on English laws, because there will still be a number of votes that will affect different parts of the UK as part of that vote. For example, we know there will be some votes that will take place in the Commons that appear to affect only England but that have an effect on other constituent parts of the UK, particularly votes on financial issues. For example, the argument that we always made about the Olympics was that the amount of money being poured into London for the Olympics should mean that there was a consequential for Scotland, Wales and Northern Ireland. It was an argument that was subsequently conceded by the Treasury.

What would appear to be an issue that affects only London, and therefore affects only England, does have a knock-on effect, financially, on the rest of the UK. Why? That is because we know that a substantial amount of money that would have been spent around the rest of UK on sport is being spent on the Olympics. We understand that the Olympics are a one-off event and, of course, we support the holding of the Olympics in London. However, again, what would appear to be a London or an English issue is, in fact, an issue for the whole of the UK. To my mind, how you determine who votes on what is a UK Parliament is not as easy as it first appears.

Mr Turner: No. I should say that it is possible for people in other parts of England to regard London’s Olympics, not those of the UK or England, as questionable.

Chair: I suspect that you have two of them at the table.

Mr Turner: Indeed. [Laughter.]

Q86 Paul Flynn: On this constitutional convention, would you expect to hear the voices of people who do not approve of the United Kingdom being united or who do not approve of the United Kingdom being a kingdom?

Carwyn Jones: I think that the convention should be as wide as possible. It is a perfectly valid question to ask as to whether those who do not believe that the UK should continue in its present form would want to be part of constitutional convention. However, we know, from the evidence, that as far as Scotland is concerned, and certainly as far as Wales is concerned, the majority of people would want to remain within the UK and would want to be part, no doubt, of a constitutional convention.

Q87 Paul Flynn: Do you believe, on the example of the Scottish experience, that if you want the half apple of devolution max, you should campaign for the full apple of independence?

Carwyn Jones: No; I do not accept that. I think that there are examples elsewhere in Europe—in Spain, for example, in the case of the Basque country—where you have something very close to devo max. Again, there is something close to devo plus in Catalonia, and there are illustrations there of how a state can continue with its present boundaries while still being able to give weight to the feelings of nations and regions within that state. I do not think that devolution, in any form, necessarily leads to independence.

Q88 Paul Flynn: Your recent arguments have been that an independent Wales would not have a new nuclear power station in Wylfa and would not have Trident at Milford Haven. Are these arguments for or against independence?

Carwyn Jones: I am not in favour of independence. I have never put forward any scenarios as to what should happen in an independent Wales because I do not believe in an independent Wales.

Q89 Paul Flynn: In the measure of public opinion that took place some years ago there was a rare unanimous vote by all eight county councils in Wales at the time. They voted for a nuclear-free Wales with a very strong resolution. You are now suggesting that an independent Wales would welcome nuclear power and weapons of mass destruction. Do you not see this argument as possibly counter-productive?

Carwyn Jones: No, that is not what I said. It was a question of what might happen if Scotland were to become independent. I have never advocated an independent Wales and have never put forward any suggestions as to what might happen in an independent Wales.

Q90 Paul Flynn: Do you think it is reasonable for a small nation like Wales, if it did take an independent view, if we can look forward to that in the future, to elect to be part of the fourth biggest defence budget in the world and to engage in wars such as those in Iraq and Afghanistan, if Wales was taking its decisions independently, or should we continue to be tied to the United Kingdom defence policy?

Carwyn Jones: Given the fact that I have come here to argue for a constitutional convention that holds the UK together, I certainly would not want to offer a view on what might happen in an independent Wales that I would not want to see.

Chair: Paul, if you have some questions on the constitutional convention, it would be really helpful to the Committee.

Q91 Paul Flynn: In his book, The New British Constitution, Vernon Bogdanor, who gave evidence to us recently, writes: “We have all been living through an unprecedented period of constitutional change, an era of constitutional reform which began in 1997 and shows no sign of coming to an end.” We are on the slippery slope as was argued in 1979 and in other years since then. Do you need the convention to clarify what our unwritten constitution actually means and how those changes have taken place in the last 13 years?

Carwyn Jones: I remember that book; it had a blue cover, if I remember rightly. I did read it, even though I was 11 years old, which gives you some idea of the
path that I was destined to take, perhaps, in years to come. I think that things have changed a lot in 30 years. Another book that I know Paul will be familiar with is Kenneth Morgan’s book about the referendum campaign of 1979. In that book, there is an annex that shows what the powers of the then Assembly would have been. We have moved on a lot since then, and there is no doubt that the current Assembly is far more powerful than the Assembly that was envisaged, not just in 1997, but certainly in 1979. Devolution, as was once said by a former secretary of state, is a process and not an event, but, if it is to be a process, it needs to be a process that has some kind of structure to it, rather than an ad-hoc process across the UK. It would be far better, in my view, to take a holistic approach, put in place a clearer constitution for the UK as far as the devolved administrations are concerned, and certainly make it clear what the rights and responsibilities of the devolved administrations are.

Q92 Paul Flynn: If we take the reality—you stir up painful memories of 1979, but putting those aside—the Richard Commission, which was a rational approach forward, was changed, if not sabotaged, by the political realities that exist and by those whose political activities are outside this city. Do you think that it is possible to get together an approach from a convention that is going to be united and that will be shielded from the supreme desire of almost all politicians and political bodies to retain power for themselves? Those that have power now are very unlikely, and very reluctant, to give it up. Would it not be the reality, regardless of what the convention finds and what decisions it takes, that there will be political horse-trading and a political dog fight that will decide what the policy is after that?

Carwyn Jones: History suggests that that is certainly part of what might happen. I would hope that a convention would come up with well-argued ideas that would ensure the stability of the United Kingdom. There are examples of where that has happened. If we look at the Jones Parry Commission, that commission’s work led directly to the vote in favour of primary powers for this Assembly. So, we know that commissions have value and that a convention, therefore, would have value. We have the Silk Commission at the moment, of course, which is looking first at the financial position of devolution of the Assembly and the Welsh Government, and, secondly, more broadly, at what further powers might be devolved. I believe that the suggestions that will come from the commission will receive broad support within the Assembly, across different political parties.

Q93 Paul Flynn: If you recall the Scottish convention of 1989, there were many powerful bodies and political parties in Scotland that refused to have anything to do with it. It was made up principally of people who were generally in favour of devolution coming to Scotland. Is there a danger of a similar situation with this? There is a lack of enthusiasm from the Conservatives in Wales for this convention, as we have just heard. Do you think that it can go ahead without main players like the Conservative Party?

Carwyn Jones: It is not for me to speak for the Conservative Party. However, we know that the Conservatives in Wales have played a full part in conventions, now and in the past. I hope that that remains the case. There are, as a matter of record, different views on constitutional issues between the Conservative Party in the Assembly and the Conservative Party in Westminster. We know that with regard to the Green Paper on electoral arrangements in particular. The Conservative Party in Wales voted for the proposition that the electoral arrangements of the Assembly should be devolved to the Assembly itself, subject to certain safeguards against abuse, if I can put it that way. I do not know what the Conservative Party’s view might be. However, speaking as the leader of my party in Wales, I want to take Wales forward and make sure that we reflect the views of the people of Wales, while at the same time working with our colleagues across the UK to ensure the stability of the UK.

Q94 Paul Flynn: Should all participants in the convention have equal weight given to their views—groups such as Welsh MPs and AMs—in light of the fact that Welsh MPs were not as positive as they might possibly have been in their reception of the Richard Commission report?

Carwyn Jones: There has to be room for a number of different views. This would be a convention on the future of the UK, rather than a more narrowly defined convention on devolution, if I can put it that way. It certainly strikes me that the views of MPs have changed over the years. The impression that I get is that there is a wide acceptance of the reality of devolution.

Q95 Paul Flynn: Do you have a practical view of the numbers for this convention and how they would be spread throughout the United Kingdom? One can see it growing into something enormous and unwieldy. How could you ensure that it is a practical working body that represents all interests involved? I could throw in Welsh peers as well as people who contributed their view to the Richard Commission.

Carwyn Jones: It cannot be too big. We know from Jones Parry that a commission or a convention can work effectively. The key is to make sure that there is sufficiently broad representation without the body becoming unwieldy. There would have to be sufficient representation from Scotland, Wales and Northern Ireland to ensure that voices are heard. These matters could be looked at in detail once the principle of a convention is accepted.

Q96 Paul Flynn: The vote on Scottish independence/ devo max will take place after another two years of this present Government, which might have a great influence on the vote itself. If it comes out in favour of independence it will change the whole of the political weather. Do you think that your view might then change—the view of your party?

Carwyn Jones: I do not believe that my view would change to be in favour of independence. The greater disadvantages of independence for Wales will remain if Scotland were to vote to leave the UK. What could
not happen is a situation where England, Wales and Northern Ireland carry on as they are. That is not tenable is any way, shape or form. Serious consideration would need to be given to the nature of the relationship between the different parts of the UK. It is a scenario that I hope does not come about. However, serious thought would need to be given as to how that relationship would work.

Q97 Paul Flynn: I interpret that as meaning that independence for Scotland would mean devo max for Wales.

Carwyn Jones: It would certainly mean a substantial rethink of the relationship of Wales with the rest of the UK and looking at how Wales’s place in the UK could be strengthened.

Q98 Paul Flynn: Following the alternative vote referendum, are you more convinced or less convinced of the wisdom of crowds, knowing the influence played in that referendum by lobbyists and advertising, paid for by the rich interests opposed to AV?

Carwyn Jones: Well, those crowds are the people who vote, and we do live in a democracy. I am on record as having supported a ‘yes’ vote in the AV referendum, but there were other issues, I think, that caused it to fail. It was a bad idea to hold it on the same day as the election in Wales, because political parties could not work together to deliver a ‘yes’ vote. Secondly, it was not well explained to people. When we had the referendum in March 2011, we found that the question posed, if I remember rightly, was three paragraphs long. We knew full well that unless we could distil the essence of that question and explain it to the electorate, people would not understand the question, and, if people do not understand something, they tend to vote for the status quo. So, the phrase I used was that we were asking people to vote to ensure that those laws that affected only Wales were made in Wales. The result shows that that encapsulated the issue. I do not believe that that was done effectively with the AV referendum.

Q99 Paul Flynn: British Columbia, in 2004, had a citizens’ convention made up of members of the public. Would you regard that as a model to emulate?

Carwyn Jones: It depends on the breadth of such a convention and on the numbers. If you are trying to take a snapshot of public opinion, the opinion pollsters will tend to look at 1,000 people as a minimum in order to do that. The challenge for a convention is to ensure that it is not just the great and the good, which royal commissions tend to be—which is why I have not argued for a royal commission—but also that it is not so big that it becomes unwieldy. Those are matters that can be, to my mind, resolved once the principle of a convention is accepted.

Q100 Paul Flynn: We probably have a citizens’ commission now; we do not have royal commissions these days, if we have commissions at all. Unlock Democracy told us that “it is essential that within any constitutional convention process there is a means of having debates about the governance of England as well as the governance of the UK as a whole.” Do you think that England needs to decide who will represent it? It does not spring easily to mind as to who exactly would represent England, which does not see itself as a separate unit in many ways. Should we do that? Before we can set up a constitutional convention, it may not be your position to say it, but how on earth are we going to get representatives who will speak for England?

Carwyn Jones: The point you make is whether England should be represented. The answer to that is ‘yes’, England is clearly a constituent part of the UK. In theory, if Scotland can potentially leave the UK, so can England, because England is, again, a constituent nation of the UK. I often pull the leg of Peter Robinson, my colleague in Northern Ireland, that, if Scotland and England both leave, we would have to work out who had the Security Council seat between us as the successor state. [Laughter] However, it then make the point that it is not all about Scotland, and my worry is that the whole debate about devolution at the moment is driven almost entirely by what happens in Scotland. The West Lothian question is one example of that. The focus is entirely on Scotland, and that is clearly not in the interests of Wales or Northern Ireland, or, indeed, England, which is why a convention would be able to bring together the different voices from around the UK and ensure that devolution and the powers of the UK Parliament were issues that would be debated across the UK rather than in parts of the UK.

Paul Flynn: Thank you very much. I must say that your paper is extremely helpful; it is probably the best we have had on the Committee. Mae’n adderchog bod yma yng Nghaerdydd. Diolch. It is great to be here in Cardiff. Thank you.

Chair: First Minister, thank you very much. I would like to ask one or two questions, and I welcome Simon Hart, who has had transport problems but has manfully struggled to get here. We are grateful to see him.

Simon Hart: I do apologise; the first train was cancelled and the second was 40 minutes late.

Chair: But you are here.

Carwyn Jones: Were these trains coming from London?

Simon Hart: Yes.

Carwyn Jones: That is not our fault then; it is not a devolved matter. There we are; it is a matter for the convention. [Laughter.]

Q101 Chair: Mr Davies, who we had the pleasure of speaking to just before you arrived, First Minister, talked about the elephant in the room, the elephant in the room being England. In a sense, the Northern Irish, Welsh and Scottish parts of this puzzle are the easier bits; I am not saying that they are easy, but that they are easier than the English bit. We now have the English question rather than the Scottish, Welsh or Northern Irish question, I think that that is what he meant by the elephant in the room. We would not have the temerity to come here to suggest what you should do in Wales, but we would have the temerity to ask ‘What is your advice, looking at England, as to how to resolve a conundrum?’ Unless the English question
is resolved, it cannot lead to the further change that you would like to see in Wales. How do we wrestle with the English question?

Carwyn Jones: I do not believe that the West Lothian question is easily resolved unless there is an English Parliament, for which I do not think there is general support, or greater devolution to regions across England; we know that that has been problematic in the north-east of England and that the trend has been going the other way with the abolition of the regional development agencies. England needs a voice, and it could express that voice through a convention. While I make the point that the whole debate around devolution is focused entirely on Scotland at the moment, England is not seen as part of the debate, yet it should be. It is as much part of the UK as Wales, Scotland and Northern Ireland. However, there are issues surrounding England that are unique to England. If the situation is changed, in terms of greater devolution to tiers of government below the UK Government; again, these are not easily resolved. A convention would give the opportunity to provide that resolution.

Q102 Chair: I often hear myself repeating the story of when we started off on this particular inquiry. I sat down with my clerks and said, “Well, if we want to hear from Wales, we’d better see the First Minister; if we want to hear from Scotland, we’d better arrange to see Mr Salmond; if we want to go to Northern Ireland, we should see Mr McGuinness and Mr Robinson; and for England of course, we will see…”. It stops there because there does not appear to be coherence, not least because of the history and maybe the size, in who speaks for England. Do you have any views on how you can help us answer that conundrum?

Carwyn Jones: As far as England is concerned, for most matters, the person who would speak at the moment on behalf of England would be the Prime Minister. There are other matters that are less easy to resolve, such as the issues of criminal justice and social security, where there are elements of devolution to different parts of the UK. Whether the Prime Minister himself would want to take on that role is a matter for him, but it certainly seems to me that there is no-one else who can take on that role, given our current structure.

Q103 Chair: If there is a strong case for devo max for Scotland, Wales and Northern Ireland, what form might that take in England? Would it be independent local government or stronger local government, since, as you say, the regional issue seems to have been so mishandled in the past that it is not likely to be a runaway success, and an English Parliament does not appear to have any popular support?

Carwyn Jones: The first point that I would make is that I do not believe that devolution has to necessarily be symmetrical. A convention, to my mind, does not inevitably lead to the three devolved Governments having exactly the same powers. Social security, for example, is devolved in Northern Ireland, but we would not seek the devolution of social security here in Wales. If I had the answer to the English question, and that answer was accepted by the general public, there would be no need for a convention to some extent. However, this shows that there are serious questions, not just regarding the Celtic nations, if I can put it that way, but England itself. In my view, the convention process will go towards looking to provide answers to what are difficult questions to resolve.

Q104 Chair: Over the last 10 years, there has been movement from a position of ‘no-one should tell Wales, Scotland and Northern Ireland how to run their affairs’, to ‘they are effectively running their own affairs, and the question that needs to be answered may well require advice from our friends in Wales, Scotland and Northern Ireland’. So, First Minister, I would ask you to keep thinking about how this broader settlement might work in respect of England, because I feel that that may well be the sharpest conundrum that this Committee, and those who may or may not want a constitutional convention, will have to confront.

Carwyn Jones: From a Welsh perspective, England is a large nation and, whereas one solution for England would be a tier of regional government—there is significant resistance to that—that is never an option in Wales. Wales is too small for that option to be considered. So, England does stand out as a different case to Scotland, Wales and Northern Ireland. However, the question of England has to be resolved in order to ensure that we have stability in the UK. If the constitutional question in England is not resolved, then clearly it cannot be resolved across the whole of the UK.

Q105 Mr Turner: So, you are saying that it would best if England were sorted out first.

Carwyn Jones: No. The danger of that is that it returns to the tinkering point that I made earlier. We should take what I believe to be a UK approach and sort this out once and for all at a UK level. England is part of the UK and, as the Chair said, the England question, as he put it, can be dealt with as part of providing the UK with a robust constitutional settlement for the twenty-first century. I no more believe that England has to be sorted out first than I believe that Scotland has to be sorted out first before the rest of the UK can be looked at; I think that it has to be taken together.

Q106 Mr Turner: Having someone sit in Government for the United Kingdom purporting to speak for England will, it seems to me, lead to the Scots, Welsh and Northern Irish people saying, “Our Prime Minister no longer speaks for us because he is too worried about England”. At the same time, English people would be saying, “Nobody is speaking for England”. We have to sort that out somehow. I think that your proposal is wrong.

Carwyn Jones: We are at a point where people do not know when the UK Government is speaking for England, for England and Wales, for England, Wales and Scotland, for England, Wales and Northern Ireland or, indeed, for the UK as a whole, which is why a convention is needed, to clarify those points. We have reached the point where England does not have its own voice—there is no question about that.
It is perfectly plausible, from my point of view, for people to understand that, on some issues, the Prime Minister speaks for England—we understand that—but we cannot carry on with a constitution where there is a complete lack of clarity. In my view, we cannot carry on with a constitution that says that the UK Parliament could, if it wished, abolish the devolved administrations in a matter of months. That clearly is not right in terms of democracy. It sits ill with us in Wales, as it does in Scotland. As the debate rages in Scotland, over the next two years, there is a danger that there will be a rising tide of opinion in England that will ask for a resolution of what is seen as the English question, but I do not think that that can be resolved in isolation from the UK question, any more than Scotland can be considered in isolation in terms of the effect that a 'Yes' vote in the Scottish referendum would have on the rest of the UK.

**Q107 Chair:** Is it an adequate summation of your view that, if we can resolve the English question and move forward on that, the Westminster Parliament would, in effect, be a federal Parliament, with effective governance of the nations of the United Kingdom taking place elsewhere? Whatever we define as the resolution to the English question, Westminster itself would be a smaller, but still overarching United Kingdom federal Parliament.

**Carwyn Jones:** I have two points on that: first, I do not think that the constitutional stability of the UK and the solution to that is conditional on sorting out the English question. The two things run together as part of a wider UK issue.

Secondly, there is the issue of federalism. The UK is a quasi-federal state now. It may not be so in constitutional theory, but it is in constitutional practice. The question for any convention would be how much the theory and practice should converge. From the point of view of this institution, the constitutional fact that we could be abolished by Westminster without even referring to the people of Wales by vote is clearly wrong, even though, constitutionally, it is possible—there is no question about that. It is that kind of issue that needs to be resolved.

Less dramatically, there are jagged edges to the devolution settlement. The Scottish settlement is a great deal clearer. The Welsh settlement is better than it was, but its application is still jagged. It is in everyone’s interest to have greater clarity regarding what devolved governments can do, what their relationship is with the UK Government and what the UK Government feels is proper for it to be able to do. That applies regardless of political party and the political make-up of any administration in the UK.

**Q108 Chair:** We will move on to some more technical questions. I will begin with one question that is a matter of personal curiosity. Do the First Ministers get together and meet on a regular basis—Mr Salmond, Mr McGuinness, Mr Robinson and you? If so, what form do those meetings take? Do you discuss the English question?

**Carwyn Jones:** There are irregular meetings held between First Ministers. They are not planned on a regular basis. We meet from time to time. We do not tend to discuss the English question. We tend to discuss matters of immediate import, regarding, for example, the block grant or issues such as disputes between administrations regarding various matters.

**Q109 Chair:** I do not want to be impertinent in making this suggestion, but if these issues are to move forward for the benefit of Wales, Scotland and Northern Ireland, perhaps you might consider discussing with your colleagues the possibility of including the English question on the agenda.

**Carwyn Jones:** The difficulty is that there would be no consensus. We try to steer clear of giving unsolicited advice to our friends and colleagues in England. I suspect that my colleague the First Minister of Scotland would answer the question by saying something along the lines that the English question can be solved by Scottish independence, which is not a viewpoint that I share, nor, I suspect, would my colleague in Northern Ireland.

**Q110 Chair:** Again, this is another nitty-gritty question that you may have thought about, First Minister, in some of the works that you have written and some of the speeches that you have made; it is about moving forward to a constitutional convention. Do you think that that requires a statute or could it be done informally, on a less legalistic basis? Will there need to be an Act of Parliament before this show could get on the road, should people be in favour of it?

**Carwyn Jones:** There is no need for a statute. A convention can be set up informally, but on the understanding that it has a level of formality. It does not need a statute to set it up. In the future, following a convention, if there were to be a standing royal commission—such as the Royal Commission on Environmental Pollution, which existed until two years ago—that may need something more formal with regard to law to set it up. However, as far as conventions are concerned, I do not believe that that is necessary. For example, it is true that the Jones Parry Commission was set up by the Government, but beyond that it was set up on an informal basis to advise the Government. It was supported by the Government as regards its administrative needs. However, nevertheless, it was not set up as a result of statute.

**Q111 Chair:** To what degree would the consent or agreement of the Assemblies and Parliaments be required to get this going forward? It is possible that one or more of these bodies could say that it was not in their interest to resolve these questions and that they do not want to co-operate. On that basis, do you think that it would need to go ahead anyway, a little bit like the Scottish Constitutional Convention prior to devolution, which went ahead having invited everyone, although not everyone accepted the invitation?

**Carwyn Jones:** As far as Wales is concerned, I believe that there would be a clear majority in the Assembly in favour of taking part in such a convention. I cannot speak for Scotland or Northern Ireland. However,
clearly, it would be important to ensure as much buy-in as possible. Even if not all parts of the UK decided to be part of a convention, it would not mean that there was no need for a convention, because the other parts of the UK would still need to ensure that they had the level of constitutional stability that we need for the coming century.

Q112 Chair: So, before creating a constitutional convention, it would be helpful to agree terms with everyone who was a willing participant, but it would not be essential to have unanimity on those terms, and it could go ahead without unanimous agreement—although that would obviously be much more welcome than not.

Carwyn Jones: The terms would need to be agreed, that is true. If terms were agreed, it would suggest that there would then be full participation across the UK. However, certainly, the remit of the convention would have to be established in order to ensure that all parts of the UK and all representatives were happy with it.

Q113 Chair: Going to the very far end of this continuum, as it were, if a proposal for the settlement post referendum were agreed, whatever that referendum delivered, do you think that a new referendum would be necessary in order to make that settlement stick and to have the endorsement of the people, which sounds appropriate and just? However, as colleagues have already mentioned, people do not always respond to the issue on the ballot paper. Sometimes, they respond as though answering another question, such as ‘Do you like the current Government?’. Rather than the specific question in front of them about a constitutional settlement, asking them whether a good job has been done. Are you casting a difficulty for concluding an agreement made by a constitutional convention if you want a referendum?

Carwyn Jones: It depends on the extent of the constitutional recommendations. The position that I have taken as far as Wales is concerned is that I do not believe that devolving further powers to this institution requires another referendum, except on the issue of income tax. There was a referendum specifically on this issue in Scotland, and if there were proposals to devolve income tax to Wales, to my mind, that would be necessary in order to make that settlement stick and to have the endorsement of the people, which sounds appropriate and just.

Q114 Simon Hart: They are probably a whole lot of questions that you have already answered, so forgive me if that is the case. I want to turn to a couple of things that, first, were in your written evidence and, secondly, I picked up as I came into the building about public involvement. When we have taken evidence on this back in London, it has been quite difficult to find a magic solution. What would you suggest?

Carwyn Jones: Yes. Sometimes they respond as though answering another question, such as ‘Do you like the current Government?’. Rather than the specific question in front of them about a constitutional settlement, asking them whether a good job has been done. Are you casting a difficulty for concluding an agreement made by a constitutional convention if you want a referendum?

Carwyn Jones: I do not want to digress onto recent events in the House of Commons, but it may be of some small comfort to you to know that number of colleagues from all sides of the House raised the question of the lack of proper debate about that issue in the House of Commons, and one way that we are taking that forward is by looking with the Better Government Initiative at how we can scrutinise legislation more effectively. We are in touch with people at the Senedd, asking their opinion on how Parliament can do that, and that will not assist you in the short term. Nonetheless, parliamentarians of all institutions are keen to make sure that executive power is more effectively held to account. We are working on that one. Thank you very much for those answers, First Minister. Now, if Mr Hart has his breath back from racing from the station, I know that he has some questions about the public side of this.
had an interest one way or the other. Nevertheless, it engendered a level of public interest. We had the referendum here last year, and although the turnout was not as high as we had thought it would be given that it was a three-paragraph question on a fairly obscure piece of constitutional theory, people did take an interest. There is no question about that, and we saw that from the result. As I mentioned earlier, I believe that one of the reasons for that is that the issue was crystallised into one sentence, which was ‘Do you believe that the laws that only affect Wales should be made in Wales?’ That is much easier to understand than three paragraphs referring back and forth to the Government of Wales Act 2006. So, there is a challenge there to ensure that people feel that the issue is important enough to get involved with, and I would argue that it is, because we are talking about ensuring the constitutional stability of the UK in the long term.

Q115 Simon Hart: I absolutely agree with most of that, and what we have not touched on is the process or the mechanics of how that is put in place. A while back, I went along to one of the public sessions, I think in Swansea, on the boundary changes, and there was a room with 200 seats, but there was only me and two other people. That was something that was relatively intimate for our patch of west Wales, as you know, and yet trying to get members of the public to take an interest in that was, and remains, extremely difficult. So, that is a particular problem.

The other thing is—and I hope that no-one will be offended by my saying this—how you keep the academics out of the way, because otherwise the whole thing becomes a massive opportunity for people for whom this has been a lifelong passion, and I think that that is a turn-off rather than a turn-on. It is how we get proper interest, if you like, rather than just an excuse for a convention of professors.

Carwyn Jones: Not being a professor, I take no insult. I will leave that for others to take. You make a good point, however. What models might be used? One might be the Scottish Constitutional Convention, which clearly led to substantial public buy-in to the referendum in Scotland in 1997. It clearly went beyond being merely a convention of the great and the good. That is one way in which it could be done—to study how they did it there, which led to a substantial amount of public engagement in Scotland. That might provide one model.

Q116 Simon Hart: On an associated point, you said something earlier about the referendum, and the current proposals for boundary changes are of interest to us all. When it comes down to it, I can accept the argument that there seems to be a contradiction in not referring it to a referendum this time when there was one last time, but to take referenda generally in Wales, how do you account for cross-border issues? On tax-raising powers, for example, there would be an argument, would there not, for people in the border counties to take a real interest, because such powers could have a significant economic impact on Herefordshire, Shropshire, Worcestershire, and those seats? How would you make a referendum on something like tax-raising powers for Wales fair to people along the England-Wales border who might either benefit or suffer as a consequence of it?

Carwyn Jones: The difficulty with that is that it suggests that people along the border should have some kind of veto over what happens in Wales, and that would not be acceptable given the current state of devolution. The reality is that there are different laws applying in Wales now than apply in England, and there are different financial arrangements. That is the nature of devolution. It is correct to say that, in Wales, people receive free prescriptions and have done for some years, and that does not apply across the border. However, I do not see that as a difficulty. It is inevitable that we will have different policies in different parts of the UK, and, in some ways, it is open to governments in different parts of the UK to learn from what happens to see whether something works properly—or not. So, I do not fear that at all. It is in the nature of devolution. It is also the case with the border between Northern Ireland and the Republic of Ireland. That border is as porous as the border between England and Wales. There are differences in approach and with financial incentives through taxation on both sides of that border, and yet that is accepted.

Q117 Simon Hart: I suppose that what is lurking at the back of my mind is the fact that, if we were to have public buy-in to a constitutional convention, people across the whole UK will need to feel that this is something relevant. We need to get over that. While you are absolutely right, and there are plenty of examples of differing legal arrangements across the devolved nations, there have been occasions when that has led to a sense of frustration and even resentment in some quarters. We do not want that to be a barrier to engaging with, as you put it, the ‘shape’ of the constitution, and the shape of Wales. How do we get over the fact that it can be a little partisan, a little tribal, and therefore be off-putting for people to engage?

Carwyn Jones: It comes back to this point about the English voice, and the view that is sometimes expressed that Scotland, Wales and Northern Ireland have their administrations and England is in some way left out. I believe that a convention is one way of giving that voice the right level of amplification, because at the moment there will no doubt be people who live on the English side of the border who will say, ‘Look at what the Welsh have got—who is representing us?’ At the moment, that is a difficult question to answer, and we have already gone into that, asking who speaks for England. However, a convention would give people who live in England the opportunity to have their say about what the whole of the UK should look like, and it would give people who live along the border counties an opportunity to express a view on the nature of the relationship between the different parts of the UK.

Q118 Simon Hart: As far as the Silk Commission is concerned, does that offer a positive platform for all of this, or is that a completely different initiative? Can the two things be synchronised in any way?
Carwyn Jones: I believe that they can. The Silk Commission is dealing with more immediate issues. The convention, I suspect, would need to look longer term. No-one could pretend that there could be a full constitutional resolution in a year or so; it would take longer than that. In the meantime, the Silk Commission is looking at issues that relate only to Wales. We have a West Lothian Commission as well, of course, and there may well be something in Scotland at some point beyond 2014. However, this comes back to the points that I made before. These conventions are all well and good, and in the absence of any other mechanism for devolution to be examined and taken forward, these kinds of commissions will be taken forward. However, in terms of a longer term solution, this has to be a holistic, UK-wide solution that provides a firmer constitutional basis, in terms of the nature of the UK Parliament and its relationship with the devolved administrations. Returning to the point I made earlier, the difficulty of the West Lothian question is not only a matter of what an English issue is but whether you can really have an institution that is one thing one day, and another thing the next. The UK Parliament is either the UK Parliament or it is not. I do not think that it is easy to have a Parliament that is different on different days. That is a very clumsy solution to what is admittedly a difficult problem.

Simon Hart: We had better not start on the West Lothian issue. I have finished my questions, Chair.

Q119 Chair: Fine. Thank you, Simon. First Minister, when we were coming down on the train, we were commenting on how remarkable it was that you got the evidence turned around for us so quickly. Also, your office was very expeditious in sending your latest speech through. We thank you for that. However, we always hurt the ones that we love, so, having seen your ability to deliver so swiftly, I wonder whether we could, upon leaving, ask you to think for us and with us about the issues that Simon raised about public involvement, citizens’ assemblies, online possibilities, and how we could involve a broader number of people if and when a constitutional convention occurs.

Carwyn Jones: Thank you, Chair. I should add that I am fortunate in the support that I get from my officials. It was remiss of me not to introduce the gentleman on my left, namely Dr Hugh Rawlings, who is the senior official here who deals with constitutional affairs. He will have heard the proceedings and the debate that has taken place here today. We will certainly look carefully at the issues that the Committee has raised in order to look to assist the Committee further in its deliberations.

Chair: We would certainly like to put on record our thanks to Mr Rawlings and his team, particularly for the speed with which he turned around evidence to help us in what was quite a compressed timescale. I very much appreciate that.

We now have a few more quick questions from colleagues before we release you, First Minister. I will bring Andrew in first, and then Paul.

Q120 Mr Turner: At the moment, we have two kingdoms, one principality and one province. However, there are lots of other places, like the Falklands, Gibraltar and Jersey, which are in danger of going independent fully, and the Republic of Ireland. Should they be invited to attend?

Carwyn Jones: No. That is my answer to that. The Republic of Ireland is an independent sovereign state and has been for more than 90 years. Jersey is a Crown dependency. Gibraltar and the Falklands are not part of the UK. We know that there is a possibility of a referendum in the Falklands, next year perhaps, on the preferred constitutional arrangements for the people who live there. However, to my mind, this is a matter for the UK as a sovereign state. First, it is about preserving its current borders, and secondly, it is about having a constitution that will serve it well in the years to come, rather than relying on a constitution that has bumped along for a number of years, and sometimes very well. However, given devolution, it is clear to me that merely getting along will not be enough in future. My greatest fear is that the UK will start to lose members. Scotland is the obvious example. If Scotland were to leave the UK, where would that leave thinking in Northern Ireland? The nature of the union in Northern Ireland in terms of cultural links is more with Scotland than England. How would it affect the debate there? My wife is from Northern Ireland and I have heard surprising views in Northern Ireland from people who I would have believed, in years gone by, to be diehard unionists. It is a matter for the four constituent parts of the UK at this stage, rather than Crown dependencies or sovereign states.

Q121 Paul Flynn: The call for independence quickens the pulse in a way that a call for asymmetric quasi-federalism does not. It is now a sexy issue that has commanded the attention of people across the world. We had a group of MPs from New Zealand before us recently and one of the issues that we wanted to discuss was the possibility of Scotland becoming independent—would it be the same if they were Canadian or Australian. Do you not think that the reason why we should make people concentrate their attention and magnify the public’s interest would be to ensure that the possibility of independence is on the table and is a possible choice for Wales and Scotland? Should they be invited to attend?

Carwyn Jones: Yes. I would certainly suggest that the people of Scotland will have a choice regarding independence in 2014. As for Wales, opinion polls and election results show that the appetite for independence in Wales bumps along at around 10% to 15% of the electorate, and has done so for some years. Independence is an easily understood concept. People tend to understand what an independent state means. It tends to be more difficult to explain a dominion or a Crown dependency, or the nature of the relationship between the Commonwealth of Australia and the UK. These are more difficult to explain, but it does not mean that they should be dismissed. Wales’s future lies in the strengthening devolution, but not in independence. The fact that it is difficult to explain to people and often takes a lot of work to clarify does not mean that it is not the right solution.
Q122 Chair: First Minister, if you had the chance to address a group of young schoolchildren from Wales right now, what would be your vision for them and for Wales’s position in the United Kingdom in 10 or 15 years’ time?

Carwyn Jones: Inevitably, I would want Wales to be a more confident and prosperous and an ever fairer place in terms of wider politics. My message to them would be that we need to ensure that Wales’s voice is heard loud and clear within the context of the UK.

Q123 Chair: First Minister, thank you very much for your time this morning. I know that you are incredibly busy, so we are extremely grateful for your time. We are always grateful and eager to visit the Senedd. It is always a pleasure and a privilege, and I would be grateful if you could pass on our thanks to everyone who has made us so welcome this morning.

Carwyn Jones: Thank you very much, Chair. I know that I will be seeing you later this evening in London. It is probably best that I leave now, given Simon Hart’s experience. I welcome the opportunity to give evidence today. I am grateful to you for travelling to Cardiff and I look forward to your conclusions.
Thursday 6 September 2012

Members present:
Mr Graham Allen (Chair)  Paul Flynn  Andrew Griffiths  Fabian Hamilton  Simon Hart  Stephen Williams

Examination of Witness

Witness: Sir Merrick Cockell, Chairman, Local Government Association, gave evidence.

Chair: Sir Merrick, welcome—yours is a familiar face. Do you want to say a few words just to kick us off?

Sir Merrick Cockell: I do not think so, actually, Chair. I am happy just to answer your questions.

Chair: We will give you a nice starter. I know that Simon is very good at that. He will be very friendly and get you warmed up.

Simon Hart: It is nice to be told that my questions are so easy.

Chair: I said as a starter. The nasty ones come later.

Q124 Simon Hart: I have to go fairly soon, so I apologise in advance if it looks rude if I ask a question and clear off.

We have talked quite a bit about the culture of conventions and the upcoming referendum in Scotland. One of the things that has puzzled us is whether you think that there is a case for establishing a convention before matters have been resolved north of the border.

Sir Merrick Cockell: I propose I could ask you questions about the nature of the convention and whether you have reached any views on it, but clearly, whatever happens with the referendum in Scotland, there will be change. Whichever way the vote goes, there will be implications of some sort from that—possibly severe implications—so my instinct would be not to wait. If there is an appetite in Wales, Scotland and Northern Ireland as well to be part of a UK convention, why not move ahead with that? I think there is a wind behind those of us advocating a review of England's status within the Union and how England operates. Why not get on with that? There are political opportunities, in the timing of general elections and things like that, so I would favour getting on with it, although obviously you could not do it unless there was willingness from all parts.

Q125 Simon Hart: The natural supplementary question to that is: do you think that, to maintain the momentum, the process should be formalised in a statutory sense, or can a constitutional convention be an informal process?

Sir Merrick Cockell: Again, I do not know whether there are logical consequences of a formal or an informal status, but if a formal status meant that the members of a convention were in any way unable to be fully representative of those who should be party to such discussions, I would not be in favour of it. My instinct on who might be members of such a convention is that it should be those who hold elected office. Who else can speak on behalf of other people other than you and those I represent? I am not saying they would be the only components of a convention, but they must be essential to it. I think that the two parts of the governance of the Union should participate in it. If a formalised status prevented that, so that it was simply made up of parliamentarians, my view—it will not surprise you—is that that would not be helpful, certainly from a local perspective.

Q126 Simon Hart: One of the questions that we have asked every witness on this topic is about the extent to which we could generate public interest and how we would go about that at national and local level, and how we could avoid the whole thing just becoming a huge intellectual exercise among academics and thereby turning off, rather than turning on, the public. Do you have a view on how we should do that?

Sir Merrick Cockell: As you know, we have some experience of working with your Select Committee on trying to generate some interest around the country. I have travelled with your Chairman to a few places, and one cannot pretend that there was a reception committee made up of thousands of residents of Sunderland or the various places we have been to, but I do think that local communities, perhaps led by their councils, can create that interest. Again, I am not suggesting that some of the other things, including just being in work, are not clearly prime considerations for people, but still we have found a real appetite and interest, particularly when you are talking about a potential shift in power.

We are always discussing why turnout at low elections is so poor, and the instinctive response is that it is because many people wonder why the hell they should bother to vote when the town hall always get re-elected—there are not enough powers at local level, so why does it matter enough to bother to vote? But I think people are more interested now. Perhaps it is because there is greater confidence in local government than there was a few years ago—that is borne out by the work we have done on surveying satisfaction ratings. That has gone up in the last year, so I don’t think people think the local system is broken. There are inevitably questions about the centralised state. I think a significant number of people would want to contribute, but at local level we would need to work to generate that and give opportunities, whether it is town hall debates or whatever, to try to bring some life to something...
which, as you say, could be a pretty sterile discussion among only those who are directly involved.

Q127 Paul Flynn: Who should represent England in any convention? Should it be local authorities, MPs, cities, Lords? Who should it be?

Sir Merrick Cockell: There is no single person, is there? I do not know the potential size of a convention, but clearly with any group of people, the fewer there are, the more likely they are to reach conclusions within a lifespan. You would have to look carefully at the make-up. If local government was represented broadly through the LGA, the representative body, it would be our responsibility to make sure that rural areas were there as well as cities, and that there was cross-party representation. You could easily end up with 25 people on that basis. On the other hand, we very often have to find a balanced grouping to represent national government. I think one could do it but clearly there are distinctive voices that would have to be part of it: cities, counties and smaller communities should all have a voice in this.

Q128 Paul Flynn: England has had a centuries old habit of telling other countries, including the colonies of Scotland, Wales and Ireland, and countries in far-flung corners of the world how to run their affairs. Do you think there is an appetite in England for self-government?

Sir Merrick Cockell: I think increasingly there is. You refer to colonialism and the mother country being England. Other countries, be they ex-members of the empire or, indeed, Scotland, Northern Ireland and Wales, are allowed to move away from the default, mother country’s view of the right way to govern, yet the mother country has not had the debate about what is the right way to run that model—that mother country model that others have been able to have their own variation of. That, I think, is probably a justification for a convention where England reaches some conclusions as part of a UK convention—it is a UK convention you are proposing—and that England discusses these things, rather than, as you might have said, Chairman, England being the last part of the British empire, still run, as we concede, in a way that might have worked with running India from the India Office. We would certainly question, as you have done, whether those silos and that sort of approach are effective anymore.

Q129 Paul Flynn: As a representative of part of England’s first, and probably last, colony, I do fret about these matters and about whether the asymmetric nature of the distribution of power at the moment is detrimental to England. We just appointed a new Secretary of State for Wales, who will be a small fish in the small pond of the Wales Office, and who is progressing towards having the status and influence of, say, the Lord Warden of the Cinque Ports, but without the smart uniform—

Sir Merrick Cockell: Or the accommodation.

Paul Flynn: Indeed, or the civil servants or anything else that they have. Do you agree that the power is flowing down the M4 to Cardiff anyway, and that we will increasingly see just the trappings of office left here—people with seats in the Cabinet and great titles, but whose influence is draining away?

Sir Merrick Cockell: Clearly, that must be the case, but it is bizarre. Wales is about twice the size of Northern Ireland and London is more than twice the size of Wales, but Wales has its own NHS. I am sure that the Mayor of London would be very keen to have more direct control over health with the boroughs. The whole asymmetric argument takes us quickly to the financial settlement and the Barnett formula. I don’t know if that is where you want to head, but clearly Lord Barnett thought that that historic mechanism would last for a few months. It does have bizarre consequences, particularly at a time of less money. Although it is not something that is on the lips of every citizen, clearly in local government and across the parties, it is, because one has to recognise a growing dissatisfaction—if not something further than that—in that arrangement. I particularly saw that when we were up in the North-East and on other trips that I have made there, where the whole relationship with Scotland is far more immediate and the pressures, the demands and the ability of the workforce to move are absolutely visible to that region. We are not going to be able to avoid looking at the asymmetric of funding and fairness and must try to work out something that is actually based on need rather than an artificial formula.

Q130 Paul Flynn: I recall the late David Taylor, a greatly respected former MP, asking that his constituency of North-West Leicestershire be renamed “Powys, Far East” because of Barnett envy that he wished to fulfill. If you see the convention coming out, do you see it dealing with the whole picture that is likely to emerge, possibly after the Scottish referendum and possibly when the weather changes if they go for independence, or do you see it dealing principally with the relationship between each of the elements in the devolved powers at the moment? The relationship or the big picture?

Sir Merrick Cockell: I suppose my experience of public life is that if it ranges too widely, there is a risk that it will quickly get focused into House of Lords reform or other fascinating matters. The LGA’s wish would be that it focused on the relationship between the constituent parts or on changing parts of what is currently the Union. One way or another—whether that is with an independent Scotland—we will have to be working out how we work together. The geography will not have changed, even if the political realities have. I would hope that it would focus on the interaction between the constituent parts.

Q131 Stephen Williams: Robert Hazell from UCL, who sends us submissions, has quite often said that England is the most centralised state in Europe. I remember Charles Kennedy often making a joke at Lib Dem conferences, that Britain, as well as England, is the most centralised state in the European Union apart from Malta, which obviously has special circumstances. I presume that you agree with that assumption, but why do you think England has remained this centralised state, particularly outside London?
Sir Merrick Cockell: I think it is history. I am a politician and the reality of politics is that one wants to be able to change things, and to reach political office where one can follow one’s views and change matters. In the parliamentary system, that is based on becoming ministers. In a centralised state in that sense, with the civil service supporting that, you believe that you can alter things by changing policy and the things that we see every day, including today. That reinforces a centralised state.

The difficulty we are in now, and there is increasing evidence of this, is that statements or changes in advice to local authorities or others are unlikely to work or work quickly enough to have an impact, particularly on the financial position of the country. That is why it is time, not to break up the system or head in a direction of an English Parliament or something like that, but to re-craft a grown-up relationship with local government.

You referred to other countries being less centralised. I went to speak at a local government finance conference in Sweden a few weeks ago. It was fascinating that there were 3,000 delegates there, in a local government finance conference.

Stephen Williams: Must have been fun.

Sir Merrick Cockell: They thought it was. The fact that I was able to speak in English was impressive to start with.

Talking with them, and then with some leaders of Danish local government the next day—of course you would be loyal and speak positively about your system—it did feel as if there was a far more grown-up relationship between both parts of government in those countries. In this country, the financial settlement for local government is a proper negotiation, with an understanding of responsibilities on both sides; there is dialogue in it, conclusions are reached, and that is just how business is done. That is enshrined in law, which is another focus area of your interests. My view is that that is more likely to work. What I find doing this job is that, increasingly—indeed, this was very much the case in a Select Committee hearing on universal credit yesterday—the line is that if you involve local government at an early enough stage, your policies are more likely to work. We have had more announcements today on planning, and we had a few hours’ notice of some of it, but frankly, we were prepared—indeed, this was very much the case in a Select Committee hearing on universal credit yesterday—the line is that if you involve local government at an early enough stage, your policies are more likely to work. We have had more announcements today on planning, and we had a few hours’ notice of some of it, but frankly, we were prepared—indeed, this was very much the case in a Select Committee hearing on universal credit yesterday—the line is that if you involve local government at an early enough stage, your policies are more likely to work.

We need to move to a different way of doing business between both parts on a far more equal basis in government. I think that has more chance of working, which ultimately is what we are all about: we do want to change things; we want them to be effective. National Government, the coalition Government, have a legitimate right to put their policies through, but we also have legitimacy and we can help—I hope positively—governments to achieve what they want to achieve, and very often it will be exactly what we want to achieve. We want to achieve economic growth; we want to kick-start it. We have schemes around the country ready to go and we need some approvals. The more we work together, the more chance there is of effectiveness.

Q132 Chair: Let me follow up what you were saying, Stephen. Sir Merrick, on the amount of money that is raised locally in Sweden and Denmark, I do not expect you to have the statistics in your head, but isn’t it true that local government in England raises about 5% or so of its own money through council tax, whereas in the Nordic countries you mentioned, I understand that it is more in the 30%, 40%, 50% range. They have a degree of financial independence that our local authorities do not have.

Sir Merrick Cockell: That is certainly correct. I think local government in Sweden accounts for something like 40% of GDP. That rings a bell from the briefing I had a couple of weeks ago. It is substantial sector. I don’t know if my advisers can tell me the amount of GDP that would flow through local government.

Q133 Chair: Sir Merrick, it was very unfair to drop that question on you. If your resources can be deployed to give us a note on that, it would give Members a perspective on our finances compared with those in many other countries and would be helpful.

Sir Merrick Cockell: Certainly. It must be substantial in this country as well. You would think that, as with industry and other parts of the sector, you would want to work closely with a sector that covered so much of the economy, yet that relationship is very different here, as you well know.

Chair: Yes, Stephen, sorry for interrupting.

Q134 Stephen Williams: Back to the English model, away from Sweden. Why do you think it is that English politicians, such as yourself, in local government—where I used to be, as did Fabian—put up with diktats from Westminster politicians who may not have served in local government or know much about what happens on the ground? The housing announcement today may be a classic example of that. That was probably done in a way that no one in Los Angeles would tolerate from the state capital of California, let alone from Washington DC; or that the Mayor of Munich would tolerate from the government in Bavaria, let alone from Berlin. Is there a peculiar English craven relationship to Westminster?

Sir Merrick Cockell: Perhaps we are hearing the Mayor of London responding differently in recent times, aren’t we? I think we are all conditioned to the system that we have and to feeling subservient.

Q135 Stephen Williams: Do you think local government in England is ambitious enough? You are the Chair of the LGA in England. Do you think local government has shouted loud enough and been ambitious enough to stand up to the centre? It is always part of the problem that a lot of ambitious people in local government actually want to be here.

Sir Merrick Cockell: Yes. There is a lot of history to this, of course. The overall history of local government has been patchy at times, but I think that...
has moved and we have moved on as well. The sort of case with which governments have batted back ambitious local government by pointing to failure—maybe in different authorities—and portraying local government as failing when broadly that is certainly not the case, has been part of it. Some parts of the media do not see local government in a positive way: they go for the anecdotal stories as if to indicate that they reflect all local government throughout the country. That is just something we have to live with, but we have to increasingly make our case.

I actually think we are enormously helped by local government’s broad performance in this recession. We have taken, as you have heard too many people say, very large cuts and we are in the process of that, but the consequences of that have been far less visible. It has surprised even us in local government that, actually, we have been pretty good at finding ways. It goes back to this more mature relationship. I think we have a more mature relationship with our communities and those we represent at a local level in understanding the need to find savings—nobody was arguing against the need to find substantial savings; maybe not 28% but still substantial savings—and then working in local areas to find the best way through according to the circumstances there and bringing in partners in a grown-up way. As a result, collectively in your community you have some real buy-in—perhaps not from everybody, but weighty buy-in to those decisions led by local authorities in finding ways of saving money. That is indicated by the satisfaction ratings.

We have a great story to tell now. I think it is a story that national government can learn from, because we can show evidence of the working together and the co-operation. We can show how our efficiencies are coming through and that we are working in very innovative ways now, increasingly—not uniformly, but we are all moving in that way. Manchester is a prime example because of the work that they have done, without anybody forcing them, in the direction of AGMA and their new legal status, and there are examples in the city deals done throughout the country. In speaking louder, we have the weight of evidence behind us and, I think, more broad support from local people who look to their local authority and find that we are the people they work with day to day and that we are doing, broadly, a pretty decent job in difficult times.

Q136 Stephen Williams: You lead one of the 32 London boroughs and you have mentioned the Mayor. Do you think that the existence of the GLA and the Mayor, in combination with the 32 London leaders, has, ironically, strengthened the voice of London vis-à-vis the rest of England?

Sir Merrick Cockell: In a previous role I chaired the London boroughs for four years. Part of what I tried to do—frankly, it was difficult under Ken Livingstone—prior to the Conservative party’s selection of Boris Johnson was reaching conclusions on the difficult balance between the boroughs with substantial powers, and the Mayor with substantial powers in certain areas but no powers over the boroughs at all. The London councils did issue a challenge

to the candidates six years ago, or whenever it was, challenging them, cross party, to commit to working with the boroughs, but stating that the boroughs would give that voice for London to the Mayor. Indeed, indeed we set up a constitutional agreement—a convention that meets a couple of times a year—as a symbolic thing. That was a very conscious willingness and recognition that we could only make London work if all those elected to represent it got their act together and were willing to co-operate.

Part of what you have here is a democratic system that actually is pretty effective. Bar relatively few people, I think, there is no wish to create five super-boroughs because the boroughs have failed. The boroughs are finding more effective ways of working together and saving substantial amounts of money. They are also working effectively with the Mayor, particularly in many areas where there are common views, they still work effectively, cross party, for Londoners.

Q137 Stephen Williams: What I was hinting at, as an MP who represents Bristol, is that we now have the situation where we have the London economic elephant being matched by a local government element, with New York and a Mayor—and you are the capital city anyway. Do you think that there is now even more of an imbalance between London on the one hand and Nottingham, Leeds and Bristol on the other? If you accept that that is a problem, what is the solution?

Sir Merrick Cockell: I think that is just the reality. London is our capital, but it is a world city, as we know, isn’t it? It is actually competing across the globe in a unique way. Indeed, in economic terms, the centre of London is a bubble.

Q138 Stephen Williams: But Bristol is not so dominated by New York or Los Angeles or wherever. Munich can look Berlin in the face and so on. Why can’t Bristol and Nottingham be big players, too?

Sir Merrick Cockell: It is no surprise that London will run as fast as it can. Any city will do that and will push hard. Other cities, some more successfully than others, are beginning to do that. They have to be willing to take London on. They will never compete with London in scale and things like that, but they have to make a real case for their own cities and be pushy and demanding in doing so. There is also a danger that London is not alert to the rest of the country. Simply saying to industry or national government, “Invest in London, because £1 gets you more value in London than anywhere else” is a sensible argument if you are from London, but it is not a realistic argument nationally. London has to work co-operatively with other cities to make sure that that is shared, and that some of London’s power is also shared.

Q139 Fabian Hamilton: Hello, Sir Merrick. It is nice to see you again. I want to ask you about the comparison between Britain and local authorities and those in Europe that Stephen has just alluded to. The average municipality in Europe, as I discovered while cycling from Leeds to Berlin this summer—I just had...
to get that one in—and I went through many of them, is about 5,580, compared with about 152,000 in the UK. Obviously cities such as Bristol, Nottingham and Leeds, not to mention Manchester, Liverpool and Birmingham, are somewhat bigger. Do you think that if we had genuinely devolved powers we would have to reorganise our local government to have smaller municipalities? I am thinking of the communes in France, for example.

**Sir Merrick Cockell:** Yes, on my Scandinavian trip, one of the other speakers was from French local government. We were looking at the whole structure of capital borrowings for local authorities. France is doing some very interesting stuff as well. I think he said there are 36,000 mayors in France, so when they have a local government or mayors get-together, the President of France speaks, every single year. Increasingly I am against central Government deciding what the best model for local government is. We have talked about Manchester, but many of the cities and areas that you represent are working out for themselves the right configuration. Perhaps one of the difficulties of regionalism under the past Government was that other people decided what region you were in. Often it was fine if you were in London, but a lot of people in Bromley would say they were in Kent, so even that was not necessarily easy.

In the rest of the country, you were ending up with configurations that just bore no relationship to how people and local authorities saw themselves. However—maybe you see some of this through LEPs—you can say, “You are responsible for your area. You have now got to work out who you work with, and who you work with in different circumstances.” There are fuzzy boundaries to these arrangements; if you are in York, are you in Leeds city region? Well, you probably are, but you will also be facing several ways at the same time. Somebody in Whitehall deciding that York sits in one place or another makes no sense. Let areas decide for themselves. I like small areas. I would do; I am in a very small London borough. However they are arranged, the closer and more accountable they are to people, the better.

Q140 **Fabian Hamilton:** That is a very good point. I live in a small town called Pudsey between Leeds and Bradford, and Pudsey still resents the fact that in 1974 it became part of Leeds metropolitan district. It still does not like it. Most people over about 60 in Pudsey just refuse to accept that they are part of Leeds. We get that repeated all over the country from the 1974 reorganisation, which is now nearly 40 years ago.

**Sir Merrick Cockell:** Yes, and for arrangements that allow Pudsey to still be Pudsey, but still be part of Leeds or part of Leeds city region, perhaps we can look to the French model.

Q141 **Fabian Hamilton:** The French model is quite interesting. I did not realise there were so many mayors—136,000, did you say?

**Sir Merrick Cockell:** No, only 36,000.

Q142 **Fabian Hamilton:** That is more manageable, perhaps. I had experience of that recently at a wedding in a small village in the Loire valley. Of course, all wedding ceremonies in France have to be conducted by the mayor; you have to have the civil ceremony before the religious one. The mayor knew everybody at that ceremony, or everybody who was local. That is a really strong point. However, I am not sure that that would work in the UK.

**Sir Merrick Cockell:** Yes, but the French have urban communities and that is where you bring a lot together. The mayor of Lille leads a much larger grouping.

Q143 **Fabian Hamilton:** Yes, that is true. As you have suggested, plans for English regional assemblies were abandoned in 2004, when the North-East referendum was defeated. I think we all remember that. In 2011, data from the British social attitudes survey showed that only 25% of English people favoured an English Parliament, and only 12% favoured English regional assemblies, whereas 56% favoured the current arrangements in which laws are made at Westminster and, as you say, imposed from Westminster on the regions and the localities. Do you think that people in England really are interested in devolution, or is it that they have never had any experience of it?

**Sir Merrick Cockell:** I do not think people are interested in an English Parliament, but how can I speak for England?

Q144 **Fabian Hamilton:** On the regional assembly in the North-East, you would think that, of all the regions of England, Newcastle and the North-East Tyneside region would feel strongest about it, and yet it was roundly defeated.

**Sir Merrick Cockell:** Yes, but I would say that the strength in the North-East comes from individual towns, and component parts of the North-East with great histories and great municipal histories, who are pretty effectively working together across parties. People do not need to have a great appetite for it. They expect their elected leaders to sort themselves out, and to get on and find the best arrangements. I do not think they necessarily feel the need—I know they do not—for another tier of politicians to vote for, but they expect us to do the best and find ways of co-operating. They are amazed when they find out that we do not do these things naturally, or that we wait until central government tell us to do it.

Q145 **Fabian Hamilton:** So you do not think that those attitudes and that survey have any serious implications for the prospect of setting up a constitutional convention.

**Sir Merrick Cockell:** No, I don’t.

Q146 **Fabian Hamilton:** Thank you for that. How important will it be to involve the general public in any constitutional convention, or do you think that locally elected people are the voice of the public? How could we involve the public, anyway? On what basis?

**Sir Merrick Cockell:** I think that would be going back to the beginning; we would have a responsibility to try to engage the think-tanks, the leaders of thinking
and the newspapers and so on to try to bring this to life—what it actually means—and to encourage debate on it. No doubt, depending on the size of the constitutional convention, I guess there would be others who must be in the room and part of it, but fundamentally I think it should be led by those who are elected to represent others, because part of our status is that people have given us the power to speak for them on these matters. We all know there are a lot of vested interests that speak on behalf of others, but do not do so with that clear authority.

Q147 Chair: Sir Merrick, you have been incredibly helpful personally, but also as an organisation, in getting the message out on further development of independence for local government. You mentioned the meetings that we did together in Sunderland, and there are many, many others; most colleagues around the table have done their bit as well in various places. Do you see as inextricably linked these two questions: devolution in the UK, specifically in England; and, since we have declared regionalism dead—at least for the time being—the idea that the only way to progress this would be through strengthened local government?

Sir Merrick Cockell: Yes, I would. They are, as so many other things are, interlinked. One feels, perhaps for the first time, that even though there may not be, as we have discussed, lots of people crying out for this, there is actually some weight behind it. There is a recognition, as I said earlier, that a very centralised state does not satisfy people's needs, and that decisions being taken very visibly at a local level and variation within the country—a moving on from postcode-lottery arguments—should be positive rather than negative, because it reflects the needs of those communities and helps them to get through very difficult times.

To quote a political example, on the whole debate on council tax benefit localisation and how we deal with that and also the cut of 10%, our view is that that would be not only workable, but much better if local communities worked out in a mature way how you divvy up that saving, and who takes it and who does not, rather than having a view in the centre that particular groups should be exempt, which puts the weight of those reductions on a much smaller group of people. Do you see as inextricably linked these two questions: devolution of political power and decision-making in the UK, specifically in England; and, since we have declared regionalism dead—at least for the time being—the idea that the only way to progress this would be through strengthened local government?

Q149 Chair: Much of the drive in Scotland, Wales and Northern Ireland for devolution has been a desire for self-government and also, particularly in Scotland, a desire to organise their own economic policy and, to some extent, their own fiscal policy. Do you see as inextricably linked these two questions: devolution of political power and decision-making in the UK, specifically in England; and, since we have declared regionalism dead—at least for the time being—the idea that the only way to progress this would be through strengthened local government?

Sir Merrick Cockell: Yes, local government may need to form itself into a size of units that effectively can carry out the devolution, but we are seeing that. We are seeing that in the city bids coming in, but also in the willingness of the Government, and particularly Greg Clark, now to look beyond cities to other areas. I know that Essex is doing work in this area, but lots of others are doing work as well, so that that and also the cut of 10%, our view is that that would be not only workable, but much better if local government to the same place at the same time. That is the right model.

In some areas, in truth, some of that leadership may come not only from local government. Some areas may not be interested in the model that I am talking about in quite the same way or, indeed, may not be capable of it. As we are increasingly looking to areas to lead, perhaps other services within those areas will take the lead. Local business might take the lead in some respects. I am not saying that we will get all local government to the same place at the same time. That is not realistic, but we can look to areas to be able to do that.
They must be progressive, and I hope that the Government will look positively at particular areas of the country saying that they would like the flexibility to do other different things when raising finance in their areas, to work very co-operatively with businesses, and to look at the things that are untouchable at this stage.

Q150 Chair: You issued a clarion call to all parties to look at this question when drafting their 2015 manifestos. I am assuming that you would not object if the current Government, made up of two of those political parties, were to look at this issue in their mid-term refresh. That would not be too premature for you?

Sir Merrick Cockell: No, not at all. Chairman, you said how these things interconnect. The work that local government has been doing on community budgets—it all feeds in. If there is a single message from the work, which is halfway through, on community budgets in the four pilot areas, it is about focusing not on organisations, but on people. What can actually change how we provide services and the financing of them is a refocusing away from organisations to people. What we are talking about is all part of that argument.

Chair: Sir Merrick, I know that colleagues wanted to come back, but—forgive us—we are overrunning, and I do not want to be disrespectful to our next witnesses. Sir Merrick, thank you so much on behalf of the Committee for the effort that the LGA is putting in with regard to one of our other inquiries about the codification of the powers and authority of local government; it is much appreciated. Thank you for your attendance this morning.

Examination of Witnesses

Witnesses: Ged Fitzgerald, Chief Executive, Liverpool City Council, Will Godfrey, Strategic Director for Corporate Services, Bristol City Council, and Tom Riordan, Chief Executive, Leeds City Council, gave evidence.

Q151 Chair: Good morning, gentlemen. My apologies for overrunning a little with Sir Merrick. We can keep going if necessary. It is very good of you to come along. Is there anything that anyone would like to say in general about the inquiry we are conducting on the need for a constitutional convention, or would you like to pile straight into questions? Tom, you look as if you are just about to speak.

Tom Riordan: We produced a piece of work in Leeds on the future of local government. One of our five key conclusions was on what we called the English question. We are happy to submit that as evidence. It was quite a wide-ranging piece of work, with a wide range of people involved. I can go into the detail of that in the questions, but it is very relevant to your piece of work. We were pleased to have a joint meeting with you in Leeds, and to get our members to feed in. It is very consistent with the thrust of what you are looking at today.

Q152 Chair: Tom, do you want to put that conclusion on the English question in a nutshell?

Tom Riordan: I think what we found was that it very much played into this issue that devolution has happened quite successfully in Wales, Scotland, Northern Ireland and London, but it has not happened in England. That prompts the question: what do you do with that piece of unfinished business? We came to two main conclusions. The first was that the obvious place to devolve to was local government, but you probably needed to do it not to every authority, but to groups of authorities. We see the combined authority model that Manchester has led and others are following, including Leeds city region, as a good way forward. Secondly, we posed a question and suggested that one of the main anomalies is in Whitehall; the current structures do not have anybody with a specific mandate for England in Cabinet, yet there is for Scotland, Wales and Northern Ireland. You also do not have a specific department mandated to work with England. Although the Department for Communities and Local Government comes close, it is not that department. We think that has therefore led to a lack of focus on England. We think that a structural change would be helpful in that respect. Those were the main conclusions.

Q153 Chair: So your model is essentially a voluntary and spontaneous collectively organised sub-regional group. It is something that people want, rather than something where Whitehall says, “You have to fit into this region”—something that Sir Merrick alluded to earlier. You evolve your own sub-regional city region. Tom Riordan: Yes, bottom-up, I think. If you look back, whether at industrial development boards, training and enterprise councils or regional development agencies, of which I had some experience, you could say that their fundamental weakness from the start was the democratic deficit. You need to put something in place that meets that concern.

Chair: Unless Will or Ged want to say something, I will move straight to questions.

Q154 Paul Flynn: Should we have this constitutional convention before the Scottish decision in 2014, or afterwards?

Ged Fitzgerald: For us as officials, the issue of the convention would be more of a political and a representative question, rather than a professional, technical assessment. In the spirit in which the question is asked, I think it is very much at the heart of what you are considering overall. To pick up what Sir Merrick was saying when I came into the room, the distinctions between powers and resources, and between different geographical areas of the UK, are
fundamentally important in determining whether a convention will work and the form the convention would involve. It is tricky to answer the question without knowing what the exam context is, so to speak.

Q155 Paul Flynn: Have you grappled with this problem of who speaks for England, and in particular who speaks for Pudsey? We know who speaks for the cities. Is it possible to get a group of people who could be representative of England?

Tom Riordan: I think you have to look at the democratically elected people in those areas. It would be Members of Parliament and the local authority leaders who would be the most obvious ones to do that. I personally do not think chief executives of local authorities, for example, should be part of that group. Local government should definitely be represented at the forefront, but it should be by the leaders. There is probably a case, if you really want consensus, for thinking about who are the others, after the MPs and the local authority leaders, whom you might want to get round the table. That might include business leaders and voluntary leaders. When I was at the RDA, I always had Tim Kirkhope bending my ear about the MEPs, to ensure that they were in the loop. You could also say that the Lords are an important element. The main body should be around local authority leaders and MPs.

Will Godfrey: We are now also in the era of directly elected mayors. They will have huge legitimacy, in terms of the mandate that they will have received, having been directly elected. Certainly, in the cases of Bristol and Liverpool, that would be an obvious person to be involved in any convention.

Q156 Paul Flynn: My experience in local government is this: I was elected in 1972 to a county borough council. The powers that be had been persuaded that the ideal size for a council was about half a million, so we had county councils, to which I was elected, and district councils, to which I was also elected. Through these experiences of reorganisation, the situation now is that the council that represents my area is very similar to the council to which I was elected in 1972. In all those reorganisations that took place, there were huge costs and huge increases of staff, and we ended up virtually in the position that we were in 40 years ago. Isn’t there a case for leaving things as they are, rather than going through the disruption? The change rarely produces advantages that compensate for the chaos, waste and duplication.

Will Godfrey: Again, I can only come in on the official side of that. I have worked in a district council—I was chief executive—and I now work in a large urban authority. My perspective is that they all work in different ways. I think every authority I have worked for has been successful in different ways. You can spend an awful lot of time talking about what is the optimum size and optimum type of function for individual organisations. My professional view is that you can spend an awful lot of time and effort having a quite philosophical debate, but at the end of the day I have always believed that government of any type exists only to improve the lives of the communities it serves. That is the test.

Ged Fitzgerald: I agree with what Will has just said. Too much emphasis in local government, as in the health service, I believe, is focused on structures rather than on the content, substance or context of what is carried out. The real question, if I may say so, underpinning your question is less, in my view, about structures than it is about roles, the resources point that we touched on earlier, and the whole decentralisation/centralisation debate. Over those 40 years—I can’t quite go to 40 years, but I can certainly go to nearly 30 now—I have seen, in my own career life, an increasing centralisation of the role of the national state relative to the roles of local authority organisations, whether district, county or, in my case, metropolitan. I think that should be the focus, rather than the structure and the debates about structure. I agree with your contention that too much time, effort and money is spent and wasted on structural conversations rather than dealing with the causal issues, as opposed to the symptoms.

Q157 Fabian Hamilton: On 5 July this year, the Minister for Decentralisation—I’m not sure I even knew that such a person existed—[Interruption] It is Greg Clark. Thank you. He stated that city deals would give cities “greater powers to drive local economic growth”, “facilitate specific projects that will boost local economies”, and “strengthen the governance arrangements of each city”. All of you have negotiated city deals. Are you confident that the deals you have negotiated will benefit local communities?

Ged Fitzgerald: Shall I lead on that? Ours was probably the most controversial, if I may say so, in terms of the interrelationships, the form of governance and the mayoral arrangement that we volunteered to move to this February. My simple, shorthand answer to your question is yes, absolutely. That is the first step, in my view, on a road that should move progressively towards reducing the power and resource base of national Government relative to local organisations—whether it is increased decentralisation or devolution is an issue for debate, I guess—therefore facilitating more empowerment of people, whether local politicians, local businessmen, or others who have a very clear stakeholding and clear allegiances and alliances to local areas, whose voices may not be expressed or exert a degree of influence under the current system, as opposed to the system that the city deal process has, in my view, begun to unlock.

Q158 Fabian Hamilton: Before Leeds and Bristol respond, I noticed that all three have put transport as one of the key issues. As a Leeds MP, I know what an issue that is, and Tom also knows. I am sure that it is the same in Bristol and Liverpool. I don’t know if you want to come back on that particular issue or the general issues.

Tom Riordan: I am sure, as Ged said, that our city deal is a big step forward. It will benefit our local communities in two main ways: first, jobs, in terms of the transport investment that we want to make and to get that moving straight away; and secondly, very
much a big push for us on apprenticeships and the difficulty we have about a lot of young people coming out of school and university and not being able to get the training, jobs and skills that they need. A big impact on that cohort of people is what we are looking for and what we are confident we can achieve.

In transport terms, to compliment a government department, the Department for Transport has recognised the need to decentralise and move decision making down through the city deal processes. We have to look through the detail—the devil is always in the detail with these things—but if you talk to local people, as you have just said, the things that come out time and time again are things such as jobs, skills, prospects for young people, and transport.

Ged Fitzgerald: Just to build on the same point, ours was predicated on jobs and resources, in the way we were describing it a little earlier. That quickly opens up the issues of skills in the education system as well as the skills system. Fundamentally, you have a transport issue which, although technically it is legally owned by local authorities, is governed through a different system—the integrated transport authorities, in our cases. The transport agenda and the ability to strategically plan and strategically finance major transport projects is clearly what we would be talking about in urban areas particularly, is disconnected from the economic agenda driven through city regions and increasingly through LEPs. That makes it difficult to achieve a jobs growth or economic growth role without having some more direct influence or leverage over local transport arrangements, through the ITA, but also through national government arrangements, priorities and so on around big transport decisions.

Will Godfrey: Like Ged and Tom said, in Bristol our instinct is that yes, we are very happy with the deal that has been put in place. We think that it will benefit the communities of Bristol. The cornerstone of the Bristol deal, effectively, is a £1 billion infrastructure fund, which has a large element of transport to it but is not exclusively around transport; it is also linked to economic growth, particularly around some key economic growth areas across Bristol and the west of England, to create jobs and so on.

One caveat for me is that the deal will be successful as long as what we signed on 5 July translates through the legislative statutory process into real outcomes. The clue is in the name, really: a deal is not exclusive around transport; it is also linked to economic growth, particularly around some key economic growth areas across Bristol and the west of England, to create jobs and so on. One caveat for me is that the deal will be successful as long as what we signed on 5 July translates through the legislative statutory process into real outcomes. The clue is in the name, really: a deal is not exclusive around transport; it is also linked to economic growth, particularly around some key economic growth areas across Bristol and the west of England, to create jobs and so on.

Q160 Chair: So what is your alternative, Ged? You seem very fatalistic about that. I do not hear from you what your alternative is. You just say that it is pretty bad at the moment but it could be worse and you don’t quite know what you are going to do in future.

Ged Fitzgerald: No, I am not fatalistic about it at all. I would suggest that, by definition, a local authority chief executive has to be optimistic rather than fatalistic, certainly in the areas that each of us comes from. My view on the piece of work you are engaged in is that if the city deal process, the localism agenda, and the legislative framework that Will rightly referred to a minute or two ago all continue in the direction that has been set, then I am optimistic about the future. What I wanted to emphasise is that in our own city deal negotiations, we had all sorts of offers and promises about powers and I said, with due respect to all concerned, including senior politicians nationally, that the debate and the deal are not about powers. We have powers; we have general competence; we have economic, social and environmental well-being powers and so on. It is about resources, and it is about getting more control and leverage over our own resources and more control and leverage over other agencies’ and national government departments’ resources locally.

Q161 Chair: I see that is your wish, but what are your proposals? Does your organisation of chief executives have a clear plan on a city deal? Government in the round are not going to give you to ask for it in the first place. Do you have the ambition and the clarity about what you want at the moment? You can say no. It is not a bad answer if it is no, because we need to help you there and you need to help get us there.

Ged Fitzgerald: In my opinion, the answer at the moment is a fragmented set of responses. There is no one clear plan; there is no one clear ask of government from the local government family and communities. That is partly because of the complexity of the funding regime. I mentioned the figure of 91% in our case, and I know Leeds will be not far off that kind of number, but I worked in Lancashire county council before Liverpool, and their number is a lot smaller.
very clear and coherent? We are obviously looking towards the future, but no one will ever give us anything by way of a redistribution of power unless everybody has worked out where they want to be. Would you take that back to your own professional organisation?

Ged Fitzgerald: Speaking as someone who sits on the SOLACE board, I am more than happy to raise that with the board, but whether we can get that collective view, we will see.

Chair: We will manage. Fabian is going to ask a brief question, but I want Tom and Will to answer the same question.

Q163 Fabian Hamilton: I just want to mention the Commission on the Future of Local Government. You were at the launch of that. I think that could form the basis of that ask, because it was a very good piece of work, which obviously originated in Leeds.

Tom Riordan: I would just say two things that came out of that that are relevant. One is about the Barnett formula. I was in when Sir Merrick was talking about that, and I think it is an absolutely fundamental question if you look at the whole question of resources. That has to be one element of what we are asking.

Another thing that I would suggest, which we would obviously need to talk about, is the idea of a single pot to back up the city deals. At the moment, despite the work that has been done very well in the Cabinet Office, we will still have to have a relationship with different Government Departments. One of the good things that worked well that came out of the RDA era was the flexibility of the single pot. I have worked in Whitehall myself, and the thing that stops the culture in Whitehall letting go is the issue of how the money comes down from Parliament and gives you accountability, as an accounting officer, for the way that public money is spent—the regularity and propriety issue. That is the issue that needs to be transferred; that is the thing that needs to pass genuinely down to cities, to counties and to others. We need that flexibility to be able to decide what to do with the money, not a set of 10 strings where we have got to report back up in 10 different ways. That is the problem.

Q164 Chair: Often, Scotland, Wales and Northern Ireland had success in getting devolution because their ask was, if not always totally consistent, very coherent and collective. I think if you are going to wait to see what pops up out of the process, you may be disappointed, whereas if you are part of building that, we have got a heck of a much better chance of getting some progress. Will Godfrey: In terms of the other question, I agree and hope that it is the first step towards devolution. One of the issues that perhaps we have not talked about much at the moment is that how local enterprise partnerships develop over a period of time is also critical to the equation. The city deals, effectively, are agreements in part with the local enterprise partnerships as well as with the local authorities. How those develop over a period of time will be quite important, because not only are there relationships between local government and central government, but there are now relationships between local authorities and representatives around the local enterprise partnerships. That is quite an interesting part of the equation as well, and it is uncertain at the moment how that will unwind. It will be quite interesting to see whether, when the economy recovers, making money available in other places, business will still play the part that it is playing at the moment in the local enterprise partnerships. At the moment, most of the money that business is able to access is through Government, and therefore they have to play an active role in the LEPs. As the economy recovers, will that still happen?

Q165 Andrew Griffiths: Professor Robert Hazell has argued that Britain is probably the most centralised country in western Europe. To what extent do you agree with that and to what extent can you therefore give us some examples of how that centralisation has had a negative impact on the ability to deliver for our constituents?

Will Godfrey: Can I give you a direct example? I used to work in Wales, as well as working in England, so I have had some experience of local government in Wales, and it is very different. Wales, for instance, has had much more flexibility around the way that it can use its grants for a longer period of time. England is moving towards that way in local government. Certainly I think that the relationship between the Welsh local authorities and the Welsh Assembly Government is quite different from the relationship between English authorities and so on. Some of that is due to size and scale, but some of it is a philosophical issue about trying to give local government more flexibility.

On the question, I am not sure if it is the whole of western Europe, but certainly from my point of view, if you simply look at resources and our flexibility and powers, I would argue that we are a very centralised country. That does not necessarily help. If you look at Bristol, for instance, which is incredibly diverse with a lot of very different requirements, you cannot just have a single solution for all the communities in a city of 450,000. We need to have a much more flexible approach to solutions at local level. That requires greater trust and flexibility from central government to local government.

Tom Riordan: If I could add some examples, Leeds is the only major city in Europe without a light rail public transport system. We have been to-ing and fro-ing with the Government for probably 25 years on a major public transport scheme in the city. Thank goodness we have just got the green light for the trolleybus scheme—the NGT scheme—which we are very pleased about and which we are going to implement—but we have had major strategic pieces of land in our city centre waiting for this for 10 or 15 years. I think there is a genuine opportunity for transport with what is happening on rail, potentially on rail franchising and the bus system, together with the devolution of city deals, to go further there.

I have another example. It is not in Leeds, but it is in west Yorkshire. I know of a major company—a major employer—that is thinking of leaving the area,
because they are being given an incentive from Scotland, and the locality has no equivalent resource to draw on. That comes directly out of the Barnett formula point. That does no good to the UK economy: it is recycling and making competition within the UK economy as a whole. A level playing field for us in economic development terms is absolutely what we need, and that is again where the city deals and the idea of a single pot could really help.

**Ged Fitzgerald:** Chair, I have already made the point that in my opinion professionally and in my personal experience, the level of centralisation I think bears out the question, and that is borne out by lots of academic research and evidence that the Committee will be aware of and will be looking to, I am sure. I can quote lots of examples over many years of the degree of disconnect between national and local in the way that Tom perfectly exemplifies. It cannot get a better example for you than the one I quoted a minute ago. Is it right democratically that the national government decide 91% of the funding base for what happens in Liverpool? Not only that, but generally, do the citizens—the taxpayers—of Liverpool know that? They don’t.

**Q166 Andrew Griffiths:** So it seems very much as though, when we are talking about decentralisation—or localism, as I prefer to call it—it is not extra powers you want or extra ability to be able to do things; it is just money.

**Ged Fitzgerald:** That is a key element of it. I would not say that that is the only answer, but that is certainly a major point, that we have to have more flexibility over how we can raise and use money, we are clearly in a better position to meet the needs of local communities.

**Tom Riordan:** I would just add a couple of things. It is important to say that we are not just going with a begging bowl. We accept that it is not new money; it is important to say that we are not just going with a begging bowl. This is not a whinge about the begging bowl definitely applies. This is not a whinge about wanting more; this is about how what is there can be used better.

My other point is almost the reverse of your question, if I may say so, which is that without having more leverage and influence over the resource base locally, a lot of the other part of the democratic deficit and other issues that the Committee will be relevant or operative, because you just get, with respect, to philosophy and philosophising if you do not have the ability for that bite to make a difference locally, particularly to local communities. That is borne out by turnout and by successive pilot exercises and all sorts of different ways of testing out ways of trying to improve democracy; which I completely understand and respect and have supported professionally. Ultimately, however, there is no point in doing those if the resource base still remains 91% controlled by Whitehall or Westminster.

**Q167 Andrew Griffiths:** Sure. So if we are going to transfer resources from central to local government—the localist agenda—there is an argument, that says, perhaps unfairly, that some local authorities are officer-led rather than councillor-led and that actually the democratic deficit comes from the involvement, the understanding, the qualifications and the experience of the elected representatives. All too often, it is people like your good selves and officers who are making the decisions and pulling the strings. How do you think that that can be countered? What can be done to ensure that if we are devolving money down, we are also ensuring that local government is ready to deal with that extra responsibility?

**Ged Fitzgerald:** I think that is genuinely a very good point. I have been chief executive in four local authorities—there is an argument, that says, perhaps unfairly, that some local authorities are officer-led rather than councillor-led and that actually the democratic deficit comes from the involvement, the understanding, the qualifications and the experience of the elected representatives. All too often, it is people like your good selves and officers who are making the decisions and pulling the strings. How do you think that that can be countered? What can be done to ensure that if we are devolving money down, we are also ensuring that local government is ready to deal with that extra responsibility?

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by local elected politicians, and that is absolutely right.

Tom Riordan: I used to work in a quango—I was one of those dreaded people who are even worse than local authority chief execs—coming across to local government, I was very aware of this issue. Obviously, the Secretary of State has been very vocal about it during his period in power. We have a perception problem at times about the role of the chief exec. What I have experienced has been very different and very much what has been described. There is a recognition that we need both to work well. You can’t just make decisions and they try to make sure that they are all implemented and taken control of at a political level, because you would not have time to do anything else.

As for the role that scrutiny can play in local government, I do not mean pure scrutiny. We have different groups on our executive board—our public cabinet—and scrutiny of every decision that is made can help.

Q168 Andrew Griffiths: Do you think that the demand for you to publish expenditure of much smaller sums now is also adding to that? Do you think that it is making a difference in the way in which the council operates?

Will Godfrey: Personally, I do not think that it has made much difference at all. Very few people have taken interest in it or particularly had a look at it. In terms of the philosophical argument, it is absolutely right that local government and all public bodies be transparent. The danger with setting an artificial limit is that, in practical terms, particularly for a large organisation like Bristol, you must look through thousands and thousands of transactions to pick out something that you, as an individual, may be interested in. I do not personally think that that has really helped transparency. Transparency is a behavioural issue, rather than a process issue.

Ged Fitzgerald: I echo the point made about the balance between transparency and proportionality. Liverpool is a similar size to Bristol, so with regard to scale and volume, there would be the same kind of dynamics.

Q169 Andrew Griffiths: Mr Fitzgerald, you touched briefly on structures and roles, which is important if you are talking about decentralisation. I heard the Secretary of State say that he kept a pearl-handled revolver in his drawer that he would use the first time that anybody came into his office and asked him about positions that he held. What extent do you think that the localism agenda has moved the issue away from structural issues? Look at things like the sharing of chief executives and the cross-border partnerships that we are seeing in more and more local authorities. To what extent do you think that that has had an impact on the debate, and on service delivery?

Ged Fitzgerald: That is a very good question. For me, it is a step absolutely in the right direction. It has shifted the debate, as you rightly suggested, away from structures as being the means of saving money in the present climate, and more on to the quality of local services. That is clearly a continuum, and, in that sense, it is moving in that direction.

Tom Riordan: Can I add one thing to that, which relates to the last question as well? We are going through such a massive challenge at the moment. Perhaps previously you could get into a cruising situation, say in an authority where the officers took more of a role than would have been liked politically at a national level. We are all going through such a change now, and we have to look so fundamentally at what we do. I think it is driving that. We have to have that political dialogue, and you have to have that look at how we are working. It is forcing us to have a bottom-up look at how we are operating and how we relate to our neighbours. It is having a dramatic impact.

Ged Fitzgerald: I agree.

Q170 Andrew Griffiths: In relation to the convention, to what extent do you think that cities that chose not to have mayors will be disadvantaged in any constitutional convention? How far do you think the involvement should go down? We are talking about mayors and local authorities. Is there a role for parish councils here? How far do you trickle the whole thing down?

Ged Fitzgerald: It is interesting that the question comes in terms of areas not moving towards a particular model being disadvantaged. Again, I prefer to look at it the other way round. There is no question in my mind that we are better advantaged under the mayoral model and the city deal arrangements than what we were before. I am sure that the 58,000 people who voted for the Mayor of Liverpool would echo that point.

I will make this distinction, and perhaps I should have made it earlier in the conversation: one of the big differences for me in the mayoral model in Liverpool is that it is the Mayor for Liverpool, not the Mayor of Liverpool city council. That might sound subtle or slight to an uninformed audience, which clearly you are not, but it is very distinctive. It underpins that point about the advantage, as well as the advantages that we negotiated through the city deal itself. It advantages the profile of decision making, of accessibility and visibility, and of transparency, and the fact that—Will and I were talking about this while we were waiting to come in—business people know that they can ring up, e-mail or tap the shoulder of one person, called the Mayor for Liverpool, to get things done and have a direct dialogue. Even with the best of intents, that was not the case before, in terms of trying to be accessible, streamlining decision making, accountability and so on, as I have said before. It is an advantage issue, rather than a disadvantage issue.

Will Godfrey: Obviously, in Bristol we are moving towards our Mayor. We have had the referendum and we will have the election on 15 November. It is interesting going through that transitional period, in which people’s minds are very much on what will be different and so on. Personally, I think it is a sign of the strength of local government that we are able to deal with different structures, with some areas and
cities having mayors and some not. It is a genuine reflection of the desires of the different communities across the country. That is the way that democracy should be. I do not know what will happen with the directly elected Mayor in Bristol. It will be an interesting experience, both from a professional perspective and from the perspective of what happens. The experience elsewhere, as Ged said, is that the strength of it is that people do see a very clear leader for a place, rather than a leader of an institution. I think that that is a big difference.

**Tom Riordan:** I will have to put the other view. I suppose that I would say that you have to respect what people voted for. If we just went for mayors across the country, you would miss out the six biggest cities in the country. I do not think that you can do that; you have to have both. It will be interesting to see how the mayoral models develop. In Leeds there was an interesting debate, with a lot of the feelings that you have heard articulated. The greater feeling was probably about putting power into one person’s hands. You have heard the example of the Pudseys of this world, in Leeds. Sorry, I do not know if you were here before, but we were mentioning one part of Leeds. Leeds is quite a federal city; it is made up of quite distinctive places and the feeling there was that they did not want to give that away to one central core. It will make it work with the model that we have got at the moment, and it will work well with those places that have got mayors, I am sure.

**Q171 Andrew Griffiths:** Mr Riordan, something you said earlier has been ticking away at the back of my mind—I think it was you who said it. It was about your concerns regarding LEPs.

**Chair:** And their relationship to the constitutional convention.

**Andrew Griffiths:** And their relationship to the constitutional convention.

**Will Godfrey:** I said something as well. Another one, was it you? Sorry, yes. Clearly, we need to understand the role that LEPs will have in relation to the constitutional convention. Their very make-up, when they were established, was, from my understanding, to be business-led. If you are predicting that in a few years’ time business will disengage from that, and they will become more of a forum for authorities to co-operate in, rather than a partnership of that kind, that has, for me, big implications, both in terms of how the LEPs operate and in relation to how we would need to engage with them as regards a constitutional convention. What do you think?

**Will Godfrey:** What I am reflecting on is that at the beginning I think the purpose seems very clear—trying to promote economic growth—and that is absolutely understandable and right to do. Experience of the city deal, though, has shown that as LEPs have developed and perhaps got a bit more confident about their governance, etc., their reach has been getting broader and wider. Where there does that stop, and what does economic growth mean? Economic growth can be many different things to many different people. I am just speculating on whether, if they get more embroiled in being seen as institutions and processes, rather than bodies that come together to stimulate the economy, it will then simply be seen how that additional layer of complexity plays out with all the other layers that we have got. That is all I am saying.

**Q172 Stephen Williams:** There has been a very top-down conversation about mayors, MPs and leaders—I think it is inconceivable that the leader of Birmingham city council, for instance, would not be part of the constitutional convention as well as the Mayor of Bristol—but do you think that the people of Toxteth, Pudsey and Clifton really are seized by this as an issue? Are you having to draft lots of letters for your members to angry citizens saying, “What we really need is a constitutional convention because Liverpool, Leeds and Bristol haven’t got enough power”?

**Ged Fitzgerald:** That is a great question. My view on this is that if you ask people today—this is perhaps implicit in your question—they would not comment because they would not have a view, but if there was pre-information about what the current situation really is, as opposed to how it is played out in the media or in popular conversations, so that there was therefore an information basis to the question—a rationale and an explanation given as to why what is being considered for proposal will be considered for proposal—I think we would get a different response. I speak as the person who ran the counting office for the North-East referendum in 2004. I am absolutely of the view now, as I was eight years ago, that the reason for the out-turn, which was 74%, was of course—was that what was on offer did not make sense to people. That underpins your question. If what is made available to people through discussion, information, awareness-raising and so on makes sense to people, then I think you would have a different answer to your question.

**Tom Riordan:** I absolutely agree with that. We have people who are absolutely bothered about the way the bus companies are operating in our area, for example. It is something that affects them daily, and they want more say over it. They want to do something about it. If we said, “Are you interested in the governance structure of the UK?” they would not be, but if we said, “Do you want more control over the way the bus operates?” definitely they would be, so I think it is how we say it.

I always think people can usually sniff out when something is really on offer, and that has been the problem with the questions that have been asked, whether about directly elected mayors or the North-East referendum. People knew that there was not really much more power on offer, in reality, hence the results that we got. If you ask a different question, which you have done in Scotland, London and Wales,
people will answer in a different way. If it is about genuinely passing power, which people will have more say over, from the centre down to a locality, they are interested.

**Will Godfrey:** I think that is right. Certainly from my point of view, it will be interesting to see in Bristol what the difference is between the turnout for the referendum and the turnout for the mayoral election. That will be interesting feedback on the process that we go through over the next few months. Like Tom and Ged, my experience is that most communities want their living environment to be the best possible. What they do, generally speaking, if they have problems is come to MPs and councillors, because they see those people as the people who have some influence and can try to change things. I guess that people tend to get engaged with processes when they want something done. The people who are disengaged and perhaps feel as though they are not able to do that are the people I am interested in trying to make sure that we stimulate, to ensure that everybody has equality of the opportunity to have the best living environment that they possibly can. That is what drives us as individual public officials every day of our lives.

**Q173 Stephen Williams:** Do you think that the nature of a constitutional convention—obviously there has to be a certain size of participant, otherwise it will get completely unwieldy—means that it has to be a bit top-down, leading to endorsement in a referendum? The way you all answered the questions was about the end of the process, about endorsing or rejecting a proposal that has been arrived at by others—politicians, or maybe business leaders. Or do you think that it needs to be a mass-participation exercise? If you do, how would your cities facilitate a mass-participation exercise?

**Will Godfrey:** I think there are probably ways of doing both. I think it is right that if you have any constitutional convention, if you have a membership, it has to have some democratic legitimacy, so it probably has to be rooted in local MPs and local politicians. We all do public engagement events for different issues across our cities all the time, and there is absolutely no reason why that should not happen. We do that regularly for various issues; you know yourself, Mr Williams, about things we do across the city. There is no reason why you cannot match those two things together and get some engagement from communities, but membership of any convention has to be rooted in those people who have been democratically elected.

**Q174 Stephen Williams:** We all know—the answers might be similar—that you could probably quite easily get 50 to 100 people to turn up to a meeting in an area about parking charges, to take an example that we would probably all be familiar with. Would we really get mass participation from the citizens of our major cities on the power that local councillors should have vis-a-vis their MPs?

**Tom Riordan:** Probably not, but I think it depends on the way we tell the story. Certainly in the North of England, there is an increasing feeling about the relative powers and resources that Scotland, in particular, has.

**Stephen Williams:** That Scotland has?

**Tom Riordan:** That Scotland has.

**Q175 Stephen Williams:** What about London?

**Tom Riordan:** London probably to a lesser extent, I would say, but people are still aware of that. They are very aware of the Mayor of London as a key figure in the country. I think if you told the story in the right way, people would be interested. You would not get mass response, but as Will said, if we can weave it into the way that we are consulting with people about other things, I think there are lots of ways we can do it.

**Ged Fitzgerald:** I completely agree with all that. For me, it is the case. If the case is coherent, clear and well intentioned, people will—taking Tom’s language from a bit earlier—see through things. People are not as daft as maybe we all try to make out. It is about what is on offer. The engagement would follow whatever the answer is to the “What’s on offer?” question; that, with respect, is why I answered Mr Flynn’s earlier question the way I did. Again, the risk is that you go to the structural question—yes or no—rather than to “Why is what is on offer going to be on offer?”; and the kinds of points that I was making a little earlier.

**Q176 Stephen Williams:** Those were things that I was interested in asking. Our brief says that the Hansard Society claims that people are less interested and engaged in politics. You can measure that in all sorts of ways, and they happened to have alighted on the number of people who sign petitions, but from my experience, in terms of the number of people who write to me as an MP, that has only ever gone in one direction in the past seven years, and that is up. I assume that you have data on the number of people who are engaged with your councils and how much resource you have to put behind correspondence or dealing with petitions in this internet era, when everyone can just e-mail something off. Has this engagement from the public to your councils gone up in the way that politicians have experienced?

**Will Godfrey:** I would say yes, personally, from my experience. I cannot remember a council meeting in the time I have been in Bristol, which is just over three years, when we have not had significant public representation on issues, just in the context of the number of letters that we get. That continues to increase. We get petitions probably to every single council meeting.

**Q177 Stephen Williams:** Are more people engaged in, for instance, the planning issues? Sir Merrick mentioned that controversial planning decisions had been made by the Government. When I was a member of a planning committee, you used to read people’s hand-written letters that came in. You could actually do it, because relatively few people chose to do that. When I first became an MP, I could read the letter that came in. I can’t now, because hundreds of them come in via e-mail. Have more people engaged with what local government does within its existing
Chair: Thank you all very much indeed. We really appreciate you sparing your time today. The evidence this morning, some of it is that if we have a serious policy decision to be made, whatever the subject—there is still a gap, in terms of democratic engagement as everybody in this room have faced in the past few years have absolutely catalysed that. Liverpool, under its previous leader—now the Mayor—took what I thought was a brave decision at the time: to make absolutely transparent the whole budget-making process. All the options that professionals like me generated for politicians to consider through the budget process went online. Nearly all the conversations regarding the budget took place in public and were webcast. That is a big step forward—a brave step. Having done it, you cannot go back; you cannot slip back into the old, smoke-filled rooms in which some of the stuff used to take place. I think there is a direction of travel on that. I am also taken by Will’s point earlier, which is that generally—apart from planning issues, licensing, antisocial behaviour issues or reporting a streetlight or pothole issue—there is still a gap, in terms of democratic engagement as everybody in this room would prefer it to be, rather than as it actually is. We have to work smarter and better.

Q178 Chair: Thank you, Stephen. I think Stephen was asking a bunch of questions about individual issues, and I get them into the system. We need to try to make ourselves more accessible in terms of that new era and the way that particularly a new generation of people want to communicate. I think there has been an increase, but there is lots more work to do in terms of engaging people even more.

Tom Riordan: Again, following the same kind of line that Will and Tom have taken, in the earlier part of my career, local government was very poor at engaging with citizens and taxpayers other than those who were motivated to complain—typically, people making representations about planning issues. I think we have got better at that, and the new forms of social media definitely help. Internet access and e-mail obviously help.

Speaking for Liverpool, the budget challenges that we have faced in the past few years have absolutely catalysed that. Liverpool, under its previous leader—now the Mayor—took what I thought was a brave decision at the time: to make absolutely transparent the whole budget-making process. All the options that professionals like me generated for politicians to consider through the budget process went online. Nearly all the conversations regarding the budget took place in public and were webcast. That is a big step forward—a brave step. Having done it, you cannot go back; you cannot slip back into the old, smoke-filled rooms in which some of the stuff used to take place. I think there is a direction of travel on that.

Chair: Thank you all very much indeed. We really appreciate you sparing your time today. The evidence this morning, some of it is that if we have a constitutional convention, it will see that there are parts of the United Kingdom that have a devolved settlement, and one major part—England—that does not. Traditionally, that was always philosophically handled by regionalism. Regionalism suffered a very serious setback. As for where we have got to this morning, I would characterise your views as being in favour of more voluntarist, bottom-up development by local authorities into some sort of sub-regional or city region possibilities, which would not be imposed, but would develop and/or local authorities in England could be the agents of that devolved settlement. That is my very rough and ready summary. I therefore have a question for you as leaders, and I do not mean political leaders—I know the difference. I have been on both sides of that fence, and I know where I have been more powerful, but we won’t go there. Are you ready? Are the cities ready for the reality that could come your way within two years of being the agents of devo-max, effectively, in England? Are you up to it? I know it is very early, and I know it may never happen, but are you ready and prepared for that possibility? Are you thinking about that at the moment? I would answer no, we are not ready today. Are we up for it? Absolutely.

Tom Riordan: I would just say one thing about your summary, which was absolutely spot on. The danger with what you describe is that people pick out the sub-regional element; they say that there is another tier going in, and therefore there will be more politicians and more bureaucrats, and it will have to cost more money. It is the opposite of that that I think we are advocating. We are advocating working with the grain of what we have in those two democratic tiers and strengthening the local one. I do not think we are absolutely ready, but I see in local government generally that perception goes way behind reality. Sir Merrick mentioned the LGA surveys done. People have twice as much confidence in local government as they do in central systems at the moment. When I look around the table at the sort of authorities we work with to get things done on the city deal in our city regions, they are big organisations with some very talented people and good capacity. I was with North Yorkshire yesterday. I think that the county is generally very well run—a very good organisation. We certainly could move in two years to that position when we are ready.

Will Godfrey: I would echo what Tom and Ged have said, in the sense that I think local government has a really good history of stepping up to the challenges that people give it. The city deals is a very good example of how we were challenged to be ambitious and innovative, and I think that if you look around at all the city deals, they are ambitious and innovative. We have a real history of delivering on different issues. Are we organisationally ready to do things today? Maybe not. Are we prepared and able to step up to the challenge? Absolutely. I think the record across the whole sector demonstrates that we can do that.

Chair: Thank you all very much indeed. We really appreciate you sparing your time today. The evidence...
has been first class and has given us lots of food for thought. We will continue our efforts to pull together a report on the need for a constitutional convention. I very much hope that I can reinforce our wish to hear from SOLACE collectively on where it might see this going. In parallel, we are doing an inquiry into the codification of local government rights and powers, so that it cannot be taken back, if that were the way the Committee wanted to go. Again, we would very much appreciate your individual and collective evidence on that before evidence-taking closes. Tom, Ged, Will, thank you so much for your time this morning.
Thursday 4 October 2012

Members present:
Mr Graham Allen (Chair)
Sheila Gilmore
Andrew Griffiths
Fabian Hamilton
Mrs Eleanor Laing

Examination of Witness


Q179 Chair: Welcome.
Willie Rennie: Thank you for inviting me.
Chair: I think you know why we are here. We are looking at the case for a constitutional convention, obviously in terms of the issue of what is going to happen before, during and after the referendum campaign. Today we are asking each of the parties and some expert witnesses for their opinions, comments and a general chat to try to understand these issues a bit more and whether there is in fact a feeling, among the political parties and others, that it would be useful to have a constitutional convention, and timings, content, before or after the referendum, who might be on it, what it might do and how it might work. This is a very general opening salvo from the Committee. We are going to be on this, I suspect, for three or four months.
Willie, did you want to say something to start us off, or do you want us to jump straight into questions?
Willie Rennie: One of the frustrations—as I am sure that Sheila recognises—is that in Scottish politics we have a passion, to a greater or lesser degree, for constitutional change. It has previously been described as the democratic deficit. We have moved on from that now but there is still a desire for a further change and we, as federalists, are hoping for that change. We want the Scottish Parliament to be able to control much more of its own destiny and have more control of its own finances, and we have a report coming out at the end of October, which will set that out in a bit more detail, under the chairmanship of Menzies Campbell.
The big missing link in all of this is the same passion and desire for change in England and, as much as we want it, in order to get a truly federal system we need to have change south of the border in terms of that passion. There is some desire and partly it is a reaction to what is happening in Scotland—“Why do we have these Scottish MPs running their affairs?” That was always the accusation that I would get, as well as: “Why are you interfering in our education system when we have no influence at all over yours?” So that is the kind of start. It is not a positive thing; at least it is something that indicates that there is perhaps some degree of support for change, but it needs to go much further than that.
I suppose the way that I would put it to the English voter is that if they are content for the whole of the UK to run their affairs then that is fine. It is up to them, but I would want the change. I would want their democratically elected representatives to control their own domestic affairs, whatever form that is, whether that is an English Parliament or regional assemblies and parliaments below that. I recognise, having lived in Cornwall for a few years, the difficulties with that in terms of regional identities within England. As long as people do not grasp that issue then we will continue to have that problem and, therefore, we will not get the further change that people like me desire. I think that is the big missing link and it is how you inspire that, which I am sure you as a committee are trying to get to.

Q180 Andrew Griffiths: Thank you, Willie, for a very interesting way to start the debate. We are looking at the constitutional convention. Clearly it is something that is exercising our minds. Everybody’s mind in Scotland is exercised about the referendum. Until the referendum has been settled, do you think it is feasible or worthwhile to engage in these discussions, to talk about a constitutional convention, or indeed press ahead with a constitutional convention?
Willie Rennie: I think you should do it beforehand. The Scottish referendum is actually an issue for the whole of the United Kingdom. Even though they do not have a vote, people should have a say because it means the future of the United Kingdom is about the continuing existence of it as it currently stands, so there is an important role for people throughout the UK to have a say about what they want the UK to look like in the future. I think the referendum will be a good opportunity to inspire greater interest in the run-up to that, because there will be debates throughout the UK, I would imagine, on television and in the newspapers, about the Scottish issue. That is a great opportunity for a constitutional convention to try to shape that for the wider UK interests and look at some of the more detailed rather than just the superficial stuff. So, yes, I think it should be done beforehand.

Q181 Andrew Griffiths: Do you think that work before the constitutional convention could proceed if one of the regions of the UK or one of the political parties in the UK decided not to take part in that debate?
Willie Rennie: You should not have a lowest-common-denominator approach to these things. If you wait for everybody to come on board then you might be waiting forever. I would hope everybody would come on board, and if people who perhaps might be reluctant to join in see that other people are moving ahead anyway that might encourage them just to realise this is where the show is and they should be participating. I think you have to show intention and
desire and, with a bit of luck, everybody will come on board. I think it is really important. This is not a final decision-making body. This is really about engendering a debate, because ultimately Parliament would have to decide and the people would have to decide if you did go to a referendum, which I am sure will come. It is about stimulating a debate, and you should not allow anybody to stop that debate from happening.

Q182 Andrew Griffiths: You used the word “passion”, people in Scotland are passionate about, I think you said, constitutional change.

Willie Rennie: Maybe they do not talk about it in the pubs, but yes.

Q183 Andrew Griffiths: Do you think that Scottish people are passionate about the Union?

Willie Rennie: The Union is an odd word just now because it has been described in negative terms. The Nationalists tried to remind people of the Empire and all the negative aspects of these things, but the United Kingdom, partly through things like the Olympics, can do things pretty well. When people think about the good things, the United Kingdom can inspire some passion but probably not in a political sense, but probably in softer terms, for example, family, in relation to the army, because the military is very important. The recruiting grounds in Scotland for the military is quite strong so that engenders some passion and belief, but it is probably not in the terms that we would like it to be passionate. So, yes, it is there in some cases.

Chair: Sheila, and before you start thank you for letting us come to your place.

Fabian Hamilton: She could have refused.

Q184 Sheila Gilmore: That is right, yes indeed. That is the good bit about representing the historical bit, as far as the political bit—if I could slightly follow that up. I think there is a danger that the debate in Scotland is conducted in such a way that it excludes the rest of the UK, and is that a problem in getting interest in it?

It is quite sort of negative. You mentioned the negative associations of the Union, but there is also the negative chippiness that perhaps has grown in recent years, the bit about people complaining endlessly if some poor BBC commentator happens to use the word “English” when it should be “British” or whatever, and people get very agitated about that. Is it a negative interest or passion, and does that have an impact on the rest of the UK?

Willie Rennie: It can be negative, and it varies from person to person. Some people view Scottishness as purely a positive thing and some people view it as anti-English, so it varies from person to person, but I think it is our role to try to shape it in a positive way, to try to lead the debate. Therefore, I think it is important—going back to that last point—about making sure that people across the UK feel comfortable about participating and they are not put off by accusations that, “This is our decision”, and claims that, “This is just ours” because it is a wider debate. Even though they do not have a vote they should have a say in what happens. I did a recent contribution for The Times to say they should say what they like about Scotland and what they like about the United Kingdom. It is almost an Eric Pickles love bomb-type approach. There are a lot of people in England, from my experience, who have a great passion, desire and affection for Scotland, but I think the Scots need to hear that. Therefore, I think that would perhaps help deal with some of those issues about the superficial football, sporting TV mistakes that people make because they may be London-centric. I do not know if that answers your question or not.

Sheila Gilmore: We are very sensitive, but then the other side of that sensitiveness is that other people’s backs get up as well, so you are not having that conversation.

Q185 Chair: I do not know whether Willie will want to comment on this, but it is something I feel. I feel that the media and the political classes are very London-centric, and I am speaking from my city of Nottingham.

Willie Rennie: Absolutely.

Chair: We talk about the Olympics, and sometimes you think, “Those London Olympics were very good”. They weren’t the UK Olympics very often. I think that is an interesting point about expressing that opinion, and also letting people in the Union know that we are really thrilled to bits that we are all part of a union and we all bring a lot to the party.

Willie Rennie: One of the real dangers—just to follow up on that point—is that the only voices that we hear in Scotland commenting on this debate are the extreme voices, people who are perhaps the English Democrats or whoever, who might say, “You are subsidy junkies. We want nothing to do with you, you just leave”. That is what we think the rest of the United Kingdom thinks, so moderate, reasonable, sensible voices should be speaking out and we should encourage them to do so. They are exactly the people who might feel sensitive about doing that because they do not want to tread on a debate that is somebody else’s. That is why I think it is important that we say loudly and clearly, “Yes, participate”, and the constitutional convention might be a way of allowing that to happen.

Q186 Sheila Gilmore: The leader of the Welsh Liberal Democrats told us, “It is essential that any convention establishes a durable settlement that provides not just for the existence of the devolved parliaments, but makes possible for them to accrue greater areas of responsibility, especially over financial powers”. Would you agree with that statement, and should it be the starting point of a constitutional convention? I suppose that is how you make a dynamic constitution, not just a static one.

Willie Rennie: I just want to get it clear. She was saying it shouldn’t just be about UK-wide reform; it should be more within Wales and the devolved Assemblies?

Sheila Gilmore: I think how you can grow that from where you start so that it becomes a more dynamic settlement not just a fixed settlement. A constitutional settlement could be a constraint in some respects, but
people in the different parts of the UK clearly hold different points of view about what powers they want devolved. 

Willie Rennie: It should be a once and for all decision. You are absolutely right, and she is right about that because these things are a gradual process. We started off with just the Scotland Act 1998. Now with the Scotland Act 2012, which gives us more financial powers, we want to move a bit further, even further than that. These things evolve over time. However, it is important for people to understand what roughly the end point is and what it looks like. If you continually just say, “It is a process ultimately that leads to independence”, it never ever stops because people want more and more, forever more. In terms of just setting out a picture of what we want it to look like, then, in principle, yes, I agree with what Kirsty is saying, because these things have to develop over time, and because there are quite extensive new powers, we need more powers, we are now getting for the Parliament, and you probably would not have recognised some of the powers we are now getting for the Parliament, and you would probably think that was not reasonable. Before the Parliament was created, people would have thought the stuff we are talking about now was rather crazy. It is one of these things that has to be gradual but you have to take people with you.

Q187 Sheila Gilmore: Can you ever force more powers, devolution or whatever, on people? Is that ever going to work, or do you have to wait for that to develop?

Willie Rennie: It is very important, because you have to get ahead of the debate a little bit and encourage people to come with you by explaining what it means. It does not mean you always have to follow exactly where people are at. Sometimes you have to challenge, fight and contest to make sure that the debate moves on. You can never really force it on people, but it is one of these organic processes and you will get people who want much, much more arguing much more vigorously in order to change that debate. When we set up the Parliament in 1998 we probably would not have recognised some of the powers we are now getting for the Parliament, and you would probably think that was not reasonable. Before the Parliament was created, people would have thought the stuff we are talking about now was rather crazy. It is one of these things that has to be gradual but you have to take people with you.

Q188 Sheila Gilmore: Although the irony is that even here in Scotland most people seem to be blissfully unaware that additional powers are on their way. It is one of the best kept secrets of constitutional change, it seems to me, that the 2012 Act has gone through with hardly any fanfare of any sort. I do not know whether it became too parliamentary or it did not involve people in the same way as previous attempts, because there are quite extensive new powers. Some of the debate is about, “We need more powers, we need more powers”, and actually some are already quite in force, but why is it—

Willie Rennie: Partly because I don’t think there was enough of a contest about it. Almost everybody agreed, apart from the Nationalists, who tried to rubbish it the whole time, so that is probably part of the reason for that. It was a little bit too easy to get the powers through, so there was no great big debate. I think that is probably part of it. But, yes, I think you are right, a lot of people are not aware of what is coming.

Q189 Sheila Gilmore: So you think the debate for the constitutional convention should be livelier?

Willie Rennie: It has to be like that.

Q190 Chair: Willie, I will go back to a point you made in your opening remarks, if I may. It was almost, “It is about time the English got up off their backsides and started asking for progress”.

Willie Rennie: I did not quite put it that way.

Chair: Well, I am going to put it that way. From your perspective, how do we overcome that fatalism that there is in England that Whitehall rules and local government is the agent of the centre? Are there lessons to learn? Is there advice you can give? Are there ways forward on that one? We all used to talk about the Northern Irish question and the Welsh question, but we are now just talking about the English question, really. You talked about the federal set-up. How do we make progress on that?

Willie Rennie: I wonder whether it is connecting it to the wider parts of life that mean things. For instance, culture and sport and local identity is probably part of it. How do we make sure that, for instance, the Yorkshire identity is kept strong? How do we make sure that we get a lot of things that Westminster just does not understand? It is that kind of approach that I think can work. It is broadening it beyond the purely political decision-making into things that mean something to people, and then just reminding people that the rest of the UK is deciding for them and if they want to change that, then they need to embrace this change.

Q191 Mrs Laing: Willie, it was interesting to hear you say—and I do not disagree with you—that the idea of a constitutional convention is about stimulating the debate. You have just said, and Sheila said, perhaps the reason why the media have not properly publicised what the most recent Scotland Act has done, in terms of further devolution of powers for the Scottish Parliament is that there was no debate. It was not controversial enough. Looking at it from that angle, would you say that the Scottish constitutional convention of the 1990s had a particular political agenda in stimulating the debate?

Willie Rennie: Yes. I think it is probably different from the constitutional convention you are talking about. The constitutional convention then was not parliamentary because in the absence of a parliament, you created a voice, a platform, a group, a forum for discussion. It was in reaction to the Conservative Government at the time who were resisting change. There was a political consensus. There were parts of that period where there were very few Conservative MPs—sometimes none, I think.

Q192 Mrs Laing: Let us be fair and be honest about this; there were none.

Willie Rennie: We strive to be fair to our coalition partners.

Fabian Hamilton: You are being diplomatic.
**Willie Rennie:** It was a kind of proxy voice for Scottish political opinion, which included the churches and the trade unions and so on as well, so it was an extra forum that allowed us to just express that view. It was practical in terms of developing the model, but it also allowed that kind of expression of Scottish opinion against the resisting Government in London, so it was multi-faceted. It helped with that debate that already existed, but it almost professionalised it. It formalised it. It filled a space that was a real intellectual challenge to the Conservative Government because it came up with a proper model that was well worked out and agreed across the political spectrum. It was much more difficult for them to resist and helped to create the model for when Labour came into power.

**Q193 Mrs Laing:** Indeed. Thank you. That is a very helpful description. I wanted to ask you that because our Committee here is not only the people who are in this room right now and, as the Chairman said, and others have said, like yourself, in other parts of the United Kingdom there is not always an understanding of what has happened here in Scotland and how the constitutional settlement has developed, so thank you for describing that. That is helpful. If we were looking now, as we are, at the possibility of a constitutional convention, would you say that it would not be the same kind of constitutional convention as occurred here in Scotland in the 1990s?

**Willie Rennie:** Yes, because I am not sure who the resistant body is to change, apart from the invisible establishment that resists most change when the chips are down, like if it were AV and such things that people pronounce in favour of. I will come to that in a second because one of the biggest issues that we have is dealing with the resistance to all change. But I think it will be different. I think it will be more of an inclusive body that probably includes the whole spectrum of political opinion. There is not something to fight against in the same way as Scotland was fighting against it.

**Q194 Mrs Laing:** It would be different?

**Willie Rennie:** It would be different.

**Q195 Mrs Laing:** It might be using the same description, the same words “constitutional convention”, but it would not be the same as the constitutional convention that achieved what it did here in the 1990s?

**Willie Rennie:** What it needs to avoid doing is just simply being an administrative, tidying-up exercise. It needs to become something that has a bit of passion about it.

**Q196 Mrs Laing:** That is helpful. We are beginning to get a bit of colour in the description now. Thank you for that. I think that is very helpful. Do you think then that such a convention should look, for example, at the possibility of creating a written constitution?

**Willie Rennie:** Yes. We are strongly support a written constitution, and if you are looking for political change, that would be part of it.

**Q197 Mrs Laing:** Yes. I would take issue with you about resistance to change in general as opposed to resistance to very particular change of a very particular kind, but this is not the place to go into that. Given that you identify resistance to change as one of the catalysts for creating interest that then brings the matter to the public’s notice, if there was a possibility of a written constitution and there was some resistance to that, would that be likely to make the workings of a constitutional convention more interesting to the world in general?

**Willie Rennie:** It is beyond the actual technical aspects of this thing. It is much more about what do, primarily, people in England get out of this; “What is in it for me? Why should I care about this?” It is much more the other aspects of life, sport, culture; “Why is my area not getting listened to? What do we need to change in order to get a better deal for me in my patch?” I think those are the kinds of things that will inspire people that just simply a written constitution won’t do. As much as I would love people to get passionate about a written constitution, I don’t think it will happen.

**Q198 Mrs Laing:** Doesn’t everybody? Doesn’t every MP, or indeed every elected representative of any kind, always think that they have to push for the people in their patch?

**Willie Rennie:** They do, yes, and that still happens.

**Q199 Mrs Laing:** It doesn’t matter whether you are in Scotland or whether you are in Essex or whether you are in—

**Willie Rennie:** But it is the degree of scrutiny that you get, and prominent scrutiny that you get, if it is just all within one single United Kingdom Parliament. We debate a whole range of issues in much more detail in Scotland now than we ever did pre-devolution and it gets much greater prominence as well. It is not just subsumed into the UK-wide debate. That scrutiny is one of the great benefits to the Scottish Parliament, and I think the rest of the UK would benefit from exercising the same degree of scrutiny. It is not more government; it is just better government.

**Q200 Mrs Laing:** I take your point on that. If there were a convention, given that it would not be the type of body that we talked about in Scotland in the 1990s, who do you think should decide its terms of reference?

**Willie Rennie:** I suppose it comes back to Andrew’s earlier point about who do you include. Answer: as many people as possible. You want the terms of reference ultimately to be decided by Parliament so it has the authority, but you want widespread inclusion in the debate about what the terms of reference are, so all the political parties right across the UK, trade unions, the churches and anybody who has an interest are included. It is probably achieved through a consultation process, but you probably need something a wee bit more than that in terms of a key stakeholders’ gathering to form the terms of reference so you can get some kind of commitment from them to really commit to the debate so it is not just superficial. Consultation exercises are a bit process.
driven, but you could have some kind of stakeholders’ gathering that avoided that. Ultimately, I think the Westminster Parliament would be the best place to give the endorsement so people could recognise its official status.

Mrs Laing: That is very helpful. Thank you very much.

Q201 Sheila Gilmore: I am anxious to know what Willie thinks on this. We are very good at creating myths in Scotland, and one of the myths is that the constitutional convention was the greatest grassroots organisation that ever was. Do we exaggerate that, and was its strength that it coincided with a much wider and stronger mood? In essence, you could have described it—and I think people did who were opposed to it—as simply the chattering classes even then having the conversation among themselves, and the churches, the trade unions, voluntary organisations, and some but not all of the political parties clearly were involved in that. What made it a power in the end? Was it the constitutional convention itself and the way it worked, or was it that it coincided with a mood? Which created which, I suppose.

Willie Rennie: Yes, I think you are right. The way I described it earlier on is it gave a professional, formalised edge to a movement that had developed, a feeling in the community and a passion from many Scots who felt that something was wrong. It provided a counter to the Conservative Government at the time, which was able to put in formalised terms exactly what this movement really felt and think. In that sense it provided an extra element to it, but it did not create the movement; the movement was there already. I think you are right; what you are saying is correct.

Q202 Chair: Picking up Eleanor’s train of thought, one of the things that we could do is to have something between all the parliaments and assemblies now, and that structure exists. One of the reasons I have been pressing this particular issue is because I believe the Westminster Parliament should have a view. Rather than wait for what the Government does or what media pundits come up with, there should be a very strong parliamentary interest here. Working with the Welsh Assembly, with the devolved settlement in Northern Ireland and the Scottish Parliament, parliamentarians might collectively flex their muscles a little bit rather than just wait for the Executive to give us pointers on this. Does that make any sort of sense?

Willie Rennie: Yes, it does and I have seen encouraging developments. Probably the Whips get a bit exercised by these things, but I have seen encouraging developments since I left in 2010. There is a stronger backbench feeling, an independent mindedness of Members of Parliament, something I have noticed from afar, and Alistair Carmichael, our Chief Whip, I am sure is very concerned about the development.

Q203 Chair: That is always a good sign. I think you are looking at it, actually. Every member of this Committee, in fact every member of every Select Committee is now elected by their own party groups in a secret ballot, which is very difficult to influence, as we know. The Chairs of Select Committees are now elected by the whole House, every Member. It was unheard of when I was in the Whips’ office. We used to decide who was going to chair Committees.

Willie Rennie: It was done properly when you were in charge.

Chair: I used to decide who was going to go on a Committee and that was entirely to support the Executive interest over the legislative interest, so that is why—

Mrs Laing: Sometimes it was an honour and sometimes it was a punishment.

Fabian Hamilton: Yes, that is right. Good point.

Chair: But I think, unlike the era of the Scottish convention, we perhaps do now have an opportunity to do something collectively as a set of legislatures together in these islands, which is a unique opportunity.

Q204 Fabian Hamilton: Nice to see you again, Willie. I know we are running out of time. I will be brief.

Willie Rennie: No, that is okay.

Chair: No, we have plenty of time.

Fabian Hamilton: Following on from what Shelia said, how did the Scottish constitutional convention actually enthuse people? We have heard about the make-up of it, and whether it was just the chattering classes talking to themselves, but in the end the referendum in September 1997 was overwhelmingly in support of a Scottish Parliament, and I just wonder how people were engaged. Was it because they already wanted the Parliament and this was a momentum that could not be stopped, or was it because, in some way, the convention got to people who would not otherwise think about it?

Willie Rennie: You are getting into territory that is a bit before my time, I am afraid. I lived in Cornwall for a little while during some of the period they conceived the convention. I think before that I was in education so I wasn’t heavily involved in the constitutional convention. From what I can observe, it brought that professional informal edge to the movement that already existed, so that is why this constitutional convention would have a different role in making sure that it partly stimulates the debate rather than just formalising a movement that already exists.

Q205 Fabian Hamilton: Do you think that you always have to have a referendum after any constitutional convention? Is that vital?

Willie Rennie: No, you don’t always have to. It depends how radical and far-reaching the change is, but you don’t always have to have it. I think there is some change that you can have that does require it. What I would like to do would probably require a referendum. If you were to create a separate democratic structure for England, and then a federal parliament with a written constitution with proportional representation, a man of his words, I think you might just need a referendum for that.

Fabian Hamilton: I think you might just, yes.
Willie Rennie: But you do not always need it. I do not think, for instance, further powers for Scotland would need a referendum, because we had the referendum in 1997, we did not need it for the Scotland Act 2012. There have been other changes in between as well when real powers were transferred. We did not need a referendum for any of those things, so it is already—

Q206 Fabian Hamilton: So devo-max is okay, but anything beyond that—

Willie Rennie: Yes. Don’t get me on to devo-max, fiscal federalism, fiscal autonomy and things like that.

Fabian Hamilton: Sorry—all right.

Willie Rennie: I think you wouldn’t need a referendum for more powers, but again these things are a political judgement. You have to weigh up how far this goes. I do not think you should say all constitutional change requires a referendum because I think you are just tying your hands, given that, to a degree, people might not be concerned.

Q207 Fabian Hamilton: I accept that you were not around at the time or you were not involved so much at the time of the referendum in 1997, which makes me feel my age really.

Willie Rennie: I apologise; I was a bit indulgent.

Fabian Hamilton: But presumably you have colleagues, people in your party, who were involved. I am intrigued because I think one of the problems we found in the early days of the Labour Government, when we were very enthusiastic about devolution—not just to Scotland, Wales and Northern Ireland, but to the regions of England—was that the regions of England were not that interested. That is a huge contrast. I know we have touched on it, and everybody sat round this table today has touched on it, but I am really interested. I represent a Yorkshire seat and there is a strong feeling of almost Yorkshire chauvinism in parts of Yorkshire, a real pride in being a very separate, independent part of England, yet no desire whatsoever for independent government.

Willie Rennie: I think it gets caught up in the question of more layers of government with democratic control. From my understanding of the north-east and north-west, the proposal was not substantial enough. Other people took a different view that it just wasn’t desirable at all and there was no desire for it in England, but I think there was little interest in it because it was not substantial enough. That is my view.

Q208 Fabian Hamilton: So devolution must be almost a repatriation of power, a regionalisation of power that has taken away from the centre?

Willie Rennie: Yes.

Q209 Fabian Hamilton: As long as that is made clear, then you think people will be more enthusiastic?

Willie Rennie: I think so, yes. Not living in England it is difficult to know, but my understanding is that if you offer something substantial and you are sure it is not just more politicians and more committees and more layers of government, I think you get an interest. If you just present it as kind of a start to test the water then people say, “No, not interested. It is just more political talk”.

Fabian Hamilton: That is very helpful. Thanks, Willie.

Q210 Chair: I think it may be interesting for people in Scotland to understand that the boats have been burnt on English regionalism, and there has to be another way for England. Another inquiry we have underway is about independence for local government, which I think is quite a specific English thing because of the devolved settlement emanations of the United Kingdom. That may be another way forward, but because of the failure, the lack of progress on regionalism under the Labour Administration—I think the first ballot took place four years after the great momentum around the Scottish and Welsh settlements—and the way in which the current Coalition Government have done away with the regional development agencies and the regional governmental structures, I think people need to know they can’t really look to English regionalism to take this forward. It has to be something else and something home-grown, I guess, for England.

Willie Rennie: There was a great passion for a Cornish assembly really, even when I was down there. It was a very, very small share of the vote, but there was still a wider interest in having more decisions in Cornwall. So I do not think it needs to have necessarily a perfect system throughout England, but I think there is clearly a desire in some areas to have it. You might have different powers in different parts of the country. I don’t think it has to be perfect, but I accept your point.

Chair: It is almost changing the psychology of Whitehall so that it is permissible to do things in a multi-speed way and that civilisation as we know it does not collapse if you have a less than one-size-fits-all solution to these problems. We need to work on that one. Andrew, I know you are interested in the public consultation side of these things.

Q211 Andrew Griffiths: Yes. The phrase we heard earlier this morning was the “chattering classes” and how the previous convention had the great and the good, the churches, the trade unions and some of civil society, but what it did not seem to consist of was a real dialogue with the public. Sheila talked about a wave of enthusiasm, but the convention seemed to just happen alongside that rather than engage with it. I do not know whether you think that is true, but the question for us is how a convention—something as dry as a constitutional convention—can engage with the public and how we do that or even if that is desirable. Do we need to engage with the public in a convention or not and how do we do it? Can we do it through new media? Are 140 characters on Twitter enough to put your views about a convention or not? I wondered if you have any opinions on how we can engage with the public in this exercise.

Willie Rennie: Facilitating the debate with colourful characters is part of it. You need people who are going to be expressing it in a very colourful way that will catch the imagination, so it is almost the reverse of what the Scottish constitutional convention was. It is that kind of facilitating, agitating, provoking.
Nigel Smith: Thanks very much for asking me; that does need to engender a debate. It is roughly the same issues there, but the nature is different.

Q212 Andrew Griffiths: Do you think that means doing these things on YouTube and Facebook, and all those things that are in place—or does it need to be a proper—

Willie Rennie: You can use all these tools, but the tools are probably not as important as the message and the characters who are involved in promoting that; you need to engage some interesting people from business, charities, churches, politics who are going to try to bring this to life and paint the picture of what it means, and then you might get more of an interest. But it is partly top down, and partly pulling out some of the feelings that are randomly felt throughout the United Kingdom about these kind of things, so it is probably more of a campaign in some ways than it is a convention. It still needs to have a formal element to it, but you just need to approach these things differently, because I think the feelings are there. There was a poll recently that showed support for Scottish independence in England was higher than it had previously been. That shows there is an interest now in constitutional issues so that is something I would support. It is showing that the Scottish debate is having an effect elsewhere, and that is why you should use the Scottish referendum as an opportunity to have that wider debate. You can’t leave it until afterwards. I think you have to do it before to maximise the opportunity.

Q213 Chair: You talked about part of the drive for greater devolution not just being about what it does for Scotland but in some sense as being anti-English. I think you might be describing the English and this polling data as maybe responding to the question asked with, “Well, what do we care about the Scots?” rather than, “What does a devolved England look like? What do we want? What powers do we want?” and looking at it in a positive way. If someone from The Sun or a pollster in the street asks you a question, it may be framed in the terms of the prejudice of some description rather than a thoughtful debate about what England itself needs to do. Do you feel that is—

Willie Rennie: Yes, it is about having a deeper debate and presenting it in the much more positive, proactive manner of “What can we do?” If it is a snapshot opinion poll you just get gut reactions. That is what is interesting about the whole Scottish independence debate. As we are getting more and more into the issues, the polls are subtly changing over time. A lot of people say to me they like the idea of Scottish independence, it sounds very complex, but they do not have all the answers. More and more people are saying the latter two bits now. You want people to look at these things in a much more substantial sense, and that is what a constitutional convention could encourage on the back of the referendum.

Chair: Willie, thank you very much. It is great to see you again.

Willie Rennie: Thank you for inviting me.

Chair: It is a really great start for us. Thank you. I hope we see you again. Don’t forget where we live.
do need a power centre strong enough to deal with London.
I also think, as an opening remark, the coalition have allowed the SNP to corner this debate as a Scottish thing. They have to be absolutely clear that devolution was something done to Britain not to Scotland. In that context there is a scope for a full British debate here and the Government aren't giving nearly enough of a lead on it. The First Minister of Wales has suggested that we have a constitutional convention. I agree with a lot of his remarks but what I don’t agree with is a crash convention as I would call it, by attempting to do this before we know where the political input has to come from. All the lessons about conventions are that preparation is incredibly important for anything like a successful outcome, and I don’t think you have been given enough evidence yet about the range of experience there is across the world. So I think those are the things that interest me.

Q216 Chair: James, do you want to say anything?   
Professor Mitchell: The only thing I would say is I think there are many cases that could be made for a constitutional convention and many of these cases have been articulated by different people. One of the questions I have to ask myself is, what is it that you want to achieve. There is a case for looking at creating a new constitution, codifying the existing constitution, which would create a very different constitutional convention from one that might simply look at the position of England within the UK or Scotland within the UK, or indeed the territories. But the other point I would make, and is a very important point, is that when one starts to look at one aspect of the constitution there are often unintended consequences, there are spill-over effects and I think one of the consequences of the debate in Scotland and the kind of devolution we have is that it had spill-over effects—the unfinished business of devolution that now is being addressed with the McKay Commission for example.

One has to be very clear that if there is a case for a convention, there are many cases that could be made. At the outset it needs to be clear as to which case, what is it actually addressing, because that will then have an impact on who should be involved and so on. As I listen to the debate, I must say I am hearing great noise and a great number of cases for a constitutional convention proper the day after the referendum to prepare, develop, what plan A and plan B would be should the referendum go in one direction or the other and then start your consideration of the constitutional convention proper the day after the result of the referendum.

Nigel Smith: That is it pretty well, but I would underline James’ point about limiting the scope for the convention. All the evidence that we have in the modern democracies is that unlimited scope produces all sorts of odd outcomes and heightens the chance of the convention result being rejected in a referendum. So I think the debate about the scope would be an important part of the preparations.

Professor Mitchell: Leaving the constitutional convention issue aside, I think we do need to know if we vote no in Scotland what we are likely to get. We are told different things by different people. I have had senior people of the Calman Commission tell me that that is what we will get if we vote No, but the Prime Minister has said that we will get more powers. It is very unclear and I think that is unacceptable. Just as the SNP needs to clarify what it means by
Independent, we need to know what we are voting for if we vote no. At the moment, frankly, I don’t know what I am voting for, whether I vote yes or no, and I think as a voter I have a right to be told clearly what I am voting for. The danger is if we vote no and we think we will get more powers and nothing happens, or the opposite in fact. We need some clarity from both sides in this debate, or all sides.

Q219 Chair: Do you feel that the pre-referenda work will be useful to create a menu so that the voter can, hopefully, in an impartial way, decide between the two options?

Professor Mitchell: Yes. Ideally we should have other options put to us as well in the referendum. I personally have long favoured—I have advocated this for something like 25 years—a multi-option referendum under which we would have to work out what the options are. At the moment the public in Scotland appear to want more powers, undefined more powers, but that seems to be an option that may not be on the table, or maybe it is if we vote no; we don’t know. So there is a real issue here.

Q220 Mrs Laing: To follow up the very interesting line of exploration that Professor Mitchell has just outlined, how can that clarity be there in a changing democratic situation? This Prime Minister has given certain indications, “Yes, we promise we will do such and such after a referendum”, but the referendum won’t take place until some eight months before a general election. If that general election brings about a change of government for the United Kingdom as a whole, then the promise means nothing. I am not disagreeing with what you say, I entirely take your point, but I wonder how you can put that into a democratically evolving society?

Professor Mitchell: What it would mean is that a clear, authoritative voice would be expressed as the Scottish one, and ultimately it would be up to the UK Parliament to determine how and whether they want to respond to that authoritative voice but it would be the Scottish voice. It could be the case that the UK Parliament would ignore that or begin discussions—it would be absurd to think that if the Scots voted for more power that Westminster had to deliver those powers, because most Scots would want to have their cake and eat it. Obviously if you put an option to us that involved us getting everything and giving nothing, people would be inclined to support that. That would be absurd so there would certainly have to be a discussion afterwards, but one assumes that Westminster would wish to take into account what the public had said in that referendum. Given that there is this broad area that currently is not put to the Scottish people, it does seem odd to me that the debate is being polarised. I think that is very unhelpful. I won’t say it is undemocratic, because that terms gets bandied about too much, but I think there is a problem here.

Q221 Mrs Laing: I don’t quite get that answer. In what way has the debate been polarised? Do you mean by the timing of the referendum?

Professor Mitchell: No, because at the moment the evidence from polling would suggest that most people want more powers. That is the favoured option and that is consistently the favoured option, but the question that is being put, or, as we understand, we will be asked is whether we want independence or not. But what is “not”? We do not know what that is. That could be open to any interpretation. We need some clarification on that. Is it the status quo? It may well be understood as such, in which case it is clearly polarising.

Mrs Laing: Do you want me to come back to this later?

Chair: Would you mind, yes.

Q222 Andrew Griffiths: That is a very interesting debate. Are you suggesting, Professor Mitchell, that there should be more than one question?

Professor Mitchell: It could be either more than one question or more than one option. There are different ways of doing it. You can ask more than one question and you can vote preferentially. There are a number of different ways of doing it, but certainly it is not unknown that referendums have more than simple yes/no options, including constitutional referendums. It is not unknown. It is not common, but it is not unknown.

Nigel Smith: There is a long-standing difference between Jim and me on this. I argued strongly against multi-option referendums for this situation, and I think I identified eight or nine in the last 50 years around the whole world. There are practical reasons for this situation, why it should be polarised. I accept James’s point that there is a demand for more powers, but this is not the way to deal with it. I think the way you are approaching is much more the right way.

Q223 Andrew Griffiths: Nigel, if I could come back to your experience. I think you were a member of the Scottish Constitutional Commission, which worked alongside the convention.

Nigel Smith: I was, yes.

Andrew Griffiths: So you have some fairly first-hand experience. I wonder if you could tell us your experiences of the convention; whether you thought it was successful, both as a body and as making the case for a Scottish Parliament?

Nigel Smith: I have to be careful here. The further I go from Britain the standing of the Scottish convention is very high. Inside Scotland you have the other extreme: you have people who now denigrate the work that it did. I am in between. It was successful on a wing and a prayer in the end. If there had been a very close election result, which a lot of us thought was a possibility at the time, it would have been fought tooth and nail in the Commons by the Conservatives, and perhaps by others, and the convention process, which is one of the longest in the world, would have come to nothing. It didn’t. Thanks to people like Kenyon and Campbell Christie and others pushing it, it didn’t. The way that politics turned was the politicians reached for a plan and the plan was the convention, so the first thing was that it produced a plan. But I don’t think they particularly engaged with the public. In fact, I lobbied all three leaders to have at the very least a friends of a convention element, a public engagement programme, and it was turned down, basically. It was a partial
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elitist, which was effective but I don't think that it engaged the public directly. What it did do was engage the interests of the intermediaries, which are so important in a democracy, and through them a debate got out to 30% or 40% of the population, so in that sense it was useful. I qualify that I think one should understand its limitations.

Q224 Andrew Griffiths: Interesting, because that was the next element I wanted to come on to, which was the public engagement of the convention. Professor Mitchell, I wonder if you could give us your thoughts on that process.

Professor Mitchell: Public engagement was always going to be very difficult for the convention, given its limited resources. But what it did was draw together representatives of a wide range of bodies in Scotland most MPs, MEPs were involved, most local authorities were involved. So in that way as indirect representatives—they were not directly elected—it was a very broad-based organisation. In addition, the churches, the trade unions and so on were involved. Any such body can always be accused of being unrepresentative and not directly elected. I think it was as good as it was likely to be under the circumstances, short of being a directly elected body.

Q225 Andrew Griffiths: You are talking about democratic legitimacy to speak on people's behalf, but that is not the same as public engagement. I know lots of people who have a democratic mandate who do not engage with their electorate, of all parties. So it is that public engagement that I am trying to pin down, whether that was a success and what are the lessons we could learn from that in terms of having a conversation with Scottish public or the British public.

Professor Mitchell: I have just gone through all the boxes of the constitutional convention as part of a research project, 46 boxes. What emerged for me very strongly was there was certainly a desire to do that, an attempt to engage, but it is not easy to engage the public. I slightly disagree with Willie Rennie because I don't think the public in Scotland are passionate about constitutional change. The elites are for sure, newspapers are engaged and such like, but the public are not. They are concerned about schools and so on, and making the link between constitutional change and having better schools is not easy. It is not impossible, but it is not easy. What you tended to find is that—I won't say the usual suspects, I think that is too narrow—it was a limited range of people who engaged with the convention. There was an effort. Whether there could have been a bigger effort, possibly so. My view is it thought they focused on the right thing—to try to agree a scheme. It had a number of objectives and I think the one that they were most successful in doing was agreeing a scheme of devolution, which in itself was a major achievement.

Q226 Mrs Laing: Can I go back to the point that you, Professor Mitchell, have opened up, which I hope is worth exploring. You were talking about polarisation of the current debate and the demand for more powers, but in terms of who makes the decision about that, isn't it the case that separation of Scotland from the rest of the United Kingdom would be akin to divorce, which can be a unilateral decision where one party to the partnership says, "I don't want this any more; I am off", end of story, a complete break? Isn't the question of the Scottish Parliament having more powers, more tax-raising powers, taking a different proportion of national income from taxpayers and so on, therefore a different constitutional settlement, akin to an ongoing relationship? That cannot be subject to a unilateral decision, it has to be a bilateral or multilateral decision, doesn't it?

Professor Mitchell: I take that point. I think that is a valid point, although I am not so convinced that independence is quite as black and white as many imagine it. I think there would continue to be fairly close relations. In fact, from the way SNP appears to be going in terms of its constitutional settlement, I am not at all clear what it would involve. Coming back to the question, I take your very important point, but what I am trying to argue is looking at it from a different angle. That is to suggest that if the choice was simply between independence or the status quo, there is a range of options that are not being explored. That means that voters in Scotland who may well find themselves preferring something in between, will either have to not vote or be forced to make a choice that is not their first choice. We have already heard some individuals recently saying they will be voting for independence even though that is not what they want. That strikes me as not a good situation to be in.

Q227 Mrs Laing: I was about to say that is a typical Scottish attitude, but I can say that as a Scot.

Chair: You can say that.

Fabian Hamilton: We couldn't possibly comment, could we.

Mrs Laing: But it is. Sorry, that was not a very intellectual point from me. The other concerning thing that I was going to ask Nigel about is to what extent this is an intellectual argument and to what extent it is an emotional argument? Is there a conflict there? Were you referring to that sort of conflict earlier on in what you were saying?

Nigel Smith: Are we talking now about the single question referendum or multi-option?

Mrs Laing: I was talking about the general issue of the continuation of the United Kingdom.

Nigel Smith: Emotion plays an incredibly important part in all referendums and what you are trying to do in a referendum is inject facts, consequences, into a public debate. We all know this is a hugely difficult task, but it has to be done. That is why on major referendums I think prior process is incredibly important. The multi-party talks in Northern Ireland is a very obvious example; the super-quarry debate in Harris in the Outer Hebrides where you had two referendums separated by 18 months, and a public inquiry in the middle providing public information; and tax referendums in the south of England, Bristol and so on, where you have had outreach programmes to the public to engage them, to give them information about it. This is a big task in the referendum and it is one of the reasons why I oppose a multi-option
It is an issue that is very rarely probably
Thank you very much. Can I ask
Which is exactly where this is going.
Some of us have trains to get to at about
Exactly my point, yes. You
Even if it is 50.01% in
I take that point. That is
Yes, that would be good. I am
Let me just add one thing. You seem to be
Just to get us back directly to the
unhelpful in constitutional debate. It was slightly
that sovereignty should be abandoned altogether; it is
to that position, obviously.
I did write an article 20-odd years ago in which I said
about, power, and how a governing party with no
devolution and agreed on a scheme of devolution.
A really interesting scenario is what would happen if the
would be obliged to take into account
what the Scottish public had said in a referendum but
taking it into account doesn’t necessarily mean you
will accept it.
Q230 Fabian Hamilton: Even if it is 50.01% in
favour?
Professor Mitchell: Exactly my point, yes. You
wouldn’t necessarily have to just accept it.
Q231 Chair: Just to get us back directly to the
constitutional convention—
Mrs Laing: Which is exactly where this is going.
Chair: Let me just add one thing. You seem to be
moving towards a position that a role of a
central role, would be to more accurately
consensus that this would be put to people and a
Professor Mitchell: You said that if the referendum was positive
Mitchell, you said that if the referendum was positive
Westminster could say no. I suspect Westminster—
that is you—would be obliged to take into account
what the Scottish public had said in a referendum but
will accept it.
Q229 Fabian Hamilton: On that point, Professor Mitchell, you said that if the referendum was positive
and the people of Scotland decided to be independent,
that could not be denied. It could be denied because
power does rest in the Houses of Parliament in
Westminster and Westminster could say, “Well, we
hear what the people have to say but it is not clear”
as you yourself have said, “what this means and
therefore we are not going to allow it”. I think it is
unlikely but it is possible because that is where power
is. What is your reaction to that?
Professor Mitchell: I take that point. That is
conceivable but I think it is so improbable that we can
set it aside. Theoretically I suspect that could be the
case. I would be interested in international reaction
and the reaction of other parties. I would be interested
in the Scottish reaction to that. I think you would lead
yourself into incredibly difficult politics and I very
much doubt it would happen, but where the
sovereignty word kicks in is what would happen if the
Scots were to vote for more powers. That is a tricky
thing and I think Nigel’s position in opposing a multi-
option referendum has some validity on that point.
That is where those of us who advocate a number of
options are on our weakest ground because ultimately
Westminster could say no. I suspect Westminster—
that is you—would be obliged to take into account
what the Scottish public had said in a referendum but
taking it into account doesn’t necessarily mean you
will accept it.
Q228 Mrs Laing: Thank you very much. Can I ask
for education from both of you on a matter that I think
is not understood in the legal communities and
opinion-forming communities either in Scotland or in
England. It is a point that Canon Kenyon Wright made
long ago, and I will quote him: “There is a
fundamental conflict between the Scottish and the
English constitutional understanding and traditions”.
Let me have a go at this. The question is: some people
who think, “Well, that isn’t a question. Why even raise
it?” but is it the case that whereas the parliamentary,
democratic and legal tradition in England is based
upon the notion of the sovereignty of parliament, the
development of legal and democratic thought in
Scotland is based on the sovereignty of the people?
Are you going to say that you would refer me to
several volumes of a book to answer that question?
Chair: Some of us have trains to get to at about
6.00pm, so if you could bear that in mind.
Mrs Laing: It is an issue that is very rarely probably
considered, and we have before us two academic
gentlemen who know the answer.
Professor Mitchell: I will give an answer from a
political science point of view, a lawyer may give you
a different answer, and there is certainly I know a
great deal of contention around these issues in
Scotland in terms of parliamentary sovereignty. My
feeling is that when Canon Wright said, “We say yes
and we are the people”, the implication of that was
that whatever was decided for the convention would
have to be implemented. The question I raised then
was what happens if Westminster says no, and
Westminster did say no because at the election in 1992
the Conservative Party won and devolution didn’t
happen.
In terms of just pure power politics, in terms of what
happened then Parliament does seem to be sovereign.
There may be a genuine case around the notion of
popular sovereignty and it certainly has been part of
the rhetoric in the Scottish debate going back 50
years. I have an issue and a problem with that. I don’t
see how it’s judicable; I don’t see how people could
challenge it in the courts. Ultimately, as a political
scientist, the key concept that I use is power and the
question is: does power ultimately lie? In a
sense it does lie with the people, because if the people
were to vote for independence, then I do not think that
could be denied.
A really interesting scenario is what would have
happened if the Conservatives had lost all their seats
in Scotland but retained a majority at Westminster and
all the parties from Scotland had been in favour of
devolution and agreed on a scheme of devolution.
That is the real question, and I don’t know the answer
to that, because ultimately that is what politics is
about, power, and how a governing party with no
support in Scotland would have reacted. We never got
to that position, obviously.
I did write an article 20-odd years ago in which I said
that sovereignty should be abandoned altogether; it is
unhelpful in constitutional debate. It was slightly
tongue in cheek but I increasingly think it might be
helpful to get rid of it and bring in ideas of power and
where power ultimately lies.
important issue. Wasn’t it Lewis Carroll who said, “The words will mean what I say they mean”? I am in an unusual position because I am a Scottish lawyer and so my logical thinking comes from the law faculty of Edinburgh University, and yet my everyday life and practice comes from being a Westminster MP representing a seat in the south of England. I fight this conflict. I realise that most people, even most people in Parliament or most people in the legal world, and certainly most normal people who lead normal lives, do not recognise this conflict, and because I live with it I understand it, and you have identified it very well. I wonder whether you think that a constitutional convention, properly developed, could help to put the conflict into the right context.

Professor Mitchell: Perhaps it could. One of the things that often is the case in these debates is that caricatures are created, and that Dicey’s notion of sovereignty is often represented in caricature form. Dicey was much more sophisticated than, frankly, many people in Scotland are willing to concede. Dicey was obviously an advocate of parliamentary sovereignty, but he also recognised that Parliament would be foolish to ignore the public, and ultimately at one stage he advocated a referendum when he expected that Parliament would take a different view from him on Irish home rule. But Dicey in his earlier thinking was much more sophisticated. I don’t think any parliamentarian in Westminster would ever say that they can ignore the public. That would be absurd. Sometimes I think the apparent starkness of the difference between parliamentary and popular sovereignty breaks down so that it is perhaps no quite so stark after all. The question, however, is whether there should be a distinct Scottish voice and how so stark after all. The question, however, is whether there should be a distinct Scottish voice and how authoritative that voice should be in constitutional deliberation.

Q233 Mrs Laing: Nigel, do you have an answer to this question too? Nigel Smith: I am afraid mine is very basic. When the Pentonville Five were imprisoned by Ted Heath by due process of law during the late 1960s/early 1970s and there was a huge public outcry about this, somehow the state magicked up some kind of official to release them from prison and I disbelieved in parliamentary sovereignty after that.

Q234 Mrs Laing: I suppose that is the exercise of political power. One more issue, which refers back to something you both said earlier, is the scope of looking at constitutional issues all at once, and Professor Mitchell’s point about the reaction of Bundestag is not surprising. Are you aware that a minority of the Joint Committee on House of Lords Reform, which sat for about nine months—it was actually 49% of the Committee—produced an alternative report and I helped to write that? It is not a special feat, but it just happens that I have been involved. It did recommend that there should be a constitutional convention, because the more you look at constitutional issues, as we have been doing this morning, as you do all the time, the deeper into it you go the more—I must put a question. Is it the case that one then finds that the latter cannot be looked at in isolation and that there should be a broader consideration?

Professor Mitchell: Yes, it raises the question that I raised in my paper, just what is a constitutional issue, and there are a variety of answers. Should, for example, the central bank be in a constitution? It is in a number of formal written constitutions today. Should an electoral system be in a constitution? These tended not to be included in written constitutions in the past; but they often are now. There is interesting research on constitutions that shows the more open deliberative constitutional conventions bring more people into the deliberative process and thereby more issues are defined as constitutional. The consequence of that is that these conventions are much more difficult to manage, to reach agreement and the final documents are also much longer. If you want to get a nice lean document then you want to exclude as many people as possible, bluntly. The old elite constitution-making approach—the constitutional convention in Philadelphia was a small group of people—didn’t have to worry about democratic legitimacy; they got on with their business, they had a very narrow range of options, and they produced what is a wonderful document, but I think that would be inconceivable today in the States or in any democracy today. I think you are pointing to some of the problems. That is not to say it shouldn’t be tried but I think we have to acknowledge that in modern politics and constitution making we would expect it to be more much more, more deliberative, more participatory. That does give rise to all sorts of issues emerging as constitutional issues and therefore makes it perhaps more challenging to reach agreement, and certainly the document would be longer. I am not saying that is a bad thing, far from it, but I think we need to be aware of that.

Nigel Smith: The Americans have a term for their convention, they call it a runaway convention. In other words, if you are not careful people will just put more and more things on the table and it becomes impractical. Therefore, I for one would support a limit. Although I am very interested in the European Union and at least half the Members of Parliament are going to go to the next general election with a commitment to a referendum on Europe, if that was involved in this I think it would be a mistake. The scope has to be limited and then you have the problem of saying which issues are in that, but you can’t duck it either because to open it up for a country with a largely unwritten constitution is too tall an order. This is a problem we might have to solve really quite quickly if there was a close result in the independence referendum, a close defeat.

Q235 Sheila Gilmore: What do you think would happen if some political parties refused to get involved in a constitutional convention? Would that affect its legitimacy?

Professor Mitchell: I think it would affect its legitimacy. I think it would be a problem. Essentially constitutions are rules of the game of politics. In that sense I think it will has to be different from everyday public policy. For that reason I also think there has to be broad agreement on the rules of the game. If there
is a significant party, whether a political party or other group, that feels that the system is biased against them unfairly then we have a problem. It is always important to do that. The notion I refer to in the paper is the need for ‘loser’s consent’. There are always winners and losers in any constitutional structure. Sometimes people who may not be great winners in this may acknowledge that the process was fair and deliberative, but if you have a major political party refusing to participate then I think you have a problem. The danger is that an agreement can be reached but when that party that has not participated comes back to power then we start the whole thing again. That is not a sensible way of moving forward. So certainly the main political parties would have to be involved.

**Nigel Smith:** Could I add something to that point? If you have a referendum afterwards, of course a lot of legitimacy to the process by a referendum based on people who might say, “I will accept this partially founded convention”, but if that led to an abstention in the referendum, for example one party said, “Not only will we not take part in the deliberations but we will campaign against our members even voting if this does happen”, then that really would delegitimise the result and if they didn’t go as far as that, then the referendum would overcome some of the problems that James has referred to. There is no doubt that a convention where people are a little more like-minded has a greater chance of producing some kind of workable scheme, but the problem of legitimacy is then transferred to the referendum.

**Q236 Sheila Gilmore:** James, you mentioned in your written submission that you felt that if you had an elected convention then it would have greater legitimacy than the one that was appointed. How do you make an elected convention representative? Are there ways of ensuring that it would be representative and then, of course, how does it stand in relation to—

**Professor Mitchell:** I am not necessarily advocating an elected convention. What I was trying to take was an extreme case that would have a legitimacy. The likelihood is that we would have a great debate on how it should be elected, that would be tricky, but we would have an agreement. The likelihood is also that the members of that elected convention would come almost entirely from political parties. If that is the case then arises, why bother, especially if it is by first past the post. The other problem, I think, with an elected convention is that there would be an interesting tension in its relations with Parliament and Westminster. So, while I think the overwhelming case for legitimacy lies with an elected convention, I see so many other problems that I don’t think it is likely, but I wanted to pose that as one extreme. I think it is an unlikely thing to opt for but if you are seeking legitimacy that would be the obvious way forward. The more likely way forward would be to do it through indirect representation, people who have been elected to office, whether that is MPs, MSPs, AMs, MLAs and so on, and perhaps even local authorities. That was the convention in Scotland’s experience and then bringing others in, but again where does this end? I think it is hugely tricky.

**Q237 Sheila Gilmore:** Could you include in that sense indirectly elected representatives, people who, for example, represent trade bodies or important groups that will have some form of election within themselves?

**Professor Mitchell:** I guess the question is who would be included, who would be excluded, on what basis would you include people? Would you, for example, include universities? I would argue, yes, you should. I would argue you should have professors of politics who have an interest in the subject. I am being facetious, but the point I am trying to make is it is very difficult to know where the line should be drawn. Many organisations, many individuals would make the case, and perhaps a very good case, for inclusion but it is very difficult. This is a problem that always arises when you do not have direct elections. I suspect around this table we could all identify groups we regard as having a right to be in such a convention, but it would not be the same groups. Ultimately we would all be advocating groups that would support what we would wish to see the convention include, let’s be honest. The real debate on the membership of the convention is as much about what it should include as anything else.

**Q238 Sheila Gilmore:** In that sense I think it leads me on to saying, how does it proceed? Do you attempt to get consensus? Do you have voting within the convention? Do you need some sort of majority? Constitutions often have within them provision for a change only to come about if voted by two thirds or whatever. We have talked a lot about the Scottish convention. That convention did proceed, while I can’t recall there being votes, it was probably a consensus, but you could argue that that was partly because some key players stood outside of it and maybe, when it came to the subsequent referendum, did not necessarily rock the boat in any substantial way and that may be because of the election result. Nevertheless it was easier, was it not, to reach consensus if you didn’t have certain people there at all?

**Professor Mitchell:** It was, but there were some pretty tricky issues that had to be dealt with and I think it was very interesting. The one I highlight in the paper is the size of the Scottish Parliament, which is very important in terms of just how proportional the Parliament would be, and the two main parties disagreed very passionately on this. How was it resolved? It was resolved by Menzies Campbell, who has been mentioned today, in his front room in Edinburgh. The leader of the Labour Party and the Liberal Democrats got together and hammered it out. In fact, they just split the difference. I am not criticising them for doing that. I think that will often be the case. When it comes to tricky issues some of these discussions and negotiations have to take place in that way. Sometimes there is a case for just getting behind closed doors and hammering something out. Even if you think there is a great debate taking place publicly, much is likely to be held elsewhere. What I am trying to suggest in response to your question is that I think that we have to be realistic about any convention. Politics will play within the convention,
and ultimately the smaller the grouping of people the easier it will be to reach agreement, but even then it is not easy. It is not easy.

There is a danger, which we are hinting at here, that any constitutional convention will be unable to reach agreement and that would be probably a very dangerous situation to get into. Where are we at the end of the convention? That takes us back to Nigel’s point that a narrower focus would probably be better in as much as it is more likely to lead to some kind of agreement. However, that confronts the problem of the spill-over effect of such agreements. I am sorry I am sounding very negative when I point out some of the problems, but I think it is better to be aware of them at this stage than at the end of a process that has been very fruitful.

Nigel Smith: I think you have to recognise that it is an entirely political process. It is about the redrawing and distribution of power and it is not a kind of academic seminar. You are trying to set the modus operandi for these negotiations and debates and therefore having several hundred people doing this, you know yourself, is incredibly difficult and nothing very much would come out of it. It is interesting that even the Philadelphia Convention normally had 70 delegates whereas there were only 50 involved on this—think you could put them in one room—and they dealt with big issues. Remember they dealt with slavery, they dealt with the north and the south, they were log-rolling big time, but these various things were settled or compromises were made and you got something. They did it in four months and it took 40 months to ratify. It sounds like the European Constitution.

Q239 Chair: I think you are making an argument that the work this Committee does, in terms of collating information and getting clarity on what the consequences of a yes or a no vote are, is increasing in importance prior to a referendum. Indeed, we will need to continue to do that. I think I need to have a word with Members around the table about that.

Nigel Smith: I strongly think that the Prime Minister should be giving evidence to you. It is not very likely but—

Chair: It is possible. Certainly the Deputy Prime Minister will be asked serious questions about this. We are also seeking to talk to the individual Secretaries of State, but I think they are passing the ball to the Deputy Prime Minister. That is the latest state of play. Serious evidence at the highest possible level will be given to this Committee. I think we may well, when we have five minutes together, seek to press some of the consequences of that, perhaps even before the Deputy Prime Minister comes before us, to get a lot of this stuff cleared out of the way before he speaks to us. Anyway, we are thinking on our feet. We will consider this carefully.

Q240 Fabian Hamilton: Nigel, you said in your evidence, I believe, to the House of Lords Constitution Committee that constitutional issues should be subject to obligatory ratification referendums. Do you think that the output of any constitutional convention should also be put to a referendum?

Nigel Smith: Yes.

Q241 Fabian Hamilton: Would all parts of the UK have to vote in favour before it was considered to be ratified and implemented?

Nigel Smith: My view would be you wouldn’t be looking for 100%. You would have to have some kind of rule about two thirds of this and that. First of all, I believe there would have to be a referendum because one of the things that does is concentrate the minds of the people in the convention that this has to pass democratic scrutiny. One of the mistakes of the EU convention was that it did not face up to that and recognise that it was going to fall foul of referendums, because they had just not thought about it. The other thing about a known referendum beforehand is it galvanises the interest of the press and the opinion formers in the process of the convention because they know something is going to happen; a decision will be made at the end of this. So, I for one think this should be obligatory and, unlike Willie Rennie, I would extend it across virtually every constitutional function. Interestingly, in the Northern Ireland agreement it is already obligatory. Of course we now have it in parts of Europe and you can see it creeping into constitutional reform in Britain. But the specific point of how you get ratification, I think there are various ways, including an electoral college, that you can do this. I wouldn’t attempt an answer now, but it would have to be something, some kind of threshold in federal terms, a majority here or a majority there and so on. That is a problem in Britain because you have 83% in England.

Professor Mitchell: I think there is a prior question and that is: what is a constitutional issue, and what is a constitutional change? In the paper I cite an article by Vernon Bogdanor, published in 2004, about what he regards as constitutional acts and some of these were certainly not subject to referenda. He includes the independence of the Bank of England. That was not decided by Parliament, or even the electorate, of course, there is a question as to what we have done and what is a constitutional issue. One could argue that is not a constitutional issue, but some might say it is. So that prior question has to be addressed. One of the problems with our constitution is it is very unclear as to what the constitution is because we don’t have that formal written document. I think there is a formal written document—I am not saying we should have one, but if we did—it would be much easier because it could be argued that any amendment to that required a referendum. We do seem to be edging towards a situation through precedent that certain major constitutional change is required with a referendum but not all. Again, the inconsistency in our constitution is interesting. I think there is a case to be more consistent but, again, that is easy to say in principle, and it takes me back to the question as to what is a constitutional issue.

But to the final part of the question, I think the notion that there should be separate majorities in parts of the UK would be a major innovation in the constitution. We have never had that; it has never been seen as necessary. I do recall reading about the 1975 EC membership referendum and it certainly was the case
up here that speculation was Scotland might vote no and that England would vote yes and what would be the consequences of that—fascinating. A couple of weekends ago I was at a conference in Cardiff and people were speculating as to what would happen in a referendum on continued membership of the EU if Scotland voted yes and England voted no. My response was surely that wouldn’t make any difference in a sense, so why would it not matter for this but it might matter for some other constitutional question? Maybe the answer is because it would be dealing with a territorial constitution.

All I am pointing out is that this is a minefield, it is very complex, we don’t have precedent and we don’t have a clarity in constitutional deliberations, and that can lead to accusations that we operate in a very ad hoc and very unfair way. It would be good to sit down and consider what a constitution is and what are constitutional issues. Perhaps that ought to be one of the main issues for a constitutional convention. In a sense I have to say that I think there are so many prior questions that would need to be addressed before I could honestly answer that.

Q242 Fabian Hamilton: The problem with 1975, of course, is that it was the first time we had had a national referendum and so there were no rules. They were made up by Parliament as we went along, as I recall. You mentioned the issue of a written constitution, which we don’t have. Just to go back to your issue of the word “sovereignty”, if we had a sovereign document authority for everything else rather than Parliament.

Professor Mitchell: Yes, one assumes so.

Q243 Fabian Hamilton: Is that a good thing?

Professor Mitchell: Is that a good thing? I think if it was possible—I am not convinced it is possible to write such a document, people have tried and they have run up against all sort of problems—it probably would be a good thing. It would be good in as much as it would be good to have that transparency and that clarity, absolutely.

Q244 Fabian Hamilton: And that consistency?

Professor Mitchell: And that consistency, absolutely.

Q245 Fabian Hamilton: Can I move on to something that Professor Robert Hazell has argued. He says that England is now the most centralised of all the large countries in western Europe. Is that a bad thing? Is that a good thing?

Nigel Smith: I personally think it is a bad thing. I spent the first 25 years of my life in business in England, centralising things on behalf of big corporations, and I saw the practical effects of that and I didn’t like them. That is the root of my whole decentralist politics.

Q246 Fabian Hamilton: You get consistency with centralisation.

Nigel Smith: Yes, you do. Intellectually it is easier to argue the case for centralisation than decentralisation because the benefits of decentralisation are more ephemeral and less tangible but they undoubtedly exist. But in my book the north of England, the north of Thanet and the Isle of Wight and Devon and Cornwall are getting a raw deal at the moment. That would become very apparent if Scotland left Britain. I don’t know why 6 million people in Scotland should hold up British territory in this way but in some extraordinary way it does. If we went I think it would become starkly obvious that particularly the north of Britain was getting a raw deal. It is bad for Britain because the economic performance of the northern half of Britain, if it was anything like the southern half Britain, would be at the top of the economic league, and that is good news for a lot of voters. So that is where I come on this issue.

Professor Mitchell: I guess my pluralist instincts lead me to support decentralisation; however I see a case for centralisation. I certainly see a need for it in terms of many aspects of the proposal. The other thing I would say is even a centralised state need not necessarily mean you have consistent public policy outcomes, far from it, because there are so many institutions in terms of the delivery of public policy. There are very few people who are willing to put down a case for centralisation on paper in the UK. You have to really go to France to find some of the best intellectual cases for centralisation, where people do celebrate the Jacobin state.

Q247 Fabian Hamilton: One of the biggest arguments, especially in the current climate, it is especially relevant in the current climate, is cost saving, because you don’t duplicate. If you have a regional parliament for Yorkshire then presumably you don’t have chief executives in every local authority.

Professor Mitchell: I think there are easier and more effective ways to get cost saving and better policy, and that is certainly to bring together services at a local level. I was on a commission that looked at these things in Scotland, the Christie Commission, and we reached the conclusion that efficiency is best achieved through integrating services at a local level rather than through centralisation. What we need to do is make sure that local authorities, health boards and many other bodies work together more closely. I would go a bit further than that and start pooling budgets. That can be done at a local level.

Q248 Fabian Hamilton: Yes. Pooling can be done without centralisation?

Professor Mitchell: Absolutely. Centralisation in that respect can be quite dangerous. I think it can lead to very bad policymaking. The man at Whitehall does not know best.

Q249 Fabian Hamilton: I think we all know that. Can I just ask you then, Professor Mitchell, polling data from the National Centre for Social Research suggested that only 25% of those living in England would want an English Parliament with law-making powers. What is your view about why there is such a lack of interest? I suspect that is an exaggerated percentage. I doubt it is even 25%?
Professor Mitchell: When I speak to colleagues on the English question they are all very agitated, but the English public does not seem to be bothered and I suspect because it does not appear to be linked to the things that they care most about, that is better schools and so on. Up here I think the constitutional debate is linked to everyday public policy. There is obviously a national identity issue here, but I think what gives it an edge in Scotland is the perception that we should be making our own policies and that they would be different from those that would emanate from London. In terms of the impetus behind devolution in the 1997 referendum—I was involved in a research project on that referendum—the overwhelming reason people voted yes was because they wanted to avoid the Tories governing them from London. They wanted different policies. In England I am not convinced that that has become part of the debate. Perhaps more so in certain parts than in others, but even there, as I have seen, it is still not very strong. So I think the disconnection between everyday public policy and everyday concerns on constitutional matters leads to the kind of figures you have been citing.

Q250 Fabian Hamilton: Does it go back to the fact, Nigel, that it is seen as an extra layer of politicians, bureaucracy, in between what people want for their everyday lives and what the public administration of the democratic system, the Parliament, the local authorities can deliver? The problem, surely, in advocating an English Parliament is that nobody has ever got through the argument that it is United Kingdom Parliament, English Parliament, county council, city council; you have all these layers. But if it was argued that this was a replacement, not that an English Parliament would necessarily be a replacement—that might perhaps be easier to argue, and perhaps if it was based in Nottingham.

Chair: Parliament once was based in Nottingham.

Fabian Hamilton: I know; that is why I said Nottingham and not Leeds.

Chair: In the castle, but let us not go there.

Nigel Smith: First of all there is the overall context of the loss of faith in the parliamentary process, which has occurred in my lifetime from deference to indifference.

Fabian Hamilton: It occurred in my parliamentary career as well. I can tell you.

Nigel Smith: I think we have seen on issues like the mayors, on quite a lot of propositions, a feeling that this will make absolutely no difference to things and therefore a rejection. Anything that involves electing people is therefore a bit suspect and people need a pay-off. It won’t surprise you that I was a supporter of English regionalism post 1997, and as soon as I read John Prescott’s senior civil servant fairly early on that the people would oppose this referendum for the simple reason it was going to be a playground for politicians—that is my phrase—and this is absolutely a killer. We see it in the transport referendums in England, where again there is lack of faith in our institutions: “Will they deliver on this if we were to vote for it?” People just said, “No, I don’t trust them”.

So for me there has to be a real measure of power devolved here. That brings you to the question of do you deal with English questions through an English Parliament. I for one think that is the wrong way because it would make no difference to the north of England, which I identify as the problem in the English question. I am interested in practical outcomes. Will the people in the north of England be better off, will the British economy be better off? An English Parliament restores symmetry but it doesn’t restore effectiveness, and that is what I am after.

Q251 Fabian Hamilton: So the city regions idea might be a better one?

Nigel Smith: As I said at the beginning, a patchwork of outcomes for me is the way. The great escape of 1997 was ditching symmetry, and we should be looking for a patchwork of power across Britain.

Professor Mitchell: I would very much agree with that. I worked on devolution in the UK a couple of years ago and my conclusion was that the UK—I used to argue it was union state, but I no longer believe it is a union state—is a state of the unions. It is a state of a series of different unions and historically they have evolved in different ways and respect for that distinctive evolution, that asymmetry, is hugely important. I would argue that the UK has been remarkably pluralist in this respect. Even prior to the establishment of the Scottish Parliament, the very existence of the Scottish Office from 1885 was a manifestation of a willingness to acknowledge Scottish distinctiveness within the state and it has been dynamic. Wales was very much integrated within England, effectively, and it was during the course of the 20th century you begin to see distinct Welsh public institutions emerge and the Welsh Office in 1964. It cannot be set in stone but I think the position we are now in is an acknowledgment of these asymmetries, these different unions, all held together in different ways. I think we are moving to an ever looser union. Exactly what that is difficult to define, but one thing is for sure it will change from one generation to the next.

Q252 Mrs Laing: A very quick question about the composition of the convention and its consequent legitimacy. Am I right in thinking that you have both said that election is not necessary, indeed undesirable because then if someone is elected we have a politician? Would it be better if a convention was
made up of people whose legitimacy is derived from something other than direct election?

**Nigel Smith:** I think the most interesting experience nearest ours in a way is America where they have had nearly 30 constitutional conventions—con cons, as they call them—in the last 20 years. There they very often elect but they then have to produce state money for each candidate. You get interests backing a candidate; it is a political process. In order to get around this the state has to fund all those who wish to go to this, so you are opening a major new extension. The only other way around that is the random lot and that is what was done in Canada, in British Columbia, and that dealt with only a single issue. Although I think it was very successful it dealt only with a single issue. So direct election should not entirely be ruled out, but it is a major, major extension of what you want to do.

**Q253 Mrs Laing:** Is there not another way? You said the only way around that is by lot, but can I mention, Mr Chairman, the lecture given by the Archbishop of Canterbury in the Magna Carta lectures delivered in June of this year at Runnymede where he—I am not getting the immediate feel of everyone saying, “Oh yes, the Archbishop of Canterbury’s lectures”. May I commend it to the Committee and suggest that it should be put in our papers and perhaps you gentlemen might be interested in reading it. The Archbishop of Canterbury makes a very good case for how democratic legitimacy can be derived for a body other than by direct election. It might be worth our looking at that. I don’t know whether you get to see it but it might be worth the Committee looking at that. Sorry, I didn’t allow Professor Mitchell to properly answer the question.

**Professor Mitchell:** I will look forward to looking at that. I haven’t seen it. Certainly legitimacy can derive from a number of difference sources. If something is effective it can be seen as legitimate, and it doesn’t have to be directly linked to elections either. Again, it comes back to what you want a convention to do. If you want to stimulate debate, I think you could go about it in a number of different ways. I am quite attracted to experimentation in terms of ballots. The experience in BC is that they looked at and debated what many people would have thought would be beyond the competence of ordinary people, which is the electoral system, and they did it very effectively by bringing in experts to advise it. That is always an important element in any constitutional deliberation, as well as the people making the decisions, it is important to open it up to expert advice. The constitutional convention in Scotland is very interesting in this respect. Where I think it was more successful was in debating the electoral system. I think it was pretty poor in some other areas—it was hopeless when it came to looking at public finance frankly—but in the electoral system it was successful and it drew in expert advice from across the world, not just on the system itself but on gender representation and so on. So that would be a very important point.

You could bring in just ordinary people through a ballot to address issues and to be addressed by experts and to listen. That could inform the main convention. It is conceivable you could have a main convention but with other discussion and debates going on elsewhere, which would perhaps allow you to claim a form of legitimacy that would otherwise be absent.

**Q254 Chair:** Thank you very much indeed. Nigel and James, thank you so much for your expert advice this morning. The Committee has been given a lot of food for thought about where we need to go from here and perhaps there are some new roles opening up for us but we will need to talk about that in a private session. Thank you so much for coming this morning. It was a great pleasure to have you along.

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**Examination of Witness**

**Witness:** Ruth Davidson MSP, Leader of the Scottish Conservatives, Scottish Parliament, gave evidence.

**Q255 Chair:** Thank you for coming, Ruth. It is good of you to spare the time to see us. We are seeing all the party leaders. I saw Nicola and discussed her new responsibilities last night, informally, and then we have seen Willie, and Johann comes in later. We have had some academics talking to us as well, and then we are hopefully getting very well educated and briefed. Thanks for coming, Ruth, and I do not know whether congratulations are in order on your appointment since we had dinner with your predecessor last night. We had great fun.

**Ruth Davidson:** Yes, she said that she had a delightful evening, so thank you very much for that.

**Q256 Chair:** Ruth, I know you are very pressed for time. Would you like to say something to kick us off and then we will ask a few questions? Would that be a good way to proceed?

**Ruth Davidson:** First, I would like to thank the Committee for inviting me to give evidence to you today. I would also like to apologise for my very slight lateness. The First Minister’s questions next door in the Parliament ran on slightly late today, so my apologies for that. With the time pressure that we have on this session today, perhaps it would be best if we just go straight to questions, if that is all right. Thank you very much.

**Chair:** Great. I know Ruth is very much on a strict timetable, so I would ask colleagues to be a bit terser than they normally would be, just because Ruth will need to leave at about 1.15pm.

**Fabian Hamilton:** I am not sure we can do that.

**Chair:** Sheila, set us an example, please.

**Sheila Gilmore:** Yes. I am also going to apologise in advance because I am going to have to leave before you have finished.

**Chair:** That is why you are on first.
Q257 Sheila Gilmore: First question is do you think there is a case for establishing a constitutional convention before the referendum on Scottish independence?

Ruth Davidson: Firstly, I think you have to make a decision about whether there is a case for this kind of convention at all. If you decide that, then for me, because over the last 15 years there has been so much change in what has been happening and so many staging points, not just for Scotland but also for Wales and Northern Ireland—we have had the Silk Commission, we have had the Welsh referendum, we have had the Scotland Act, we have had the Calman Commission—I think you have to make the decision about whether you want this or not. If you do, then you have to decide, “Well, let’s get on and do it” and be cognisant of some of the set pieces, as I say, that are happening, and perhaps not put it off until after the next general election, the next event, because in that way, given the way devolution has worked in the various parts of the UK, I think you could be putting it off for a very long time.

Q258 Sheila Gilmore: In your written evidence, you used a phrase that the convention should start by establishing, “The essence of the UK and the essential characteristics that define the unitary state”. Could you expand on what you meant by that and perhaps give some examples that would help illustrate that?

Ruth Davidson: Sure. I think first of all you have to decide, or a commission of this nature would have to decide, what is the UK? What are those things that cannot be dissolved and still remain part of a nation state? If you were looking for examples, I would look at the fact that the head of state would be the same for all constituent parts, whether that is a monarch or otherwise. I am sure it will be of no surprise to this Committee that I very much suggest that we would still retain the monarch. Would you have the same currency, that is the sort of thing that you have to decide. What are those things that cannot be looked at in terms of dissolution and still maintain the United Kingdom as a nation state?

Q259 Andrew Griffiths: Thank you, Ruth. Very good to see you. If we do go ahead with a constitutional convention, who do you think should be the body who decide its terms of reference?

Ruth Davidson: I think that has to be done very much in consultation. I think there has to be input from each of the constituent parts of the UK, and there has to be a political element to that too, and therefore that would require political input from the Westminster Government. Where I see the big gap is in England, because there is a devolved parliament in Scotland, there is an assembly in Wales and there is an assembly in Northern Ireland, and the House of Commons and the House of Lords acts for the whole of the UK. I am not entirely sure where you get that uniquely English component and how you also get other forms of governance in there in terms of local authority. I think it is very important, if this is looked at, that we do not just push powers from one parliament to another, but we also look at the distribution of powers across the UK. I think you would have to look there.

Q260 Andrew Griffiths: Very good. You are obviously focused on a referendum at the moment. It is a big issue in Scotland.

Ruth Davidson: It has come up once or twice.

Q261 Andrew Griffiths: Yes, exactly. If we had a constitutional convention that came forward as a recommendation, do you think that too would have to be put to a referendum?

Ruth Davidson: I think that when we are talking in the abstract and hypothetically it is very difficult to make a judgment one way or the other. It depends very much what the terms of reference for that convention would be. I would prefer not to be drawn on something now, not having seen what the proposals are, which is not to kick this into the long grass. It is just that I don’t think I can honestly answer that question without having more information about what the proposal, if any, would be.

Q262 Andrew Griffiths: But would you be in favour of a constitutional convention?

Ruth Davidson: I think that there is a question with further devolution about looking at how the different parts of the UK fit in with each other. I think one of the ways in which we have seen devolution progress over the last 15 years is that it has been almost a bilateral arrangement between one constituent part of the UK and the UK Government. For example, in Scotland, we had something like the Calman Commission, which led to the Scotland Bill, the Scotland Act, and that was about the devolution of powers between the UK Government and Scotland and it worked in a bilateral arrangement. It quite purposefully did not look at powers that would have some form of impact on other areas of the UK. For example, something like the devolution of corporation tax was not something that was proposed by Calman because that would have an impact on other areas of the UK. With the progression of devolution in Scotland, I think we have got to a point where further devolution of some other things that have been suggested in Scottish public life would then have an impact on the rest of the UK, and if you are doing something like that then that cannot be a bilateral process. You have to bring in other parts of the UK to look at what is going on. If I could use an example, if I may, I know that there has been a suggestion in Northern Ireland that they would very much like to have the devolution of corporation tax so that the corporation tax in Northern Ireland is much closer to that of the Republic of Ireland, rather than with the rest of the UK. That has a material impact, I believe, on other areas of the UK in terms of where people site businesses and in terms of where there is employment. I don’t believe that is a decision that can just be made by people in Northern Ireland. It is a position that must be discussed between all constituent parts of the UK.

Q263 Mrs Laing: I think you are making a very good point about all constituent parts of the UK. Do you think a constitutional convention could proceed with—let me put it the other way round. Would all...
constituent parts of the UK have to be involved before a constitutional convention could be meaningful?

Ruth Davidson: I think it would be hugely advisable if they were.

Q264 Mrs Laing: In doing that, how important would you consider it to engage the public, rather than just the usual suspects?

Ruth Davidson: I think that civic Scotland, civic England, civic Wales and civic Northern Ireland would have to have a seat at the table. You can’t exclude the public from this. We did have something called the Scottish Constitutional Convention in the 1980s and 1990s, which was—I am slightly paraphrasing—slightly self-appointed and it went in with a key aim in mind that there would be some form of assembly or parliament in Scotland, and that was what it was going to get out of the other end of it. The Scottish Conservatives were not part of that constitutional convention. The Scottish National Party were at the start and then left because their perceived wish or choice on constitutional development was taken out of the equation before the meetings even started. If something like this were to go ahead you would have to have an open remit, rather than have the stated aim at the end of it of what was going to happen before you even started. In terms of learning lessons from previous constitutional conventions that have happened elsewhere, I think that is one where lessons could be learned.

I do believe that whether it is a convention or a commission, which could be a possibility rather than a convention, that there should be some form of input from the public, and it should not just be paid-up elected representatives.

Q265 Mrs Laing: This is really saving time, Mr Chairman, because Ruth has just answered my next question before I asked it, which is absolutely brilliant, as I would expect from the leader of the Scottish Conservative Party. I am allowed to make these points. It was about the difference between a constitutional convention that might be proposed now and the one that took place in Scotland in the late 1980s and 1990s. That was the distinction I was going to ask Ruth if she would like to draw, and she has already drawn it, so I think that brings my questioning to an end. Thank you.

Ruth Davidson: I am delighted to aid the Committee and its work in any way that I can. If that is pre-empting questions, then I am very pleased to have been able to do so.

Q266 Chair: I am going to risk now throwing you out with 10 minutes left. It is all right; we have time. But I have a thought of my own, Ruth, that I would like your comments on. When the question is asked in the referendum, a yes to independence is not straightforward but you pretty much know what the answer means, and then there is a process that takes place. If the answer is no, what happens after the no? Does that mean people have voted for the status quo, or does it mean that people may have voted because there may have been other offers of additional powers and that there would be an expectation that that would take place? The no seems to be a little bit more complex of a result, somehow, unless we get clear before the vote what a no means.

Ruth Davidson: Mr Chairman, I think that this is a confusion that is going on in Scotland quite a lot right now, particularly in commentary about what is the status quo of Scotland. Does that mean the powers that are currently available to the Scottish Parliament right now, or does that mean the powers that will be enacted fully beyond 2016 when the Scottish Act comes into full power? As I am sure the Committee is well aware, that is a whole swathe, a whole suite of new powers, and it is the largest transfer of fiscal power in more than 300 years to Scotland. We are faced with a slight intrigue in that there is a question going to be on the ballot paper, we think, although it has not been signed off yet, in the autumn of 2014 that is looking at a situation where what is the current status of power will not be the powers in just a couple of years hence, when things like income tax are devolved in 2016. I think that there is a question in people’s minds in Scotland regarding what the potential future for devolution is for Scotland and something like this constitutional commission could be one of the ways in which ideas are furthered. But, like I say, for me I would believe that a commission or a convention of this kind would have to focus on all of the UK and how it interplays with each other, rather than just looking at how the Parliament of Scotland primarily relates with the House of Commons and the House of Lords.

Q267 Chair: A constitutional convention coming into being before the referendum could have a role of just outlining what the consequences of each vote might be. Would that be a helpful thing in the public domain?

Ruth Davidson: It may have. Again, we are delving in real realms of the hypothetical there. It may have a purpose in looking at, for example, defining a structure or manner in which future dispute resolutions could happen, or future progress, for want of a better word, could be made.

I think there is a view too, though, in Scotland that Scotland’s political parties fight on manifestos and the manifestos’ commitments do look at areas of the constitution as well, and the people of Scotland have one member, one vote on that issue. I know that work is going on in other parties, as well as my own, looking at the constitutional settlement of Scotland that can be taken to the people of Scotland in the normal manner in an election. I am not sure whether you would want a commission or convention of this kind to override the normal politics of a nation, but that is not to say that there is no work that can be done that would be helpful, not just to Scotland but to the settlement of the UK.

Q268 Chair: When is the next election for the Scottish Parliament?

Ruth Davidson: The next election for the Scottish Parliament is in May 2016.
Q269 Chair: So it is possible that there could be a referendum vote that goes one way, and an electoral victory that goes another? For example, let us say, hypothetically, there is a vote for independence and then, hypothetically, a Labour Administration takes over in Holyrood who are not committed to the decision.

Ruth Davidson: I understand the intellectual hypothesis of your question but, given there has been no statistically significant polls in Scotland for the last 40 years showing a majority support for independence, I am going to reject its premise, if I may.

Q270 Chair: Let me give you another hypothetical that you may find more comfortable, which is that independence is rejected but then an SNP Government continues or gets another mandate. What is the mandate of a nationalist party that has just been rejected in a referendum but given an electoral mandate? What do they do?

Ruth Davidson: I think that is primarily a question for the Scottish National Party but, if I can fear to tread here, that is very much like the situation that we have seen. The only mandate that the Scottish National Party held was the one it took to the people of Scotland was that there would be a referendum on independence for the people of Scotland if they were returned as the Government of Scotland, and that is what the negotiations between the UK Government and the Scottish Government have sought to achieve. There have been some questions regarding second questions and all the rest of it, but that is not in the mandate of the Scottish Government. There were questions too about the franchise for what the referendum would be. My contention would be that the franchise should be for the mandate that they received, and that is those people who are eligible to vote in a Scottish parliamentary election, which is different from those who are eligible to vote in a UK parliamentary election. Again, it is down to the normal, if you like, politics of Scotland.

Q271 Chair: Then another scenario, which may be your ideal one, which is the referendum says no, and you are the new First Minister in 2016. Again, this is speculation, but do you at that point say, “Everything now is fine, status quo”, or do you at that point say, “We give some powers back to Westminster”, or do you say, “We would like additional things to come in our direction”? 

Ruth Davidson: First of all, as I say, work is going on in all political parties, and I am sure nobody is telling tales out of school on what is regarding what they may bring to the people of Scotland in a manifesto for an election. Secondly, were that hypothetical to occur, again it brings me back to the question of there are still powers in train beyond a referendum in 2014 that are still to come. Also, the Scotland Act itself is an enabling Act. It allows for further transference of power in restricted areas without having to go through the system of getting a bill through the House of Commons as well, so there is provision within the Scotland Act itself for further powers to be devolved. But, given the pace of change in Scotland, not just in the last 15 years but particularly in the last nine months to a year, I think you will see people and parties setting out their stalls on manifestos for the elections coming, and people will vote on that.

Q272 Chair: Do you think people in Scotland know the sort of powers that are in the pipeline and coming their way? Is that going to be a consideration in their minds when they come to vote on the referendum?

Ruth Davidson: I think that as the powers are devolved there will be a greater cognisance of those that are still to be devolved. Particularly with the personal taxation powers, for me that is the big one that will make people sit up and take notice. I am not convinced that there is a general awareness within the general public of Scotland of just how big the Scotland Act was and how much is about to be devolved.

Q273 Fabian Hamilton: Ruth, on 11 September 1997—I am sure you will remember it well—the Scottish people voted overwhelmingly in favour of the British Government’s proposal for a Scottish Parliament. Why do you think the convention was so successful in making the case for a Scottish Parliament in a way that no other similar organisation has been successful in doing throughout the UK? How did they engage people?

Ruth Davidson: You are right. I remember the referendum. It was only the second vote I ever cast, because on 11 September 1997 I was only 18 years old, if I have worked that out right out. Yes. My first election was May, not the best election to be a Conservative in Scotland, I think it is fair to say, and my second time I cast a vote was in that referendum. I don’t know if there was only one compelling reason for it. I think there were myriad reasons that had not just to do with the Scottish constitutional convention itself, because, as I say, it didn’t have buy-in from all the political strands of Scotland. It had some very strong characters in it and it had some very strong groups in it, but I think even those who were the strongest proponents of it wouldn’t say that it represented every sector equally. I think the campaign that was run by three parties uniting was an effective one in terms of the political campaign, and possibly that there was a belief in Scotland that there was a wish for greater self-determination at that time. Beyond that, I have to say I am unable to pick one particular point. I think it was a coming together of points.

Q274 Fabian Hamilton: Thank you for that. How important is it—we have touched on this already— that we engage the public in a constitutional convention, and how do we do it, rather than having, as you mentioned earlier, people who are self-appointed, what we might call the usual suspects? If it is not self-appointed or elected, how do you ensure the spread of interest?

Ruth Davidson: I think also public buy-in, if you want to use that phrase, is one. It is about making sure that there is some level of representation on there, and
that I believe is a discussion for when we have a much clearer position of what is actually being proposed here. The other part is also how you engage with taking people’s views in terms of the consultative nature. That may have unintended consequences in terms of timing and so on, but I think in terms of having submissions to that it would have to take a very large number of submissions from a great number of areas to make sure that people had had the chance to have their say.

Q275 Fabian Hamilton: Do the Scottish public sufficiently care about constitutional issues, in the broadest sense, to engage, or is it a minority interest? Ruth Davidson: I think many people care very deeply about particularly the question that is in everybody’s mind regarding the referendum in Scotland right now. Like I say, there are a number of people who care very deeply about what is the question and I think there is a frustration, too, among many people of Scotland that elected personnel such as myself spend so much time talking about the constitution that some of the other things are not discussed to a level that they would like to see. Certainly I hear complaints from people, not necessarily Conservatives but from people up and down Scotland, who say, “Can Alex Salmond stop banging on about independence and just fix schools, hospitals, prisons, whatever?”

Fabian Hamilton: Roads—yes, exactly.

Ruth Davidson: Exactly. There are an awful lot of people who do care very deeply, but there are also an awful lot of people who are frustrated with the process that has been ongoing in Scotland, particularly in the last year.

Q276 Chair: Ruth, we have kept to time.

Ruth Davidson: Oh, excellent.

Chair: I hope we have earned a brownie point. We can let you go to your appointment.

Ruth Davidson: Thank you very much, Mr Chairman, and thank you to your Committee.

Chair: Since we did rattle through the questions, if there is additional stuff that you would like to send us, any notes or memos or whatever, we would love to receive them.

Ruth Davidson: Additionally, if there were any questions that we did not get to or any follow-up that you would like from me, I would be delighted to help you in any way that I can. Thank you.

Chair: Great. Thank you so much for your time, Ruth.

Examination of Witness


Q277 Chair: Johann, thank you so much for coming in and sparing your very valuable time to talk to us today. We are the Select Committee on Political and Constitutional Reform and we are in Edinburgh to listen to the people who know about the issue that we are most concerned about at the moment, which is the need for a constitutional convention, whether we need one at all, if we need one when might it best take place, what might the issues be. Sheila had to leave us this morning for a constituency engagement, so she sends her apologies. Johann, do you want to make a little opening statement?

Johann Lamont: Just very briefly to welcome you and recognise the significance of the work that you are doing. I think it would be fair to say that sometimes it is very useful simply to explore these issues. We recognise that the constitutional landscape has changed dramatically and it is how the different bits of that landscape fit together now and within the coherence of the United Kingdom I think these are really interesting questions to ask and I am very interested in your findings. One of the things you would need to think about is what is the question your constitutional convention is answering. There are whole issues about how you get devolved governments working with the UK Government, to what extent it is under threat or whatever. These are interesting questions and I am more than happy to explore them. I was privileged to be a member of the Scottish Constitutional Convention when it was created a very long time ago and there are interesting ways in which that developed that we might want to explore further. But I think it was something of its time and came out of a political desire to answer some very serious questions. I suppose the test would be is this convention something political that we think might be a good idea when, in fact, the actual conditions in the communities are not quite the same.

Chair: In an odd way, it is almost a convention, if it does ever exist, which will help us answer the English question. We have all been considering the Welsh question, the Scottish question and the Northern Irish question. I think the English question is who speaks for England and what should the settlement be that devolves power within England. That is a different aspect of this completely. We might be looking for your help on that with the experience of going through the Scottish convention.

Q278 Andrew Griffiths: Good to see you. A bit like comedy, in politics timing is everything. Do you think that there is a case for a convention before a referendum takes place on devolution or separation in Scotland?

Johann Lamont: Timetables need to be relevant to themselves. One of my frustrations around the debate about devolution is that some people wish to characterise a discussion about how you make devolution work as a means of dealing with an argument about the Scottish separation from the United Kingdom. It is two entirely different things. I have always said Alex Salmond had the mandate to ask the question do the people of Scotland want to leave the United Kingdom and the people of Scotland have the right to answer that question. But you will not deal with the questions and philosophies behind
nationalism, or those who wish to remain part of the United Kingdom, trading power around devolution because for those who want to be independent it is not about individual powers. They want to be a separate country by definition. I think that if you want to talk about how we make the constitutional settlement across the United Kingdom better, the context for it is not whether Scotland wants to leave the United Kingdom or not, the context is how do we do government better? How do we empower our communities? How do we make sure that politicians’ actions and policy development are shaped by the communities affected by them? That is what I think devolution is about. Devolution is about good government, it is about people having control over their lives, where the gap between what the politician says and how people feel about it and are impacted by it are brought together.

To me, do not decide your timetable on anything to do with how we make the United Kingdom work better as a means of dealing with an entirely separate debate, which is about would Scotland be stronger inside the United Kingdom or outside of it. I hear what you say about England and I think there needs to be a dialogue and a conversation about the way in which the United Kingdom is changed and what is it about it that is precious to us. Yes, there are common ties and common bonds. For me, one of the big things about the United Kingdom is the way in which we come together co-operatively, we share risk, we pool resource and at tough times at different places in the United Kingdom you can address that. Does the constitutional deal with those issues? That would be a question I would ask.

But there is no doubt that simply acknowledging the landscape and thinking about the implications of that is important. You call it the English question, but I guess part of it is that bits of England didn’t want the constitutional convention. If I were being unkind, I would say that the SNP made a decision on whether they would go in on the basis of whether the Labour Party was going to go in or not and decided it would be better for them to stand at the side and take the opportunity to talk down what the convention did. What happened, in my view, was the constitutional convention then developed an authority beyond political parties and when the package were developed the SNP took what I said was the right decision, which was be part of the campaign for a Scottish Parliament. So can you sustain a constitutional convention without political parties? Yes, the SNP think they can and what do you sustain it if people more generally say Scotland will not accept it if the trade unions are not interested in it? No, you can’t, because it is then just doing something over here.

It was a very long time ago and I was exceptionally young when I was there, but it was a very interesting process because what you then began to see was people paring down what were the bits that really mattered, what was the core business. To be fair to the architects of the Scottish Parliament, Donald Dewar and others, they did have the courage then to allow the group that came out of there to develop the standing orders of the Parliament. It was a “how many sticks can you get to beat your own back with” kind of attitude to how government should be conducted and I thought that was a very powerful and courageous thing to do.

Q279 Andrew Griffiths: Thank you for that. You touched earlier on the Scottish Constitutional Convention, which you were a part of, so you have good experience of that. One of the parties did not take part in that. The Conservatives were not part of it. What do you think about the potential of a constitutional convention if one part of the UK or one political party in the UK decided they are not going to have a part in it?

Johann Lamont: Two parties did not take part in the constitutional convention. If I were being unkind, I would say that the SNP made a decision on whether they would go in on the basis of whether the Labour Party was going to go in or not and decided it would be better for them to stand at the side and take the opportunity to talk down what the convention did. What happened, in my view, was the constitutional convention then developed an authority beyond political parties and when the package were developed the SNP took what I said was the right decision, which was be part of the campaign for a Scottish Parliament. So can you sustain a constitutional convention without political parties? Yes, the SNP think they can and what do you sustain it if people more generally say Scotland will not accept it if the trade unions are not interested in it? No, you can’t, because it is then just doing something over here.

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Q280 Mrs Laing: Courageous indeed in the Yes, Minister sense, although in saying that I am not other than paying tribute to Donald Dewar. It might seem like a very long time ago but I spent the first two years of my time in Parliament sitting opposite Donald Dewar questioning everything he was saying and everything he was doing. I would still question a lot of it but not his integrity or courage. Having experienced the constitutional convention in the 1980s and 1990s, would you say that what we should be looking at now would be a different creature? You have made the point, which I do not need to ask you and I will ask other people, that it was a political body. You made the point very well that there was one party that was not in it at the beginning and then when the political climate changed and things moved on, it was. There was another party that was never in it, but the convention itself had a momentum of its own and, indeed, achieved its political goal. Would you say that a constitutional convention set up today should have the same kind of political goal or should it be wider?
Johann Lamont: I think the political goal was wider than political parties. That is the principle of it. Essentially, everything is political, particularly if you are talking about the constitution, so I do not think you could say you could create a body that wasn’t political. But to me it feels as if the challenge for you in looking at this is does this have any relationship to people beyond ourselves? As I said before, what is the question that the constitutional convention is answering? If it is about how governments relate to each other, that is a very different thing. If it is something about what is good government—the context of the constitutional convention in Scotland was a sense in which a centralising and very polarising Thatcher Government was doing things that people had no sense of control over. We can debate whether we are in that context now. I do not detect that is, in relation to what is happening, what the constitution is. Johann Lamont has tried to polarise. Some of this debate has been between home rule and Tory rule; so, an element of trying to be able create some of that stuff. My sense is you can’t make this happen, it has to be already there. You have to be tapping into something that people already feel. You all know what the position is in England. When you will have a far better sense than I have of that. But is a UK-wide constitutional convention going to have authority? Are there going to be voices there asking the hard questions and when you find answers will they then get resonance in the broader communities? I don’t know whether that is true. Maybe I am just putting back to you what you are trying to establish. I think the mistake would be to say, “Well, here is a system that worked”, and pull it over and try to play it out. To a large extent, yes, the political parties were engaged in the issue of devolution. There was a separate constitutional alternative presented by the SNP, but the trade unions were very engaged in it, civic Scotland was very engaged in it, and some of the key figures within the organisation were not aligned to any political party. I do not think you can make that happen. It has to be that the sense of your wanting to do something is there and then you take it in a way that people will maybe accept whatever its conclusions are.

Q281 Mrs Laing: Do you think that could happen now or are we just simply not in the same place?

Johann Lamont: I am trying to transpose what I felt about Scotland in Thatcher’s Britain to what people in England feel about a change of constitutional landscape across the United Kingdom. I can’t do that because I recognise what I see in front of me, which is in the Northern Ireland Assembly, the Scottish Parliament, the Welsh Assembly and that some bits of England did not want to take regional powers to themselves. You will have a better explanation of that than I do. You will also have a better idea whether within individual local communities people are talking about that in that kind of way. I do not want to be in a place where some of the ways in which this is characterised is about competition. The United Kingdom has all this diversity, different ways of doing things, but there is still a coherence about being part of the United Kingdom which is quite a hard question. Does a constitutional convention do that work? Again, that is a matter for you. My fear would be that you look to a body that replicates something done at another time but not at the same terms.

Q282 Mrs Laing: Yes, that is very helpful; thank you. What about the composition of a constitutional convention now? Do you think it would have to be elected or could it derive its democratic legitimacy from another source? Could its members be indirectly elected or represent bodies within the community?

Johann Lamont: You will no doubt have the detail of how the constitutional convention of Scotland is constructed, but I think it did recognise that the political parties were players in the process and they appointed their people into it. It would be a matter of asking them how they did that. You do not really want to know the details of how the Scottish Labour Party’s structures operate, but I was part of the Scottish executive of the Labour Party. We decided we would have some people from there and we had some elected MPs. Maria Fyfe was there and Donald Dewar was there and so on. There was an element of pragmatism around. There had to be people there who understood the politics about all of this. Does election give you authenticity if in the country people are indifferent? The purpose of it is to build consensus. You are not going to solve anything through any kind of convention if it ends up as a vote and it is a challenge for everybody. Where does the authenticity come from? The question is: how would you place people who are interested in this body or felt how that body related to them? There are all sorts of things you can do, whether it would be voluntary organisations, representative bodies. The trade union infrastructure would do that. How do you reach out to people who do not engage in any of these structures at all but might have a view on how they feel about the way the Government treats them, doesn’t listen to them and so on?

Q283 Mrs Laing: That was exactly the next question I was going to ask you. We are doing very well on pre-empting the questions here. That is exactly it, how do you? I was thinking about that from the composition of prevention as to how it then relates to the people who you are trying to represent?

Johann Lamont: It can’t be something that looks like and sounds like something representative but is entirely detached from where people are living their own lives. It is how what you are doing is relevant to what people’s concerns are. There are loads of people in our local communities who have very sharp views and frustrations around the way in which government at every level just does not respond to them. There are very interesting debates. Sometimes I think people think all the structures, all the elected structures are great, it is just a pity you have to have politicians in them.

Mrs Laing: I think that is the answer to the question.

Johann Lamont: Certainly in the past in Scotland one of the things we tried to do in the first eight years when we were in elected office was not simply to create policy and then just take it out and say, “There
it is”. They did this at UK level as well, particularly under, I think, Labour since 1997. But policy development should be about people who live with the problem, understand the problem and generally have a solution. You should be using these models round government anyway. No one said of course I would always say this. I didn’t come into politics to talk about whether Scotland should be in the United Kingdom or not but sometimes the constitutional debate reflects what I am much more interested in, which is about how power can used, abused or is very distant from people and that it is an issue in Scotland. I accept that the constitutional debate is there, but sometimes it is about prisms through which you are arousing other frustrations, of the sense in which things are out of control. I think that in these times people are very frightened about how things get out of control at European level and are concerned with what is happening in finance and the economy, what is happening with their jobs, what has happening with their families. In those circumstances, people may look at how much influence I have over the decisions that are being made, how much control I can take. That is part of the argument around what has happened in Scotland. I don’t think you can create it unless you have said already. I respect what you will have picked up in other places. If this is responding to people’s concerns to look at how the constitutional arrangements are then that is a very legitimate thing to do and you would then want to get the mechanics right. But if that is not there first, it is very difficult to see how to can generate it.

Q284 Mrs Laing: I entirely endorse what you have said. You have, I think rightly, said that the constitutional debate can be a prism through which people are looking at what is really bothering them. Is it a bit of a worry that when you consult people, for example in the referendum that will be happening soon on separating Scotland from the United Kingdom, that people might not understand or pay attention to the issue but will vote because of their concerns about the other political or social matters that are concerning them at the time?

Johann Lamont: You could say that at one level. I accept that constitutional arrangements are sometimes seen as an answer to these concerns and it is very difficult to instruct the voters to empty their heads of all that they are worrying about.

Mrs Laing: Impossible.

Johann Lamont: But the challenge in the constitutional debate that we are going forward in is to have clarity around what the consequences are for people. We have asked and will continue to ask that we get the information we require, the work that has been done around what a separate Scotland’s currency would be like, would we be in Europe and so on, and then people can make a decision. I think all the campaigning groups and whatever view you take on this, we all want to make sure that people are informed. It is not about scaring the horses, not about reflecting on other things, it is about that. In terms of a broader UK-wide constitutional convention, it needs to be clear about what its purpose is. I would need to be persuaded about whether people are at a stage now where they think, “You know what we need to do, we need to think about the relationship between Scotland and Northern Ireland and Wales and England, or do we maybe need to think about how do we order our priorities in terms of what we spend money on, how much authority and control people have over their own lives?” These are separate things.

Q285 Chair: Johann, one of the reasons we are raising this now is so that we can think through some of those issues. It is not to say that we must style a constitutional convention immediately but it is giving us time to plan, if that is the way people want this to go. The other thing is that if others than ourselves were to decide they wanted a constitutional convention after a yes to independence in the referendum, that could lower its esteem. It could be seen as a reactive thing to a particular result. Thinking about it now, whenever people choose to enact it, it has that sense of “let us start examining what the options are for the future”. I do not know whether you feel that is a good reason to progress this or not?

Johann Lamont: I can see the logic of that position and I do think that if Scotland leaves the United Kingdom one of the conversations we need to have more fully is how that feels to the rest of the United Kingdom and how that feels to friends and family that I have across the rest of the United Kingdom. What does it make people concerned about? I am interested in a more general discussion about how we feel within the United Kingdom. I think in the past—and to be fair not so much more recently—there has been the impression created in Scotland that all of the problems are because somebody in Whitehall has all our powers and rights and they are holding them away from us, that sense that we have been denied things, we can’t achieve what we want, perhaps in some more extreme cases, like Braveheart they can’t be free. Some of that debate has just moved on. There is not really a sense people have of being part of the United Kingdom, or it being a part of colonisation. I think that is a very important part of the discussions that people will be having within their own families about the constitutional change. Yes, they will have to have economic debates but they will also think about what is to be gained and what is to be lost. It is quite a mature discussion that may take place there.

Around the timing, the idea that you would look at these ideas because and of themselves they matter, as opposed to what is happening to Scotland, is I think a very powerful message because they matter in themselves. To have the courage to devolve, to recognise diversity and make it work matters to those of us who want to stay in the United Kingdom. We do not just say we want to look at this because this is going on over here. From that point of view, whether you establish a convention or not, in that sense right across the United Kingdom we want to make the settlement work and we want the more chunky bits or clunky bits to be sorted out too for those of us who want to be in the United Kingdom.
Q286 Chair: It may be that the traditional way Whitehall deals with stuff is that it has to be a crisis and that planning ahead is not one of the greatest assets of the civil service in Whitehall. In a way, we are trying to pre-empt a bit of that and say, “Don’t wait until the die is cast one way or another, let’s examine some of the options now”. If people know a bit more about the options—I think you just caught the end of the conversation we had with Ruth—if there are particular outcomes, they have particular impacts on lots of people. A yes vote to independence would have a set of impacts, a no vote would have a set of impacts. We played through some scenarios with Ruth about let’s say, for example, there is a yes to independence vote and then a matter of 16 or 17 months later a Labour Administration comes to power in the Scottish Parliament; that might produce some interesting impacts.

Johann Lamont: Except I would be explicit in saying the reason I want a single question in the referendum—I have just said Alex Salmond has the mandate to ask the question and the people of Scotland have the right to answer that question and the Labour Party of Scotland will deal with the consequences of where that decision is. It is really important that I think that has been this debate around the questions and the safeguards around the way in which the referendum is conducted. That result has to have authority. Regardless of what the result is, it has to have authority. The last thing we need is for it to end up in court to be challenged, that people feel that somehow they were done down in a way and it loses consent. I am not quite sure what you would see. If the people of Scotland want to be independent they will then have the authority to negotiate for separation and our Labour Government took that responsibility too. I think that is a separate issue.

I think that the focus of the convention, as you describe it, has to be about good government. Whitehall has not been very nice to people in the East End of London in terms of the advantages of capacity to be responsive. It is not a geographical thing, it is a mindset thing about where power is. What devolution said was you can take power down from there and the challenge is the uneven way in which that has happened in parts of England. You will know that better than I do. But I think that debate is about people who want to make the United Kingdom work. Ultimately, Scotland will decide what it is going to do. Whatever is the structure of the United Kingdom thereafter, or as we think about it now, it is about how to make it better. What are the definitions of making it better? What do I think? Constitutions are arid and dull things, but they are supposed to be an expression of priorities and rights and entitlements and responsibilities. I think that is a much more interesting debate, frankly; some of the corners would inch convention before the referendum, should there be something of a sort of mini-focused constitutional convention on this particular part of constitutional development, being the relationship between Scotland and the rest of the UK, before the referendum in order to inform about the consequences?

Johann Lamont: People will be informed by the voices that have authority and that they have respect for. That debate has to be about people in Scotland talking about the consequences, people hearing the arguments based on one side or another, and they will respond to what the trade unions say or they will respond to what voluntary organisations say or they will respond to what businesses say. But I don’t think there is a place for the creation of something that has an assumed authority when actually it is just a body. It is not to say you can’t take that authority. I can assure you there will be a full-blooded debate on the consequences and all the potential and all the people are being in the United Kingdom or outwith it. I think that is a debate that people across the United Kingdom will want to engage in and be interested in and so on. Of course, the referendum will be made in Scotland and conducted in Scotland and it is about Scotland’s future. I want that debate to take place. I do not think you can artificially create debates. I think it has to be for. Whatever is the way in which power operates and what power we have and how the constitutional settlement should be shaped by those priorities. At a later stage do I envisage people seeking to build consensus on the way in which devolution develops? Yes, I should think that would happen, given its own history. I like the idea of people talking about how the other United Kingdom looks, how to make it work better for people and for their interests. I would be concerned if it were allowed to be characterised as something that was being brought in as a separate debate, which is whether Scotland should stay in the United Kingdom or not. I think that is a different issue.

Q288 Chair: Do you think people are clear or will be clear about what a no vote means? Does a no vote mean status quo or does a no vote mean something else, other powers, devo-max? Will the electors know that by the time they get to vote?

Johann Lamont: Some people regard devo-max as getting you to a point where you are virtually a separate country anyway, and some people try to characterise devo-max as the middle ground. It is not the middle ground; it is one particular version of a possibility of being inside the United Kingdom. What I said is we should test it, not against how do I think it has to be a crisis and that planning ahead is not one of the greatest assets of the civil service in Whitehall. In a way, we are trying to pre-empt a bit of that and say, “Don’t wait until the die is cast one way or another, let’s examine some of the options now”. If people know a bit more about the options—I think you just caught the end of the conversation we had with Ruth—if there are particular outcomes, they have particular impacts on lots of people. A yes vote to independence would have a set of impacts, a no vote would have a set of impacts. We played through some scenarios with Ruth about let’s say, for example, there is a yes to independence vote and then a matter of 16 or 17 months later a Labour Administration comes to power in the Scottish Parliament; that might produce some interesting impacts.

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Q287 Mrs Laing: Rightly you have stressed the importance of people knowing the consequences, the outcome of, let us say, a referendum or the important one that is going to take place here soon. Given that and given that there is not time for a constitutional convention before the referendum, should there be something of a sort of mini-focused constitutional convention on this particular part of constitutional development, being the relationship between Scotland and the rest of the UK, before the referendum in order to inform about the consequences?

Johann Lamont: People will be informed by the voices that have authority and that they have respect for. That debate has to be about people in Scotland talking about the consequences, people hearing the arguments based on one side or another, and they will respond to what the trade unions say or they will respond to what voluntary organisations say or they will respond to what businesses say. But I don’t think there is a place for the creation of something that has an assumed authority when actually it is just a body. It is not to say you can’t take that authority. I can assure you there will be a full-blooded debate on the consequences and all the potential and all the people are being in the United Kingdom or outwith it. I think that is a debate that people across the United Kingdom will want to engage in and be interested in and so on. Of course, the referendum will be made in Scotland and conducted in Scotland and it is about Scotland’s future. I want that debate to take place. I do not think you can artificially create debates. I think it has to be for. Whatever is the way in which power operates and what power we have and how the constitutional settlement should be shaped by those priorities. At a later stage do I envisage people seeking to build consensus on the way in which devolution develops? Yes, I should think that would happen, given its own history. I like the idea of people talking about how the other United Kingdom looks, how to make it work better for people and for their interests. I would be concerned if it were allowed to be characterised as something that was being brought in as a separate debate, which is whether Scotland should stay in the United Kingdom or not. I think that is a different issue.

Q288 Chair: Do you think people are clear or will be clear about what a no vote means? Does a no vote mean status quo or does a no vote mean something else, other powers, devo-max? Will the electors know that by the time they get to vote?

Johann Lamont: Some people regard devo-max as getting you to a point where you are virtually a separate country anyway, and some people try to characterise devo-max as the middle ground. It is not the middle ground; it is one particular version of a possibility of being inside the United Kingdom. What I said is we should test it, not against how do I think it has to be a crisis and that planning ahead is not one of the greatest assets of the civil service in Whitehall. In a way, we are trying to pre-empt a bit of that and say, “Don’t wait until the die is cast one way or another, let’s examine some of the options now”. If people know a bit more about the options—I think you just caught the end of the conversation we had with Ruth—if there are particular outcomes, they have particular impacts on lots of people. A yes vote to independence would have a set of impacts, a no vote would have a set of impacts. We played through some scenarios with Ruth about let’s say, for example, there is a yes to independence vote and then a matter of 16 or 17 months later a Labour Administration comes to power in the Scottish Parliament; that might produce some interesting impacts.

Johann Lamont: Except I would be explicit in saying the reason I want a single question in the referendum—I have just said Alex Salmond has the mandate to ask the question and the people of Scotland have the right to answer that question and the Labour Party of Scotland will deal with the consequences of where that decision is. It is really important that I think that has been this debate around the questions and the safeguards around the way in which the referendum is conducted. That result has to have authority. Regardless of what the result is, it has to have authority. The last thing we need is for it to end up in court to be challenged, that people feel that somehow they were done down in a way and it loses consent. I am not quite sure what you would see. If the people of Scotland want to be independent they will then have the authority to negotiate for separation and our Labour Government took that responsibility too. I think that is a separate issue.

I think that the focus of the convention, as you describe it, has to be about good government. Whitehall has not been very nice to people in the East End of London in terms of the advantages of capacity to be responsive. It is not a geographical thing, it is a mindset thing about where power is. What devolution said was you can take power down from there and the challenge is the uneven way in which that has happened in parts of England. You will know that better than I do. But I think that debate is about people who want to make the United Kingdom work. Ultimately, Scotland will decide what it is going to do. Whatever is the structure of the United Kingdom thereafter, or as we think about it now, it is about how to make it better. What are the definitions of making it better? What do I think? Constitutions are arid and dull things, but they are supposed to be an expression of priorities and rights and entitlements and responsibilities. I think that is a much more interesting debate, frankly; some of the corners would inch
and have some shape of what local government itself says. That is where we have got to in our own thinking.

Do I think this debate goes beyond Scotland? Yes, of course it does. What are the different options? Those of us who want devolution to work recognise it will change over time, and we will be clear again to answer the question how best to serve the people of Scotland. It is not a human shield against nationalism. It is not a means of taking on nationalism, “If you give them a few more powers they will just stop”. That is not what motivates people. If that is their view, they want to leave the United Kingdom, they want Scotland to be an independent country. There is not any point in having a debate around powers in order to deal with that argument. You have to deal with that argument. Our work on the devolution commission is about strengthening the United Kingdom and it is about devolution for the Labour Party.

Q289 Fabian Hamilton: The other hypothetical situation that Graham outlined earlier—I do not know if you were in the room, Johann—was the referendum is lost for independence but the SNP—I would say God forbid, I am a Labour MP—gets re-elected as the Scottish Government. Where do they go from there and is that possible even? Do you think if the independence referendum is lost, and lost decisively, there is any chance that the SNP will come back into power?

Johann Lamont: Of course there is the chance of it. That is the way of politics and—

Q290 Fabian Hamilton: What is their purpose?

Johann Lamont: I presume they would draw their views from other nationalist parties across the world. I do not pretend to know but my sense is that the nationalists in Wales do not advocate full independence; I might be wrong. The challenge politically is for the Labour Party. My argument is about the constitutional question. It is a different question, what would you do if you were in power? You would have the opportunity to change people’s lives. You can’t take them out of that equation; you just have to win politically. To win politically you could make that difference. My contention to the SNP now is they had an overwhelming victory in 2011 and argued that it was on competence and have spent every moment since talking about independence, talked about the hard question of independence but asserting that there is this wonderful world somewhere where the big, tough things that happen in the rest of the world do not happen. The answer to everything is independence. Yes, there is an issue about the constitution. My grave concern is that Scotland is on pause while we await the referendum because we do not want anything difficult to come in the face of that. But your challenge, if you ask me, is just a straightforward political challenge. How do you deal politically with people—this is more about, from my perspective, how we rebuild the trust of people of Scotland in us, that we are serious about them, that we are serious about the Scottish Parliament and that we are thinking through properly how to address their concerns in these tough times. I can’t make the SNP go away but we can certainly win the political argument. It is a curiosity of the last election where they fought it on straightforward political things and now, bizarrely, they spend a lot of time on the independence referendum without, curiously, having seemed to have thought through anything around how the currency would work, for example. It is quite an interesting—

Q291 Fabian Hamilton: Yes, there are a lot of questions about the head of state and so on. Obviously, if the referendum is lost then, to a certain extent, you have won the political argument, not necessarily the Labour Party but the coalition against independence.

Johann Lamont: We have one political argument that says that Scotland can stand strong inside the United Kingdom, that it is a partnership. It is not one of a hierarchy where Scotland is getting kicked about. We will have won that argument. There is a continuing argument around what would your focus be if you were leading Scotland, and to me that just goes back to straightforward politics.

Q292 Fabian Hamilton: Can I come back to the constitutional convention idea. If there was a constitutional convention, who decides the terms of reference?

Johann Lamont: That would be one of your first challenges. That is the hard thing about all of this.

Fabian Hamilton: That is why I was asking you. Exactly, yes.

Johann Lamont: Again to come back to the Scottish Constitutional Convention, my recollection was you had to get people to sit down and build a consensus about what the terms of reference were. People accepted that. They then said they had the authority to engage with it and then that authority went more broadly. But that is the task. The task is building consensus. Somebody has to sit down and write it down. My recollection is that at the time there would have been organisations and groups who were arguing for a convention beyond a political party, people saying, “This is what we think it would look like, this is what we think the terms of reference would be, this would be an interesting thing to try to do”, and developed the political argument for having the convention, and then created the standards that people were obliged to take seriously of how we get terms of reference that people can agree to.
Q293 Fabian Hamilton: Once the convention decides what it wants to do and makes a recommendation, does there have to be a referendum? Is that the only way that you can get proper approval? Johann Lamont: I am still in the place where I don’t suppose I have in my head what it will be you are going to come up with. What would you be asking people to think about? To what extent it would affect everybody, bearing in mind that when Scotland had devolution, it was the people in Scotland who voted on it? If it were only about dealing with what is happening in England—all these issues are issues to explore. People make a decision on whether they need a referendum on the basis of the significance of the recommendation and the impact it will have. You would not rule out anything. You would need to wait and see what happened.

Q294 Fabian Hamilton: It depends entirely on the recommendations and what they actually say? Johann Lamont: There are different kinds of legitimacy. Is it so significant that it goes beyond just the fact that you have built this convention or is there something contentious here? If there is something contentious coming out of the convention, they would be curious and they would be interested in what it was, but it is about how you would go. Would you take it completely out of the political sphere where you then have straightforward votes and you reach a political decision whether you would go for a referendum or not? If that is what you are going to do, that is a decision of politicians. If it is something more than that, then that body would almost shape the political debate in a way that you would be able to judge whether it needed a referendum or not. It is true that, in terms of the Scottish Parliament’s creation, we won the political argument, the political parties saying, “Adopt it” and Labour delivered it as soon as they came in. But that is because they saw that was supported. I should have referred back to the question you asked earlier about what is the status quo. I think it is quite important to say, first of all, Scottish devolution has already changed in how proposals are coming through, but we cannot allow ourselves to put a false argument. It is either what we have now or what we had, against something really exciting but completely different. It is recognised there is a creativity among people in favour of staying in the United Kingdom as well, that tests what the defined start would be, but it is not simple—people will say, “Well, how can you be sure?” and that is about political will and it is about the way in which you respond to political concerns. Devolution emerged out of a political consensus and further change in the devolution settlement will reflect that, and that is one of the things that we have said in our commission.

Q295 Chair: Johann, I think we have come to the end. Thank you so much for your time.
Johann Lamont: Thank you very much.
Chair: It was really good of you to come over.
Johann Lamont: Enjoy the rest of your visit. When are you finishing?
Chair: I think we have a couple of people looking for a tour around the Parliament.
Johann Lamont: Are you finished now?
Chair: I think we have finished now. We have met all the leaders of the political parties. Nicola Sturgeon I met with informally last night, and we have also had a couple of academic witnesses as well.
Johann Lamont: Where next for you?
Chair: We have been to Cardiff, we have seen Carwyn and all the other leaders, and probably Northern Ireland. Our problem is who do we speak to in England.
Fabian Hamilton: Yes, that is the big problem.
Johann Lamont: I wouldn’t dare to tell you.
Chair: We are open to suggestions because it is not immediately evident, but we will definitely do it. Johann, thank you so much.
Thursday 18 October 2012

Members present:
Mr Graham Allen (Chair)
Mr Christopher Chope
Sheila Gilmore
Fabian Hamilton
Simon Hart
Tristram Hunt
Mrs Eleanor Laing
Stephen Williams

Examination of Witness

Witnesses: Lord Maclennan of Rogart, Co-Chair of the Liberal Democrat Parliamentary Party Committee, gave evidence.

Q296 Chair: Good morning. I saw you performing in the House of Lords, Bob, leading your debate, so you are well warmed up for today’s session. Welcome. Would you like to say a few words before we ask you questions?

Lord Maclennan of Rogart: First of all, I think this Committee has taken a most important step in promoting a discussion about a nationwide constitutional convention because my view is that piecemeal reform is showing no signs of leading to the sort of changes that might be desirable, and, furthermore, it is a matter for you to look at these issues in the round because change in one part can have unexpected consequences in another part of the constitution. So I think this is a most valuable study.

Q297 Mrs Laing: I think the Committee all agree that the piecemeal approach is a fact and given the drawbacks to it that you have just outlined—and have previously mentioned in other fora—do you consider there is a case for establishing a constitutional convention for the UK as a whole in advance of the referendum that is going to take place in Scotland in 2014?

Lord Maclennan of Rogart: Yes, I do. I strongly support that notion because I believe that it is important that the Scots, in casting their votes in the referendum, are not persuaded that there is nothing between separation and the status quo. They need to be clear that serious thought is being given to alternatives. To me, that is highly desirable, and I think that having a discussion about alternatives as a back drop to the referendum would be very valuable.

Q298 Mrs Laing: Thank you for that. Taking that forward and given the piecemeal reform to which you referred and that this Committee has been looking at, do you consider that there is a need for a convention to clarify the way in which our unwritten constitution has evolved and developed over the last 15 years of piecemeal changes?

Lord Maclennan of Rogart: We have lived with an unwritten constitution for a long time. Where there is legal dubiety it can usually be resolved by the courts. I think the time has come to recognise that we need equitable treatment of all the nations of the United Kingdom but that the English question is very important. To answer your question more specifically, yes I think it would make sense to try to rationalise and relate the different changes that have been made.

Decentralisation has come and gone; localisation is in a bit of a mess. We need to do this as soon as possible because it will take a long time. I also think that politicians must play their part in this, but if the public is to be convinced and to move towards a consensus on the whole, it would be highly desirable for them to play a part and to look at what has been done, and where there is a consensus that it is not right, then to move on.

Q299 Mrs Laing: Would you draw a distinction between the process that was known as the constitutional convention in Scotland in the late 80s and early 90s—in which I know you are well versed because you lived through Scottish politics in that time, as did some of us here—and the kind of constitutional convention that might now look at the development of the unwritten constitution?

Lord Maclennan of Rogart: Yes, I would draw a difference. Canon Kenyon Wright is giving evidence later and he will perhaps speak with more authority on this, but I think the Scottish convention was most clearly directed towards the establishment of a Scottish Parliament. We have a much wider agenda for the United Kingdom constitution. We have to consider how to ensure that the best, or at least the possibility of the best, applies across the board to all citizens. It seems to me that some of the changes conform with a modern constitution, such as the Constitution Reform Act 2005, which separated legal decision makers from legislators. That seems to me to be a modern move. We need to bring it all into the spectrum of discussion. It is unsatisfactory—and this is something we consider in other fora—that our constitutional law is not clearly distinguished from other law, so that we have no procedures for amendment which are inherent in making those changes. We sometimes have debates in Committee and sometimes in a Committee of the whole House, but it seems to me that that decision is not taken with an eye to any objective criteria. It is worth considering whether, if we get it right, we want stability that would perhaps make it necessary to have rather larger majorities for a constitutional change, for example.

Q300 Mrs Laing: This is a question that the Committee has been exploring and various witnesses have helped us with. Do you consider there ought to be a laid-down, agreed mechanism for distinguishing...
can you honestly imagine in terms of the hierarchy of I think it has to be that is very helpful. Thank you very would not be able to square some of the circles, but I academic literature that suggests that you simply within the competing parts. There is certainly some Union, it strikes me as far more of a zero sum game corporate consensus about elements of it. Within the modern Union? The difference with the Scottish it a credible process within the parameters of the Q305 Tristram Hunt: Lord Maclennan of Rogart: It is one way of ensuring that there is closer to a consensus in the country. To me, it is extremely important that, in terms of constitutional matters, people should feel that they own this, that it is theirs and take pride in their constitutional settlement, as is the case in some other countries.

Q302 Mrs Laing: That is a salient point that goes to the very heart of what we have been talking about, so I am merely asking this again for the sake of emphasis to get it on the record. You consider that for constitutional matters—rather than simply one side having so many votes and the other side having fewer votes, therefore this is the law that is passed—there should be a mechanism, even within Parliament itself, to try to reach more of a consensus so that most people will go along with it and feel pride in the new settlement?

Lord Maclennan of Rogart: Yes, I agree with that completely.

Mrs Laing: That is very helpful. Thank you very much.

Q303 Tristram Hunt: Is the end point a written text or document, which would then have to be subscribed to by the different assemblies and parliaments?

Lord Maclennan of Rogart: That would be an end point quite far down the track I suspect, but nonetheless I think a desirable one.

Q304 Tristram Hunt: But even if the process is part of the end point in itself, that would be the finality to be agreed via a referendum, for example.

Lord Maclennan of Rogart: Yes. The referendum is a separate question, but yes perhaps.

Q305 Tristram Hunt: In a sense the question is, is it a credible process within the parameters of the modern Union? The difference with the Scottish convention was that there seemed to be a degree of corporate consensus about elements of it. Within the Union, it strikes me as far more of a zero sum game within the competing parts. There is certainly some academic literature that suggests that you simply would not be able to square some of the circles, but I suppose the answer is, if we had enough time, you would simply get around that problem.

Lord Maclennan of Rogart: I think that it is desirable to try to get around that problem. I think there is far more interest now in England in the shape of our constitution. There is a great deal of interest and discussion about how we relate to the European Union, and how we should relate, as well as about why the Scots are getting so much more out of the Barnett formula, and could we not find a better way of doing it. All those big issues do increasingly engage the public. Consequently, I think that the approach to a constitutional convention would be very different from the referendum on AV, for example, which our own press barely noticed until about two weeks before the referendum. Then they started to speculate about what the effects might be one way or another, and the public simply did not get engaged. I think that we do want to engage the public. In concluding the debate we had last week in the House of Lords, Lord Wallace of Tankerness drew a distinction between the possibility of a government or an executive setting the convention up and the convention being set up by the public. I do not see any reason in principle why Parliament should not come to this conclusion. As the representatives of the public it would be difficult to shop around the various pressure groups and non-governmental organisations and say “Would you like to do something?” It would tend to be seen as less of a national deliberation, or national conversation if that were the way it was approached.

Q306 Tristram Hunt: In terms of the hierarchy of powers, what is the cut-off point in terms of local government, national government, the interrelationship with national government and the interrelationship with Europe? I know it is an iterative process when it comes to the above, but where would your starting point be in terms of the parameters for discussion?

Lord Maclennan of Rogart: I think it has to be recognised, and should be set out, that different functions are exercised more effectively and with greater citizens’ input at different levels. We are a democracy and we want to be part of a democratic process at every level and we want to strengthen that at every level, which I think does mean that we should also be considering relationships with the European Union. It obviously cannot be decided by this country how the European Union’s rules might be changed, but at least we should articulate what we saw as desirable, and my view is it is highly undesirable to do this in a conflicted debate. It is something that needs to emerge from the discussions of principle about effectiveness, accountability and also representativeness.

Q307 Tristram Hunt: Can you honestly imagine Nigel Farage, for example, and the UK Independence Party joining this conversation in a rational and considered manner? The fact is that they represent 11% of voters, on a good day. Their not being part of the conversation would lead to suggestions of invalidation, yet the political culture is such that you would have exactly that type of composite approach,
which I suggest would be different in form from the Scottish tradition.  

**Lord Maclennan of Rogart:** No, I cannot see why any political party would want to absent itself from such a discussion, but if for some strange reason they did, their utterances about the issues have been made public and could be taken into account in the discussions. I should have thought they would prefer to be able to put their case and respond to the dialogue. They might see it as a way of influencing people. I think it is unpredictable.

**Q308 Mr Chope:** I must admit to being somewhat confused about all this. Are you saying that you think that the British people should be involved in having a say in our future relationship with Europe, and are therefore supportive of a referendum on our future relationship with the European Union? Is that what you are saying?

**Lord Maclennan of Rogart:** That is a subsequent question to the issue of whether or not the convention would devise some changes in our constitutional arrangements. We cannot change the constitutional arrangements without agreement with the other 26 partners in the European Union. Consequently, I cannot see that the convention would be able to do more than point the way. It seems to me that it could not effectively be an issue decided by a referendum unless and until the Union has either accepted or rejected what is proposed.

**Q309 Mr Chope:** So you think it is not yet time for an EU referendum? Applying that argument, if you are saying that we could not change our relationship with Europe without their all agreeing, my understanding is that we are proposing to give the Scots a vote in a referendum on changing their relationship with England without the English electorate having a say. Is that consistent with your previous proposition?

**Lord Maclennan of Rogart:** They are very different circumstances. I am not happy about the issue of separation only being considered in Scotland, but that is a fait accompli. I think it is unfortunate that we cannot learn what Scots not resident in Scotland think, but also what the English, the Welsh and so on think. I do not think it is parallel with the European Union. The Scots have 300 plus years and have certain differences, and really this is an argument about whether they are going to have more or less. We have to take account of people’s thinking. I am sorry, I am not being very clear on this issue, but I just do not see the parallels between the Scottish referendum and a referendum outside the United Kingdom about our relationship.

**Q310 Mr Chope:** Surely, the whole essence of a constitutional convention for the United Kingdom will be based around trying to find consensus involving all players? We are already allowing the Scots to go and do their own thing in their own playground and come up with whatever conclusions they want to, which is completely at odds with the principle that you say you support of a UK constitutional convention. A micro version of a constitution or convention might be argued to be the McKay Commission—your party in Parliament delayed setting up that commission, arguing about the terms of reference and all the rest of it. That has been effectively kicked into the long grass. Who would you see from England being represented on this convention?

**Lord Maclennan of Rogart:** There could be some parallels with the Scottish convention created in 1995. I would hope that politicians would participate, but I would not suggest that they would have to participate. Interest groups should be invited to participate, and I think that we want representation of the wider public. That raises a question that has been discussed by some academics about whether there should be a vote for representatives to serve on this. It is not something that I have a firm view on, but I certainly want to see consensus. I would not have wanted to see a referendum on Scottish independence, I have to say; but that was a consequence of the victory of the SNP in the Scottish parliamentary elections. Although I think this is a matter for determination by the Westminster Parliament, we have to listen to that view. It would have been to provoke a complete clash and it would have been an irrational debate if we had not accepted that. I think referenda are best for putting a seal on what has been proposed, and not as a way of groping towards a settlement.

**Q311 Mr Chope:** You just said you think you could envisage a convention not really having any political ownership, with political parties not necessarily being represented on it and academics and citizens of good will being on there instead. Surely without political ownership from the outset it is going to be a monumental white elephant, isn’t it?

**Lord Maclennan of Rogart:** Political ownership will come from its initiation, as I see it. If Parliament initiates it, then Parliament will have ownership, and those who take the view they want to participate and have their voices heard should be empowered to do so.

**Q312 Mr Chope:** What do you think is going to happen with the McKay Commission and how do you think any recommendations should be implemented?

**Lord Maclennan of Rogart:** I think it is premature, and I take the view that the West Lothian question is one of the questions that should be considered by a convention.

**Q313 Mr Chope:** It seems to me that that is kicking it into the very long grass, is it not?

**Lord Maclennan of Rogart:** There are very real possibilities and alternative solutions to that problem. You could have an English Parliament, in which case all the people who attend the Westminster Parliament would be free to act equally and the West Lothian question would not arise, or we could have a series of subordinate, regional parliaments or we could have some kind of signification that legislation before the Westminster Parliament is not going to affect Scotland and consequently the Scots would have no voice in it. There are very few measures about which that could honestly be said to be the case. There is a ripple effect from a lot of legislation, which on the face of it is
mostly about England and Wales. I see the point you are making about the McKay Commission to be very much integral to the convention’s worth. It would be good if McKay could feed their views into the convention; similarly what has been going on in Wales could be fed in as well.

Chair: Thank you very much for coming along today. We will obviously circulate the report of your debate this week in the House of Lords, but if there is anything else you would like to add in writing at any point as proceedings develop, please feel free.

Lord Maclellan of Rogart: Thank you very much.

Examination of Witness

Witness: Canon Kenyon Wright, Former Executive Convention, gave evidence.

Q314 Chair: Welcome. It is very nice to see you. Would you like to say a few words before we start?
Canon Wright: If you permit, I would like to do so. First of all, it is a great joy to be coming after Lord Maclellan, with whom of course I have worked very closely on the constitutional convention. What I want to do in a minute or two is to outline some of the Scottish experience and suggest how relevant that might be to the subject of this Committee’s question. I think we have to answer, and you would have to answer, five questions. The answers might be quite different but the questions I think are the same. The questions are: first, why do we need/want a convention; what is the problem? Secondly, what is it for—clear goals? Thirdly, who does it consist of? Fourthly, how does it work? And, fifthly, where is it going?

With these five I just want to say a sentence or two about each. Why? For us it was easy. In the 1980s in Scotland there was a deep and almost universally resonated problem, which was the perception that policy after policy was being imposed on Scotland against the manifest will of the great majority of Scots’ elected representative. That is a fact; it is not a matter of debate, things were being imposed. The result of that was threefold. First, there was a resurgence of Scottish national identity, not necountionary but in a sense that we are a nation and that we have an identity as a nation. One particular academic said that if you come up to Edinburgh you soon become aware of what he called “a world of dense Scottishness”. I know that you often think that Scots are a bit dense anyway, but I know what he meant.
The second point was the realisation that the real problem was not political, but constitutional. In other words, the issue was not who happened to govern, but how we were governed. The issue was not policy but power. Therefore the convention was formed as a constitutional convention, but out of that area. I am on record as having called Mrs Thatcher the mother of the Scottish Parliament, in the sense that I have just outlined. I did that for a long time until the press started calling me the father of the Scottish Parliament. I did not quite like the implication.
The third was the rediscovery of this principle and the formation of the convention based on the claim of right for Scotland. I do not know how many people know what the claim of right for Scotland is. It was the opening statement of the convention, which said, “We acknowledge the Sovereign right of the Scottish people to determine the form of government best suited to their needs.” Everybody, including Lord Maclellan, lined up to sign that document in 1989. It is crucial because it was the constitutional starting point. We did not begin with a political goal; we began with a constitutional goal. Is there in the UK the same felt problem? I came across a couple of quotations I want to share with you. The first is from somebody called David Cameron, who was then leader of the Opposition in 2009. He said, “We must not let ourselves believe that a bit of technocratic tinkering here, a bit of constitutional consultatation there, will do the trick. I believe there is only one way out of this national crisis we face: we need a massive, sweeping, radical redistribution of power. Through decentralisation, transparency and accountability we must take power away from the political elite and hand it to the man and woman in the street”. I hope he has not changed his mind, but that is what he said. Chris Patten, now Lord Patten, wrote, “We have an electoral system riddled with unfairness; a bicameral legislative structure that the Government reorganises at regular intervals on the back of an envelope; courts whose judges are attacked by the executive because it does not care for the way they seek to protect our liberties; local government gutted by manic centralism; an executive that displays under both Labour and Conservative leadership the attributes of what Lord Hailsham memorably called an ‘elective dictatorship’”. My point is quite simple, that there is a problem here, and that is how it is perceived from the perspective of those I have cited.

I will deal very quickly with the other questions. I will not take so long on them. As for “What for?”, we had a clear goal in Scotland. The goal of the convention was clear, to agree a scheme for a Scottish Parliament and to secure the approval of the Scottish people for that scheme. That was a simple goal. Obviously the goal of any convention—what it is actually for—in this situation in the UK would be much more complex and I would hesitate to try to define it very clearly.

Thirdly, who does it consist of? For us, it consisted of a wide representation of Scottish society. It went way beyond politics. We adopted the slogan from the start, “Politics is too important to be left to politicians alone”. Therefore the Scottish convention had the broadest cross-section of Scottish civil society, trade unions, churches and civil groupings of all kinds. That was its composition. Whether that would apply here in the UK situation, I do not know.

My fourth question was, “How?” How we worked was by consensus. I had to chair the Executive for six long years before we produced our scheme.
Consensus means you have to have time to achieve it, but it took us six years. Again and again, to be quite frank with you, I would have loved to have been in a situation where at the end of a meeting I could say “Right, let’s take a vote now”. We couldn’t. We could only say “Go away and sort this one out”. There were times when that was very difficult, but it was done. Because it was done, we have a new kind of politics in Scotland, in my view. Consensus is important. Again, how that applies to your situation is, can it be done in the UK?

Finally, where to? We always saw devolution as a process, not an event. But where is it going? It is obviously going either to independence or to the rejection of independence. At the moment I am engaged in conversation with Alex Salmond about, first of all, the commitment of Scotland—this is me speaking, not him; this is what I am trying to argue with him—that there should be a clear commitment to a written constitution for Scotland if Scotland is independent, and that even before, in the next two years, by widespread discussion we work out what would be the principles of such a written constitution. At the same time with the “No” campaign, we would want to challenge the No campaign to come out before the next election, which would mean that they have to consider, I think, serious changes, changes in the enormous powers of patronage exercised by the Prime Minister; changes in the ending of the Royal Prerogatives and the move towards a truly constitutional monarchy; changes in the development of—and which will be decided by many—a federal or quasi-federal system that recognises alternative sources of secure power, including Scotland's claim to constitutional sovereignty, in the establishment, probably, of an English parliament and government to take its place alongside the parliaments of the other three nations, all with similar defined powers and with fair, proportional electoral systems; the transformation of the UK Parliament into the federal legislature and the Executive; and the development ultimately of a written constitution to guarantee rights, to guarantee and establish the nature and limitations of power and to define relationships between the Parliaments of the UK. In other words, to move towards a participative rather than a representative democracy.

I am not naïve enough to believe that these ideas will be greeted with wild enthusiasm, nevertheless I have to put them because I do believe they are the only way towards that massive, sweeping, radical redistribution of power, of which Cameron spoke, and which could renew our failing democracy. Thank you.

Q315 Mrs Laing: It is difficult to take on board the concept that the constitutional convention which you headed up did not have a political goal.

Canon Wright: It had a political goal, but it did not begin with a political goal. It began with a constitutional affirmation, the claim of right. The political goal was to create—I said it—or to agree a scheme for a Scottish Parliament.

Q316 Mrs Laing: There is a point that you have made, which I believe I understand, but I would like to give you the opportunity to elaborate on because it would be very helpful. I believe I understand it because I am a Scots lawyer and I have practised in Edinburgh. I have a degree from Edinburgh University studying Scots law. Therefore, my concept of the law and legal systems comes from the Scottish legal tradition.

Canon Wright: Indeed.

Mrs Laing: As a Westminster MP I have come to realise that the basis of English law and constitutional development is not precisely the same. It is a matter that you have alluded to before. In your evidence to us you mentioned the fundamental conflict between the Scottish and the English constitutional understanding and traditions. We could do with a bit of education on that. Would you like to expand?

Canon Wright: Inevitably this is a huge and thorny area and it is not one on which I can make an absolute and definitive statement. My understanding is quite clear. I begin with a quotation, which I think is in the document you are referring to. It is a quotation from Lord President Cooper, who, as many would agree, was the greatest lawyer of the last century, in which he said that there is in Scottish constitutional law nothing comparable to the absolute sovereignty of the Crown in Parliament. You have that quotation. I do not have it in front of me.

Q317 Mrs Laing: I do not have it in front of me, but I am very familiar with it, and I accept that Lord President Cooper said that. I agree with the point you make.

Canon Wright: Anyway, you take the point. It is quite interesting that it was the churches that proposed that we begin with the claim of right. The claim of right was a clear affirmation of the sovereignty of the Scottish people in constitutional matters, the sovereign right of the people to determine the form of government best suited to their needs. That was the wording. That is what everybody signed. How many of those who signed it understood what they were signing? I am not sure.

Q318 Mrs Laing: I know they should all have had law degrees from Edinburgh University. I am right with you there.

Canon Wright: One Labour MP refused to sign, Tam Dalyell. All the others signed. The Conservatives obviously took no part in the convention, neither did the SNP, but nevertheless the vast majority of Scotland’s then MPs lined up to sign, as did all these
representatives of civil society. They ought to have known, and this is an important point, because here is what the General Assembly of the Church of Scotland said in 1989 on the occasion of its decision to be part of the convention. They said this, “It is not possible to resolve the question of the democratic control of Scottish affairs apart from a fundamental shift in our constitutional thinking away from the notion of the unlimited or absolute sovereignty of the British Parliament towards the historic Scottish and Reformed constitutional principle of limited or relative sovereignty. Any settlement must be built upon philosophical foundations that are more coherent and credible than the notions which underpin the existing British constitution. The English constitutional tradition of state absolutism has always been unacceptable in theory. It is now intolerable in practice”.

Q319 Mrs Laing: Do you think they were forced to do that by a political difference? You did mention earlier the phrase, Margaret Thatcher was the mother of the Scottish Parliament. Was it in fact a political difference rather than a moral and constitutional difference?

Canon Wright: I thought I had already made that clear. The political difference was the trigger that made Scots understand their nationhood to a new degree, I hope you would agree with that.

Mrs Laing: I do agree with that.

Canon Wright: Above all it was the political situation, I agree, that compelled Scotland to realise that their problem was not ultimately political, it was not ultimately who governed but how we were governed. It was not ultimately about policies, bad or good, but about power and how power was exercised. In other words, what Mrs Thatcher was able to do, what Tony Blair was able to do, was to use—or misuse—as we would say in Scotland—the enormous powers given by the British system to our Prime Minister in order to impose on Scotland. It is when that happened, I agree. What I am saying is it was a political trigger, but its result was to throw the Scots back onto a constitutional principle.

Q320 Mrs Laing: Indeed, that is helpful. Just one further point. This is very helpful. You have said, in talking about the claim of right, this affirmed the sovereign right of the Scottish people to determine the form of government best suited to their needs. In considering that, can the Scots therefore consider only their own needs in isolation or do they have to consider their needs in a wider context?

Canon Wright: I would hope that they had. Let me throw a question back to you. What would be the machinery for doing that? How could a referendum—

Mrs Laing: I do not think I am allowed to answer questions, Canon Wright.

Canon Wright: I am not allowed to ask questions.

Mrs Laing: In another forum I think you and I will have to have a discussion about this.

Canon Wright: When it comes to how they will be governed, there is an international principle that every nation has a right to self-determination, so the question becomes, is Scotland a nation? You try to suggest to anybody in Scotland that it is not and see what response you get.

Q321 Mrs Laing: I would be the first to rise up and insist on the nationhood of Scotland and indeed on the sovereignty of Scottish people. But would you say that they can by means of a referendum, or some kind of consultation process, decide what is best—in your words—suited to their needs, to the needs of people of Scotland, and that is not necessarily Scotland standing alone, but as a nation in a larger context?

Canon Wright: Absolutely. That is why I am so strongly insistent on discussing with both the Yes campaign and with the No campaign a much clearer picture of what Scotland would look like. That picture—if we get, for example, principles of a written constitution—will include the kind of things you are talking about. This is not an inward-looking Scotland that we are talking about; this is a Scotland that wants to look out on the world. This is a Scotland that would in my view be a lot more European than, frankly, the UK is at the moment. Equally, on the No side, the challenge for those who want to say no in the referendum is that they would actually have to develop a clear understanding, a clear position on what they would then do. We are being told at the moment, get this vote over and then we will give you more devolution if you say no. We heard that once before from Alec Douglas-Home, but I won’t go into that. I do not think Scots will be taken in by that one.

On the other hand, if the No campaign are willing to say “Here is a clear picture of what we will do, what Scotland will be like as a nation if you say no”, I am sure that the Yes campaign will be just as clear in saying what Scotland will be like if there is independence. If that happens, then of course Scotland would vote with intelligence, with knowledge.

Mrs Laing: Indeed.

Chair: If colleagues could stick to the need for a constitutional convention, we will make a little bit more progress because we have other witnesses coming in.

Q322 Sheila Gilmore: As well as the political imperatives for getting a constitutional convention under way at that time, there was also surely a framework that made a lot of that both seem sensible and possible because Scotland already had its own legal system substantially; I suppose it had its own educational system—I am not always entirely convinced of that—and we had an administration that was already quite separate in the Scottish Office, and so on. That was a framework on which to put the politics, that was another imperative for a Scottish constitution. Do the same things exist, for example, for England in your view?

Canon Wright: Yes, you are absolutely right. Of course Scotland had all these things, some of them guaranteed by the Treaty of Union in 1707, including the churches’ role and so on. That is absolutely true. I think it was Donald Dewar who said that Scotland is the only nation which has its own legal system but no legislature to adapt and amend that system, except of
course for the British Parliament, but none in Scotland. So, yes, that awareness of Scotland’s distinctive institutions and character was certainly part of that and made it easier, much easier.

Q323 Sheila Gilmore: If that is a driver, can you see any similar driver in the broader UK situation?
Canon Wright: I know I am not allowed to ask you questions, but I would have said, “Can you?” I will refrain from saying any such thing. It is much more difficult, because if we are talking about one for the UK, we are not talking about one for England. There is a growing English national identity, not nationalism again necessarily, but there is a sense of growing English national identity. But whether there is a sense of UK national identity I am not at all sure. If it is, it is a secondary one, certainly in Scotland. When Scots are asked are they Scottish, British in which order, the great majority will always say they are Scottish first and British second. I see no problem with that. I am not really answering your question very intelligently because frankly I just do not know the answer.

Q324 Tristram Hunt: In terms of appointees to the convention, what would your advice be on that? How would you structure the participation?
Canon Wright: My hope would be obviously that this would have the widest possible representation from British society, not only from the political institutions. In the Scottish convention we had all the MPs and MEPs, but then Scotland is a different size. If you had all the MPs and MEPs and all the representatives of civic society, you would have a massive convention. I accept that. Nevertheless, we had them. We had all the local government. One representative for every single island and every single regional and local government, as they then were. We had representatives of the trades union, of the churches, of the Federation of Small Businesses, of the Scottish Council for Development and Industry, and so on. I have the whole list here if you want to see it. I have the document. But whether that is attainable in England I do not know. I do not know how you would attain anything like that, but my feeling would be that whatever it is, it would have to be much more representative than simply political. Lord Maclennan suggested to you that you might have a situation where on constitutional matters Parliament did not vote on party lines. That came out; I was listening earlier on. That is a very interesting suggestion. That is the first step towards a written constitution—if you actually made that condition.

Q325 Tristram Hunt: What international examples did you look to prior to your process?
Canon Wright: We certainly looked to other European nations, with regard to the nations—Bavaria and Catalonia.

Q326 Tristram Hunt: Post-fascist nations dealing with devolution?
Canon Wright: Yes, plus we had a look at the Scandinavian countries and how they work, because the thing was they had a different level, more participative democracies, so we did look at the various Scandinavian nations. When I say “we did”, I did not personally do much. I did lead one delegation to the Basque country, which was very interesting. We did look fairly widely, but entirely in Europe.

Q327 Mr Chope: Can I suggest that there is a contradiction at the heart of your evidence? On the one hand you are saying you support a United Kingdom constitutional convention, which obviously the English would participate in. But on the other hand you are saying that in the forthcoming Scottish referendum, that the No campaign—obviously Scots—should spell out what would happen in the event of the No campaign being successful. Surely the future of Scotland, if it remains within the Union after the referendum, is an issue for the whole of the United Kingdom and not just for Scotland. Therefore, you are asking an impossible question of the No campaign to ask them to say what will happen after the referendum if they are successful, when that surely should be a matter under the UK constitution for the whole of the United Kingdom.
Canon Wright: Let me think about this for one second. What was your main point again, sorry?

Q328 Mr Chope: The main point is if the No campaign is successful, and Scotland remains in the Union, then the terms on which it remains in the Union cannot be just for Scotland itself but for the whole of the United Kingdom?
Canon Wright: As a matter of political realism, if the No campaign is simply saying no, just as a concept of independence, if it is simply saying “I know they want us to be separate but it is better to stay together”, then it is going to be at a tremendous disadvantage if the Yes campaign succeeds in putting across a positive and definite picture of what a new democracy would look like—more participative, more open and nearer to a Scottish understanding of community, and so on. So you may or may not be right in the basic point you are making. Earlier on Lord Maclennan was asked whether there ought to be a constitutional convention prior to the referendum. His answer was yes. My answer is no because it will not be clear until after the referendum where Scotland stands. Scotland’s stance then has to become part of the UK discussion—either the stance of an independent Scotland, which would want to re-negotiate terms of relationship of course, or a Scotland that is still under the status quo of the Scottish Parliament.
That it seems to me is the situation. The UK would have to take account of where Scotland stood. I do not see why that should not include the parties who are a part of the No campaign, either jointly if possible or separately if necessary, saying, as they are already saying, “Say no to this and we will give you something better”, which is exactly the words used by Sir Alec Douglas-Home in the past, in the first referendum for Scotland. Psychologically that feeling is there. Together or separately they should say not just “Say no please, Scots, and then we will give you something better”, but say “Say no please Scots, and here is what we will give you”, and “Here is the kind of society we will make Scotland”.

Ev 80  Political and Constitutional Reform Committee: Evidence 18 October 2012 Canon Kenyon Wright
Q329 Mr Chope: Can I interrupt you just for a minute. Surely it is logical with your position that the No campaign should say “If you vote no in this referendum for independence then I will support the establishment of a United Kingdom constitutional convention to look at the relationship between Scotland and the rest of the Union”. That is the furthest that the No campaign could reasonably go, is it not?

Canon Wright: That would be great.

Q330 Mr Chope: You support that as a line to take for the No campaign rather than coming up with some definitive relationship set on the basis—

Canon Wright: I think it could do both. I think it could say yes, we will support the constitutional convention for the UK, but here are some of the changes that we would be willing to make. A constitutional convention for the UK is going to take a long time. Ours took seven years to come from the first claim of right to the actual document we produced spelling out what the Scottish Parliament would look like. A constitutional convention for the UK will take a damn sight longer, because to get consensus—forgive my language, especially with a dog collar—you can see that it would take that much longer. I do not think we can wait for that. I think there has to be an understanding. People have to go to the ballot in Scotland with a clear understanding of what they are being offered on both sides. That is what ought to happen and probably what is going to happen.

Q331 Chair: I think this period in political history is fascinating, but I do not want to go over people’s motives from 1989; what I want to try and do, and I hope the remaining questioners will help me in this, is find out what good advice we could get about whether we need to have a constitutional convention or not. The temptation in having such a star witness who lived through that period is to indulge ourselves and talk about that time rather than what that time can help us with in terms of looking at the constitutional convention.

Canon Wright: With respect I did try to deal with that.

Q332 Chair: I think you tried very hard, and I am asking all my colleagues and yourself to try even harder to help us get to the kernel of how we might do our process, if indeed we want one, as well as it was done in your time, so to speak, in the 1980s.

Canon Wright: Thank you. I look forward immensely to what comes out of this Committee.

Q333 Stephen Williams: I will try to follow your strictures Chairman. I am a historian, so I am quite happy to learn the lessons from the past to make sure we do not make mistakes in the future, and I am wondering how transferable your experience from the 1980s is to what we might do over the next decade. It seems that you had a single objective, a Scottish Parliament, and the convention was a meeting of like-minded people who agreed, at least in principle, on what that objective was. Would it be fair to say it was actually quite an easy task?

Canon Wright: It took us six years, as I have said. I had to chair every Executive meeting, so I can assure you it was no easy task. There is not time, but I could give you example after example when we had to tell the Liberal Democrat leader and the Labour leader in Scotland to go away and knock their heads together and come back with an answer. So it was certainly not easy, but compared to the UK situation, yes, certainly it was very much easier in that we had these starting points. Our answer to the question, “What is the problem?” was clear; the problem was not the immediate political triggers, but the constitutional implications of these. In the case of any UK convention, the starting point is bound to be almost those words of David Cameron’s, the redistribution of power. How can power really be redistributed? How can we define that redistribution? From Scotland’s point of view that redistribution would have to be defined in ways that recognise Scottish autonomous sovereignty in its own area. I know that is an enormous step forward for a political system, which is so different from ours.

Q334 Stephen Williams: This is not a moment for modesty. I knew clergymen might like to be modest, but was your role as Chair absolutely essential to getting a consensual outcome? The fact that you wear your dog collar and were out with politics at that time, was that critical to the success of the Scottish convention? If it was, what sort of person would be needed to chair a UK-wide convention?

Canon Wright: I was asked to chair the Executive jointly by the leaders of the Liberal Democrat and Labour parties in Scotland and by representative of several societies, the trade union movement particularly and so on. The answer to your question is that I do not know. Yes, others have suggested that it was crucial. Certainly, I was appointed in order to be not exactly neutral but non-aligned with either side in the debate politically. Probably that was important in the Scottish situation. Yes, I agree with that.

Q335 Stephen Williams: So you were appointed because you had the trust of the people at the top of this process, if you like; you did not emerge from any other process?

Canon Wright: No, I had already chaired the preparatory group, which, for a year before, from 1988 to 1989 had planned for the convention. On the basis of that they seemed to trust me to do the job from then onwards.

Q336 Stephen Williams: If I can jump right to the end of this process—I do not know if this process ever happens—a document is put forward to the people in a referendum. In the United States if the constitution is amended, the States have to agree to it. If in the UK, let us just say the people of Scotland voted no to this convention proposal and the people of England voted yes, the people of Wales voted yes and the people of Northern Ireland voted no—whatever the combination was—probably it required a simple plurality of the British people, or do you think there needs to be a recognition that different parts of the UK have different priorities?
**Canon Wright:** I think there has to be a recognition that the UK is made up of four nations. It is as simple as that, because those nations have the internationally recognised right to self-determination on how they will be governed. That seems to me to be the position. The only one of the four nations that has no legislature of its own is England. That creates an obvious problem, but it is a problem that—let me put it this way—you are going to have to solve.

Q337 Stephen Williams: So you could have a situation where Northern Ireland would effectively have the final say, maybe?

**Canon Wright:** What you said about America leads me to one point. I am sorry I am taking a lot of time here, but this is an important point. As I said in one of my papers, I strongly argued for a Second Question, which of course has now been ruled out. It is being presented by the press as if Alex Salmond was defeated on this one. Alex never wanted a Second Question, what he said was “We are for independence but if the Scottish people want a Second Question we should at least consider it.” That is what he said. It was quite clear in his documents. I, and many people in civil society, the STUC, the Scottish Council for Voluntary Organisations and many other bodies and civil societies, not the political parties, said there ought to be a Second Question because it disenfranchises many Scots if the only alternative they are given in the referendum—and the greatest opportunity in their lifetime probably—is either independence or the status quo, even if that is spelled out. So I believe there should have been a Second Question, but I strongly argue that it should not be called “devolution” because the very word “devolution” implies, as Enoch Powell said “Power devolved is power retained”. I suggested the words “secure autonomy”. Okay, that has been lost; that is history.

The agreement that was signed a few days ago rules out a Second Question, so we do not have that. I am not pro-independence, let me say that. Despite all I am saying, I would have liked to have seen a renegotiated Union, and that would have meant Scotland and the rest of the United Kingdom of course. I know the “F” word is like a red rag to a bull to many, but if we had moved towards a federal solution that would have required discussion among all. If Scotland had had that choice and had gone for that middle choice, which I think it would have done, then negotiation would have had to have opened up at once as to what that meant politically. I am sorry we never got that.

Q338 Stephen Williams: I am not sure I got a completely clear answer to the question I was asking. My question was, if there is a UK-convention should ratification of that convention be by the people of Britain, rather than constituent parts of the UK? So, as long as there is a plurality across the UK should that be sufficient to ratify the constitution?

**Canon Wright:** Yes.

Q339 Stephen Williams: Even if different parts of the UK vote no?

**Canon Wright:** Yes, subject to the basic constitutional principle of the claim of right that the Scottish people are sovereign in their own affairs. Subject to that, yes.

Q340 Chair: Just a couple of quick ones from me Kenyon if I may. There is going to be, apparently, a government document produced that gives arguments for and against the question on the ballot paper. That is government again. We are Parliament, and in a sense Parliament is a secondary consideration very often in these matters. Wouldn’t Parliament itself helping to create a constitutional convention also be able to get out there the arguments and the evidence we have taken from yourself and others, and would that not actually be a help to make what you termed an intelligent choice when the referendum comes around? Is that not an argument to have a constitutional convention?

**Canon Wright:** I have to ask you what you mean by “get out”. I am sorry to ask you a question.

Q341 Chair: I think you talked about making an intelligent choice when it comes to where you put your cross on the ballot paper in the referendum—making an intelligent choice with full knowledge. Therefore does not a constitutional convention help to get that information out to people so they can make that choice? Is that not a good argument to have a convention meeting before a referendum takes place?

**Canon Wright:** I think from Scotland’s point of view it would rather muddy the waters. There would be no harm in establishing a constitutional convention. It could not possibly be pronouncing on the Scottish situation before 2014, when the referendum takes place. My reply would be the same, subject to recognising that there has to be a clear decision on Scotland now—one way or the other—and a clear decision worked out with the maximum possible information and knowledge of what either would mean for the future of Scotland: yes or no. Provided that is the case, then a convention could begin its work yes. I did say that, but I do not think it could actually take Scotland’s views into consideration until that vote takes place.

Q342 Chair: Understandably you are looking at this from a Scottish point of view, but in essence the Scottish question, the Welsh question and the Northern Irish question now is turned around and we are talking about the English question. That is where we have nations having some devolved power. The only nation in the quartet you mentioned that does not have devolved power is England, so there is the English question: who speaks for England and what structure could bring England up to speed in terms of having a devolved settlement? Do you have any thoughts on that Kenyon?

**Canon Wright:** Just do not know whether there is yet a sufficient political momentum in England. There is clearly a growing English sense of national identity. You do see the St George’s Cross more often, and there seems to me to be that larger sense of English identity. But whether it is yet political, I am not at all sure. I am bombarded by emails from the Campaign for an English Parliament and the political party called...
the English Democrats, whose main argument appears to be that Scotland is unfairly treated and England has to have the same fair treatment that Scotland gets. It seems to be based on that argument rather than on a political campaign. I don’t know the answer to your question, but I think English MPs should be doing just what you have said and making clear that there is an English national identity, which is not nationalism in any narrow sense, which is absolutely different, no more than the Scottish National Party is nationalistic in the narrow sense of being anti anybody else. All MPs in England could make it part of their remit to foster that sense of English identity, which might later lead to political pressure for an English Assembly or Parliament, but that has huge implications.

Q343 Chair: Rather than bombard you with a view about an English Parliament, I could bombard you with 79 consultation responses from local authorities, the LGA and others about independence for English local government, which may be more fruitful perhaps than what you are getting from the English Parliament group. That would be your choice.

Canon Wright: Yes please, do bombard me.

Chair: Kenyon, thank you so much. It has been a real pleasure to have you here this morning and I hope we can hear from you again either in person or in writing if you have further thought.

Canon Wright: Thank you very much.

Chair: Thank you so much.
Thursday 1 November 2012

Members present:
Mr Graham Allen (Chair)
Paul Flynn
Fabian Hamilton
Mr Andrew Turner
Stephen Williams

Examination of Witness

Witness: Dr Robin Wilson, gave evidence.

Q344 Chair: A prison officer has had his life taken. As a side-effect, a number of colleagues whom we were going to see are about to deal with that emergency. The tiny advantage from the Committee’s point of view is that this does give you plenty of time to say whatever you have to say. Did you want to say something to start with, Robin, in terms of making any opening statement, or do you want to dive straight into questions?

Dr Wilson: If I may take a couple of minutes, you will see from my CV that one of my specialist areas of work is in intercultural dialogue. Thanks for asking me to come; I appreciate the opportunity. I wanted to start by saying that you may have noticed outside when you were coming in the huge vainglorious statue of Edward Carson, going back to his role in the home rule crisis 100 years ago. I asked the guy who was working on it, “Are you taking it down?”, and he laughed. To my mind, it should have been taken down a long time ago, since Carson did not believe in devolution for any part of Ireland, and it should have been replaced by John Hewitt, the Ulster poet. I mention Hewitt because he famously said of himself that he was an Ulsterman who was also Irish, he recognised that he lived in a British archipelago and was also European, and to take any one of those aspects from his identity was to demean it.

I think that is relevant to your discussions because, as it happens, I am an honorary fellow of the Constitution Unit in London. I have a PhD from Queen’s in Belfast. I am also a research associate at Trinity College Dublin, and I am an adviser to the Council of Europe. It is relevant to that because, first, the constitutional discussion is usually seen, unsurprisingly, from the Westminster end of the telescope. Seeing it from the Belfast end may have certain attractions in terms of your perspective, because it directs one towards a recognition that we are indeed a devolved UK and any further elision between England and the UK should not be acceptable. Secondly, we have to recognise the fact that Northern Ireland is on the island of Ireland, and any consideration of a constitutional arrangement written down for the whole of the UK has to address that particular issue vis-à-vis Northern Ireland. Certainly, if one wanted to get involvement from both sides of the community—in that awful circumlocution—to take part in a UK constitutional convention that would be essential. It is also critical to look at things in the European context in two senses. One is that there are certain obligations, which one is not always sure are well understood at Westminster, that derive from being a member state of the European Union and the Council of Europe. There are also many comparisons that can fruitfully be drawn or lessons learned from other states in Europe that have had written constitutions and devolved arrangements across them for decades, and formalised relationships to deal with those central-peripheral issues for decades as well. Any constitutional debate on the future of the UK should hardly start de novo. I have probably spoken for more than two minutes.

Chair: That is fascinating and very interesting.

Q345 Mr Turner: Is there a case for establishing a constitutional convention? If so, should that be pretty well immediately?

Dr Wilson: I have no doubt of the case in favour of it for a number of reasons. First, if one accepts the premise that there should be a written constitution for the UK, and I do, I cannot see any other way of reasonably arriving at it that would carry the necessary legitimacy and enjoy the benefits of the wisdom of crowds, unless there was some broad participatory arrangement to deliberate on it. A constitutional convention of some form would do that as an instrument. The parallel question then is: does the UK need a written constitution? There are those who would argue that it has got along very well by muddling through in an English empiricist way all these centuries. I would just refer to the West Lothian question, Lords reform, the electoral system, regional devolution in England and so on, which suggest that muddling through is not solving the problems and we need a more formal approach. As it happens, I have had an interest in this area going back to when I was editor of a magazine here called Fornight, which, before anybody jokes about it, came out once a month. I was a contemporary of Stuart Weir, the editor then of the New Statesman. Stuart was one of the moving spirits behind Charter 88, which made the case for a written constitution. I was also subsequently a director of a think tank called Democratic Dialogue. In that capacity I was involved with IPPR in London, particularly the work of its founding director Maurice Cornforth, who I remember produced a very good conference on a written constitution for the UK, which effectively was a kind of “Home Rule all Round” proposal before devolution took effect. I have always been someone who is interested in this. I am convinced of the case for it, and I think a constitutional commission is the right way to go about it.
As to when it will be established, if we get into the question of the Scottish independence referendum, my own view is that that should never have been allowed to develop into a debate in isolation from the question of wider constitutional reform in the UK, and it should certainly never have been allowed to take the form of the either/or, yes/no question, which is exactly what the German social theorist Ulrich Beck would berate as methodological nationalism, which he thinks is completely outdated. I agree with him, particularly when we know perfectly well from the evidence of successive public attitude surveys in Scotland that, if people were asked about devo max, they prefer that, so we should give them the two options. I am not at all happy that this is going ahead. Ideally, it would not go ahead before a constitutional convention either. However, given that it is now slated to be in 2014 and a constitutional convention would need a lot of time to be established, to process and so on, I can’t see this happening.

Q346 Chair: Could I just intervene in case there is any misunderstanding? In the context we are talking about—a constitutional convention—we are looking at it as a meeting, in a sense, that might make certain proposals about the status of the UK and its constituent parts rather than a precursor to a written constitution.

Dr Wilson: I think, then, that it doesn’t make a lot of sense unless it is a precursor to a written constitution.

Chair: It may be, but I don’t think that is the driving force in a sense. Because of the impetus of what has happened in Scotland, it is making people think about how the constituent parts relate to that. Ultimately, you might be right; it may be getting to that point, but I didn’t want you to be labouring under a misunderstanding that we are looking at Philadelphia rather than something a little less dramatic. I am sorry to interrupt; I just thought I would clarify that.

Q347 Mr Turner: How could a constitutional convention resolve that different issues matter more in different parts of the UK? In other words, do you need the same? I come from an island. What matters to me are decisions taken on the island rather than on the mainland, whereas other people from different parts of the UK may look towards the centre.

Dr Wilson: There are several issues there, Andrew. One is the English question; the second one is asymmetric devolution across the UK. Let me take the English question first. I don’t think you can solve the English question without regional devolution. If for no other reason than Robert Hazell’s long-made point that, if you had an English parliament, you would be talking about a kind of Prussia within Germany in the UK context that would hugely dominate UK governance, and that doesn’t seem to me to be a feasible prospect.

I mentioned the European context in my introductory remarks, partly because the big failing with the north-east referendum was that it was so easily painted as just another layer of government between the citizen and Westminster, when it should have been presented as an opportunity to exercise regional democratic autonomy like every other region in Europe—in almost every state in Europe nowadays.

Q348 Mr Turner: People on the island don’t like the idea of being ruled from the mainland; they would rather be independent while still subject of course to the structure.

Dr Wilson: To come to the “asymmetric” question, I am not for a moment saying that we have to have a kind of gridiron solution for the UK that tears everything up and puts down a new kind of structure that is a federal arrangement, for instance, where everything is exactly the same. By the nature of the evolution of the UK historically, you would have to have some degree of asymmetry in the arrangements and facility to draw down powers, and some capacity for different authorities to exercise powers of general competence, which they might or might not want to utilise, in a context where framework legislation passed at Westminster and local and regional authorities below that level could do various things in that context. That gives you the kind of flexibility you are thinking about rather than enforcing a one-size-fits-all solution on it. That is my suggestion from Northern Ireland. It might not make any sense at all where you are.

Q349 Fabian Hamilton: Dr Wilson, do you think the Good Friday agreement presents any obstacles to Northern Ireland participating in a constitutional convention or implementing the outcome of any constitutional convention for the UK?

Dr Wilson: The big problem with Northern Ireland taking part would simply be to ensure that it was seen as impartial—that it wasn’t a Unionist event. That would necessarily require an understanding of the intermingling of relationships in Northern Ireland between those that are UK-wide and those that are to do with the island of Ireland. That can be handled quite easily. I don’t think it is a huge problem, but without handling that you would undoubtedly have a legitimacy problem in the Catholic community in Northern Ireland. The Good Friday agreement presents some barriers. If you want to spend £60 on my book on the experience of power sharing in Northern Ireland—I think it’s worth twice the price personally—

Q350 Fabian Hamilton: I am sure the House of Commons Library would want to.

Dr Wilson: The arrangements in the Good Friday agreement cannot be seen as set in stone for two reasons. One is that they were quite readily overturned in many regards by the former Prime Minister but one, in order to persuade the DUP to get into government with Sinn Fein in 2007 in ways that made the arrangements much more ethnic than they already were. That has caused huge problems of deadlocking ever since. Secondly, if you talk to officials who were involved in it, they think that the way the parties dealt with the negotiations on devolution for Northern Ireland was unbelievably cavalier. They took one night at Stormont to sort it out. In 1972–73, when they were preparing for the power-sharing executive, which was
Q351 Fabian Hamilton: Surely, whatever your criticisms of the Good Friday agreement—clearly, I will have to read your book—it has worked.

Dr Wilson: No, it didn't bring peace. That is just a common fallacy. The level of violence in Northern Ireland went up after the agreement until 2002, when the institutions were suspended. It went down between 2002 and 2007 when there was direct rule, and it went back up after devolution was restored.

Q352 Fabian Hamilton: That is something most of us are not aware of.

Dr Wilson: The graph in my book shows it. It is quite logical, because under devolution you have much more constitutional uncertainty and polarisation around the two ethnic Northern Ireland parties and, therefore, an atmosphere where violence is likely to increase.

Q353 Fabian Hamilton: Thank you for enlightening us on that. Can I move on slightly to the imminent constitutional convention in the Republic of Ireland? Is what happens in Ireland relevant not just to Northern Ireland but the whole of the UK? Do you think that the imminent convention is likely to have any effect in generating interest in a constitutional convention for the United Kingdom?

Dr Wilson: No. There is a real problem in the British media, including the London-based press and BBC, about the way that Ireland is basically treated as a foreign country and given very little serious attention. Whenever anything happens in Dublin, as a result, it is hardly going to have much of an impact. Having said that, clearly there is a huge sense in the Republic—I do a lot of work in Dublin for the thank tank called TASC—that the social model that was in operation during the years of the so-called Celtic tiger is now bust, so there is a search on for a new model. It is clear in that context that a number of aspects of the constitutional arrangements in the Republic are severely inadequate. However, while there was a sense when the new Government were elected that they would want to bring in a new constitutional broom to address these problems, the convention has been whittled down to a very small number of very discrete topics, such as possibly reducing the voting age by a year or two. It has lost that sense of a wholesale overhaul, which I think a lot of people expected. There is a considerable sense of disappointment about the convention and a lowering of expectations as to what it will actually achieve.

One interesting aspect of it, which is relevant to the UK context, is the way that it will combine elected representatives and citizens’ representatives, and there may well be a case for saying that it would be good to find some combination of those in a UK context, in particular to see whether any distinction emerged in the discussions between what the elected representatives thought and what the citizens thought, without romanticising direct democracy. That might be an interesting combination. We social scientists always like to have methodological triangulation—it’s nothing to do with the Clinton version—because it does tell you whether you are right if you get the same information from two different sources, methodologically or by data, so there is a case in that sense.

But no, I can’t say, I’m afraid, that many people in the Dog and Duck are talking about the Irish constitutional convention.

Q354 Fabian Hamilton: I don’t think I can either. We take a lot of evidence from all sorts of organisations. One organisation that has given verbal and written evidence to us is Unlock Democracy. They told us, “It is essential that within any constitutional convention process there is a means of having debates about the governance of England, as well as the governance of the UK as a whole.” Is there any merit in England having its own constitutional convention, which involves the so-called English question, before the UK-wide convention takes place?

Dr Wilson: No, for the reason I have said. It doesn’t make sense to think about the English question except in the wider context of UK devolution and except in the wider context of European decentralisation; otherwise, you get into awful arguments about flags and God knows what else. I can just imagine it going down all sorts of cul-de-sacs, which would be very unhelpful. There is already a very disturbing inward turn in England away from Europe. I am absolutely appalled, frankly, at the votes in Westminster on the budget. At a time when the euro is in crisis, we desperately need greater fiscal integration just from an economic point of view. That we had the result we had I just find extraordinary, and I worry that’s the trend.

Q355 Chair: Before we get into that—in fact, instead of going into that—I take you back to Fabian’s question. People used to talk about the Scottish question, the Northern Irish question and the Welsh question. To some degree they have been answered by devolved settlements. Therefore, you are left with the English question, because, if it is only England that does not have an effective devolved settlement, it will be run by a centralised state in our western
democracies. In a sense, that is why the Unlock Democracy quote is a good one. The problem that is confronted by Westminster Parliament comes back to an English question and how England is governed. I wonder whether we are all talking about the wrong thing. There will be UK consequences, which might well be very beneficial ones, but, rather than talking about the UK as a whole, shouldn’t we be talking about English devolution, the English question and have a constitutional convention about England rather than the whole of the UK?

Dr Wilson: I don’t mind as long as the discussion is about English devolution rather than an English Parliament, or trying to find a solution to the West Lothian question that involves some in and out at Westminster, which is insoluble. I have no problem with that. All I am saying is that there are these ramifications. For example, if you look at House of Lords reform, the only way you can sort out the issue, if you start from the premise that you want to have a second chamber but you don’t want it to compete with the first, is by having a Bundestag-type structure where you have representation of the regions and nations, albeit with more asymmetry than in Germany.

Q356 Fabian Hamilton: So a federal parliament in England.

Dr Wilson: Yes, with my qualification that it will be a slightly loose and messy federation unlike the German one.

Q357 Chair: That I understand, but the focus in terms of political power is about executive power. In terms of executive power, in the nations of the UK the only nation not with some devolved executive power is England.

Dr Wilson: Yes.

Q358 Chair: So in a sense—I have asked this question in Edinburgh and Cardiff—aren’t we looking to you to help the English with their problem? How would you go about that sensible devolution in England? You said that you have an inclination towards regionalism, but, in political reality, regionalism for the moment is dead. It was tried and failed and what was left of the regions has been dismantled. Is there another way?

Dr Wilson: No, you have got to return to that. It happens in parties. If people make bad mistakes, they are harder to get back from. Bad mistakes were made, so it will be harder.

Q359 Fabian Hamilton: We may return to it, but I come from Yorkshire. Yorkshire is a big county; it is the biggest in England, but it is already split up. The most logical way of having devolved power in England would be city regions—Leeds, Bradford, and Wakefield, for example. There is a clear economic region around some of the big cities: Birmingham and the West Midlands, and Bristol and its surrounding areas. Wouldn’t that be more logical than counties, which are almost defunct?

Dr Wilson: I wasn’t saying “counties”. I have no particular dogmatic position on where you would draw the regional boundaries. My concern is just with the principle. Part of the principle would be that we have this huge problem in the UK economy going back generations, with the dominance of finance capital and therefore the dominance of London over the peripheral regions and small nations. One of the things that have to be done in order to begin to create a better balance in the economy is to ensure that regions has much more effective autonomy to be able to establish what economists would call regional agglomerations rather than just being dependent on London. That goes without saying.

As I said in my introductory remarks, we can also try to educate people in England about the fact that this is so anomalous in the European context. You don’t have to have a situation where you have a very strong sense of local identity in order to have a region. There are very powerful regions in Europe, like Rhône-Alpes. Nobody in Rhône-Alpes; give me a regional assembly”, but certainly everybody in Rhône-Alpes knows it is one of the most prosperous regions in Europe and why having that assembly is important to it. If we can enlarge the debate a little and present it in the context of needing to transform the structure of the UK economy, we may be able to get a more reasoned audience, but it will take time. The whole argument has been so misrepresented and so represented in a very narrowly English context.

Chair: Andrew, did you want to interject?

Mr Turner: Perhaps I am being a bit of an English person. The problem is that in Yorkshire they might be quite happy to have a Leeds-Bradford lump.

Chair: A city region. Sheffield wouldn’t be happy.

Q360 Mr Turner: A city region and Sheffield, although I might feel differently if I lived in, say, Scarborough, but people appear to like much smaller units. Therefore, I am criticising you for not being clear. The difficulty is not accepting that there has to be some devolution, it is how you do it; and, if we do it in Cornwall, whether it is too big or too small, and how that compares with Plymouth, which is doing its best to grow, but Cornwall is just going to see the river and does not wish to go to Cornwall.

Dr Wilson: You are going to have to make the case for multi-level governance. In France you would go from the communes to the regions, to the départements and to the national level—no problem.

Q361 Mr Turner: But you have not told me where the boundaries go; that is the crux of the problem.

Dr Wilson: I am not sufficiently omni-competent or omniscient to do that. In one sense what I have said is that, because of the complex nature of the various societies that make up the UK, it will be characterised by a lot more curvy lines than straight lines. I don’t mind where the lines are drawn. I would rather there was a lot of local input into where the lines were drawn so that they do carry legitimacy.

Q362 Mr Turner: But what matters is who takes the decisions. That is what’s so difficult. There is no known representative for England. There are county councils that are jolly happy being counties, even
though the boundary goes just outside Plymouth. What I am wondering is how we get there.

Dr Wilson: I think some people should paint some scenarios, draw some maps and see how it looks. I don’t think you can discuss one particular district of England in isolation from the others. You would need to be putting together some configurations, and people could say that’s good or that’s bad.

Q363 Chair: And some levels of power, to go back to the argument about regionalism being painted as a new and extra layer rather than something that facilitates the counties that are finding their own feet and making their own decisions within a non-England context, because England is just too large compared with the other nations to make that work.

Dr Wilson: Everybody realises that there is a huge problem of mistrust and a gulf between MPs and citizens. One of the reasons there have to be ways to try to bring government closer to the citizen. If this is presented as a drawing down of democracy closer to the citizen, it is an argument that can be won.

Q364 Stephen Williams: At our last committee meeting one of our witnesses was Canon Kenyon Wright, Convenor of the Scottish Convention. As to that model, it would be wrong to describe it as “grass roots” because it was quite elitist; it was a Labour Party, Liberal Democrats, trades unions, churches or whatever, which voluntarily came together in a meeting of like minds. They came up with a blueprint for a Scottish Parliament. Is that a more desirable model than an established convention that is set up by the UK Parliament and the parliaments and assemblies for a Scottish Parliament. Is that a more desirable model than an established convention that is set up by Westminster, Stormont, the Senedd and Holyrood, or could it work better if it was a meeting of like minds of the people who wanted to do it, and then it might gather momentum when people saw what they came up with?

Dr Wilson: I would like the first as long as the first option was feasible because of the Government at Westminster. There was not a convention that would carry democratic legitimacy through being officially established, but, at the same time, as I hinted earlier, you would find ways of developing ideas in a way that already exist? Which do you think is more likely to be successful: a meeting of like minds or something set up on a legal footing?

Dr Wilson: The problem with that argument is that, at the time the Scottish Constitutional Convention was set up—I took a lot of interest in it—in a sense, only one of the options was feasible because of the Government at Westminster. There was not a snowball’s chance in the proverbial place of an official convention being established. In an ideal world you would have a convention that would carry democratic legitimacy through being officially established, but, at the same time, as I hinted earlier, you would find ways of developing ideas in a way that already exist? Which do you think is more likely to be successful: a meeting of like minds or something set up on a legal footing?

Q365 Stephen Williams: But the most balanced legislature in gender terms in the British Isles is the Welsh Assembly, which did not have a convention.

Dr Wilson: That is true. The other factor in all this is the electoral system. Again, I am just stunned by the fact that the alternatives presented for the electoral system at Westminster were first past the post and AV, when, a very short distance away, we had some practical experience of AMS. One of the big benefits of AMS is that you can be sure the electorate gets what it wants. The electorate wants to have more women in politics but there is a co-ordination dilemma. The only way they can get it is if the selectorate—i.e. the parties—put women prominently on party lists. That is where you get—

Q366 Stephen Williams: We are going off at a tangent, but I suppose we are coming back to this.

Dr Wilson: That is part of it, that is another issue in all this. It has not been given the proper weight it deserves but we need to get away from the culture of politics in Westminster and reopen the PR debate.

Q367 Stephen Williams: I would agree with that, but possibly not all of my colleagues would. Do you think that a constitutional convention has more status if it is agreed and set up by Westminster, Stormont, the Senedd and Holyrood, or could it work better if it was a meeting of like minds of the people who wanted to do it, and then it might gather momentum when people saw what they came up with?

Dr Wilson: I would like the first as long as the first did not come at the expense of being a very top-down process. If it was genuinely engaging and empowering, I would have thought that gets you the best of both worlds, hopefully.

Q368 Stephen Williams: What do you think the composition should be? You mentioned putting your poet into the British archipelago, which is a phrase that I have not heard before. Another phrase is “the Isles”. It is the title of a very good book by Norman Davies, which is a non-Anglo-centric history of these islands. Do you think a constitutional convention should include all the parts of the archipelago that are for, instance, in the council of the islands set up under the Great Charter?

Dr Wilson: Hugh Kearney’s book is better than that one in terms of an overview of the archipelago. It beats Norman Davies’s book by a long way, but that is another day’s discussion. There is the issue of the Republic in all of this, which, if we were living a century ago, would not have been a problem because it wouldn’t have been separate, but it is. We are talking about England, Scotland, Wales and Northern Ireland. I would like to imagine that there could be some kind of observer role for people from the Republic somehow. I don’t know how it would be done, but if there was a will, there would be a way found to do it. Yes, it would have to represent the component parts of the UK and, most obviously, it would help if there was some weighting towards the
Q369 Stephen Williams: Have you looked at how this Council of the Islands would work?  
Dr Wilson: The British-Irish Council?  
Stephen Williams: Yes.  
Dr Wilson: The answer is: not very well.

Q370 Stephen Williams: We never hear anything about it.  
Dr Wilson: There are two problems there. One is about the British-Irish Council and one about the JMC, which I will come to.

Q371 Chair: What is the JMC?  
Dr Wilson: Someone mentioned the JMC as well in that context.

Q372 Chair: What is the JMC?  
Dr Wilson: That is part of the problem, too. The JMC is the joint ministerial committee that nobody knows about. To take the BIC first, that emerged only in this messy process of devolution where we have Scotland, Wales and Northern Ireland separately, because David Trimble wanted to have a north-south ministerial council in Ireland that would suit him as a political protestant—i.e. a Unionist—as an alternative. That was set up but without any real interest in Westminster. The idea was that they just gave that to Trimble as a carrot to keep him on board. As a result, it never really got legitimacy across these islands and has struggled to find its feet.

The joint ministerial committee emerged in a debate on devolution in the House of Lords one night, much to everybody’s surprise, during the debate on the Scotland Bill. If anybody had thought about this thing coherently, they would have realised, “Wait a minute. We can’t think just about Scotland, Wales and Northern Ireland separately; we’ve got to have some kind of co-ordinating mechanism among the jurisdictions when we’ve got devolution.” This popped out from a government minister in the Lords that they had decided to have a joint ministerial committee. The problem with it is that it has only really met regularly in the EU format. It can meet in various sectoral formats as well as a plenary format, really met regularly in the EU format. It can meet in various sectoral formats as well as a plenary format, which the Constitution Unit ran, was that I was one of the alumni from that group of people elected, or selected, to make them properly distinct from the others, because the risk would be that, if you are having those people elected, they may well turn out to have some party hats.

Q375 Stephen Williams: I have got another unfair “either/or” to ask you. Do you think it is better, on a grass-roots basis, to have representatives on a constitutional convention that have been elected, or should they be selected by some randomised process or maybe some objective criteria from the electoral roll?  
Dr Wilson: Again, I wouldn’t have a strong view on that, but I could see an argument for saying that you would have a kind of citizens’ panel as part of your constitutional convention that would be done by selection, to make them properly distinct from the others, because the risk would be that, if you are having those people elected, they may well turn out to have some party hats.

Q376 Stephen Williams: Do you think a citizens’ panel could be a parallel process to NGOs or whatever?  
Dr Wilson: In my pretentiously described triangulation scenario, yes.

Q377 Paul Flynn: The situation we have at the moment going towards constitutional change has been described as a game with five hands in it, but England believes that it is the only hand in it, and Northern Ireland probably believes it is playing a different game. I don’t know whether this is a fair description of it. How do you see things turning out where decisions have to be taken on changes in the future? Is it reasonable to trust the electorate to take decisions rather than have them made by the Assemblies or the Parliament? I am thinking of what happened in the alternative vote referendum when it was taking place. When I drove across Vauxhall bridge every morning during that period, there was a sign up saying that, if you voted for AV, you would deprive soldiers in Afghanistan of protective uniforms and babies in hospitals of remedies. So anyone who was wicked enough to want AV was someone who wanted to kill soldiers and babies. I am sure people voted for that reason, because millions of pounds were spent convincing the public of this. Listening to the speeches in Parliament yesterday, with some
Chair: The question is on the way, Robin.

Paul Flynn: There is a question on the way. I have been involved in this in some way. I would have thought you could buy my book about Welsh deviation called “Dragons Led by Poodles” for about 10p. Wales had been waiting for this for 400 years or so, but it came about as a dirty deal struck among those who wanted devolution, those who wanted none and those who were in the middle somewhere. It was done where the political muscle was reflected at the moment and went that way. There was no grand plan or clever academics working out a perfect system. How do we get there? Do you think the decision should be taken by the Assemblies or the general public informed by the Daily Mail?

Dr Wilson: First, the reason I was suggesting that it was important to have a more protracted and deliberative event is that you would want to give this the time and space to ensure a proper debate evolved rather than responding to that day’s headlines. Secondly, you would want to ensure that there were various international and technical expert resources to bring a much deeper background knowledge that would otherwise be absent from the table. It would be important to have a range of NGOs and civic voices to draw on. We also need to face the fact that one of the reasons you have constitutions is precisely to stop people doing crazy things. The basic law was imposed in Germany for the reasons we all know. There are structures that guarantee democracy, human rights and the rule of law, which is fundamentally what a constitution does, so that groups of people within your society who might do crazy things can’t do them.

Q378 Paul Flynn: Do you think the fact that the Queen put on a green frock and bowed her head in Croke Park in penitence to the atrocity that took place there was an event of great significance? It seems to have had an extraordinary effect on Irish politicians, including Sinn Fein. When they saw that, the weather changed at that point, did it not, in the Republic?

Dr Wilson: Because of the way the home rule crisis worked itself out into a horrible spiral of violence—begun, it should be remembered, by the people Edward Carson was leading, i.e. Ulster protestants, who joined the Ulster Volunteer Force—there are these huge unresolved sores in Irish political culture. One of them was that particular episode during the war of independence, which was never accounted for or addressed. I think, yes, there was a very positive reaction indeed in the Republic to the Queen’s gesture, just as there has been a tremendously positive reaction in Derry to the report of the Saville inquiry, which finally acknowledged that particular atrocity after 40 years.

As a piece of Northern Ireland black humour, in my researches on my book I found that in the Cabinet Committee on Northern Ireland that met in February 1972—some days after Bloody Sunday but before direct rule was introduced in March—Reginald Maudling, the last Home Secretary looking after Northern Ireland, said he thought that maybe the Irish had a death wish, which, given what happened at the hands of the British Army some time before, was a rather odd thing to say.

Q379 Paul Flynn: There is a controversy going on in Wales at the moment over why Mrs. Thatcher reacted to the starve-to-death threat by the then leader of Plaid Cymru, Gwynfor Evans, at the time. The story is that for the first time in her life she was reading Irish history and realised that the turning point in the Easter rising was the martyrs, and decided that Wales should not have a martyr. They changed their policy almost overnight on the provision of a fourth channel.

We know that the move for devolution is going at various speeds in the five areas involved. Clearly, the lesson for Wales, from Scotland, at the moment is that if you want devo max you demand independence, and it is offered to you on a plate. I don’t know what your view is, but it is still a real possibility that Scotland will vote for independence. Given the way things are going, if they vote based on satisfaction with the Scottish Parliament and UK Parliament, with a further two and a half years of Cameron’s ineptocracy, their popularity will go down, and it is quite possible Alex Salmond’s popularity will increase and it will get through. With Scotland voting for an independent parliament, you can visualise what effect it would have on Wales, Ireland and Northern Ireland.

Dr Wilson: We could discuss that, but I am not sure it is the best use of our time, to be honest. It is a very hypothetical question, given the recent polls.

Q380 Paul Flynn: It could happen in two years’ time.

Dr Wilson: I would be extremely surprised. I would bet my house on the referendum not favouring independence, frankly. I am not saying I am opposed to it, but it’s just that I think I would be very surprised.

Paul Flynn: Really. I’ll take up the bet, if you put your house on it.

Q381 Chair: The last point that colleagues have touched on is the engagement of the public, how we fire people up and how we get people engaged. How can we get the public better engaged with these issues, because they tend to be somewhat esoteric?

Dr Wilson: Democracy is about a regime for free and equal citizens, and it is a matter of being able to say to people, “Look, we want to ensure that the UK and its various component parts function as a true democracy in which people feel empowered.” Obviously they don’t for the most part. We know, from all the opinion evidence, anecdotal evidence and everything you hear on the doorsteps, that most people feel a detachment or disconnect from the political class. Sometimes that can be misrepresented in a very populist way in some sections of the media, but there is a real problem.

If this is presented properly as a necessary renovation of the system, so that it no longer simply evolves by a series of pragmatic steps which basically retains its patrician elitist origins but is transformed into a genuinely modern 21st century democracy, that is...
something that could appeal to people, if it is presented in the right empowering and inspiring way. There are ways you can do it. I take your point about regional devolution. There are things you can say in terms of what can be done with a well-functioning regional democracy in terms of reviving moribund parts of the British economy. Take, for example, what happened in Emilio-Romagna, whenever they faced a situation where their SMEs in the textile trade were being undercut by cheap producers in the far east. The local regional government was able to organise new agglomeration economies by assisting the small and medium enterprises to move into computer-aided design in a big way. There was a big change and people could see the benefits. So there are ways you can present it not only as philosophically attractive. People want a democratic solution that is materially attractive in terms of some of the very practical benefits that come from having a much more sensibly organised system than the one that we have.

Q382 Fabian Hamilton: Based on what you have just said, yes, of course constitutional issues are very important. I agree with everything you have just said, but, in the end, isn’t democracy in a mass society like ours dependent on the relationship between the person who is elected and the electors? Of course it is important that those individuals are able to achieve something when they take up a cause, case or issue on behalf of an elector. In the end, if they are accessible and if they are willing to make themselves accessible at all times almost to the electors, and electors feel that those individuals are their representatives because there is a geographic location, isn’t that the most important factor in making democracy work and being real to the people who vote for MPs and councillors?

Dr Wilson: Fabian, I think you need to recognise that what intervenes between the individual citizen and the individual elected Member like you is the metaphorical public square. The quality of the public square varies a great deal and has been diminished in many ways in Britain in recent decades for all number of different reasons—and I didn’t mention Rupert Murdoch, did I? That quality of the public square is a very complex, synthetic construction. It is not by any means simple. You have to craft very effective constitutional relationships in order to make people feel part of the public square and that the relationship they have with elected representatives is one of genuine dialogue and interaction. It is not just a matter of thinking, “Can I go to the surgery down the road on a Saturday and see my MP?” It is more complicated, in the sense of whether people feel collectively that they are inside that square talking to their politicians, in however indirect or virtual ways, or whether they feel that there is not so much a public square that they are part of but a private office that elected representatives are part of, and they just feel locked off.

Q383 Fabian Hamilton: I know politicians and Members of the House of Commons of all parties make it their business to ensure that, when they are invited to a community event, religious event, church event—and even some of the weddings they get invited to—they attend impartially and are visible on the streets. They do street surgeries; they are at community events; and it takes a lot of time and effort, but they go out of their way to do it.

Dr Wilson: I am not criticising individuals in that sense. Q384 Fabian Hamilton: All I want to say, Robin, is that, if elected representatives make more of an effort to fulfil the sacred trust that is given to them by the votes that elect them to office, the electorate does repay them because the electorate then recognises them. In my city of Leeds, for example, there are eight MPs. It is hard to compete for space in the local daily newspaper, so you do it in other ways. You use the media of course, but you do it on a much more personal basis. If we dilute that by having large multi-Member mass constituencies or with regional lists—for example, people don’t know their MEPs—we lose something very valuable. In many ways we need more MPs so that they represent slightly fewer people and can get to know all those people, as perhaps you do here in Northern Ireland.

Dr Wilson: I was speaking at a festival in Varades in France some years ago. I met the mayor, who showed me a video of his work in Varades, a small village near Nantes, vis-à-vis the promotion of small and medium enterprises in the area. He knew every individual owner of every one of those small and medium size enterprises. That is part of what I am saying. It is partly to engender public debate in the UK about what multi-level governance really looks like and how to bridge the gap between the public and political class. One of the things you need to do is have genuinely local government, which brings everything down to grass-roots and ground level. That is one part of the answer. The second part of the answer is that it would be wrong to over-emphasise the agents at the expense of the structures. The structures of governance really matter. The importance of it is that it is good constitutional engineering, whether the people who are the agents are saints or sinners. Good constitutional engineering is what can guarantee you that you have that effective public square I am talking about. The key thing is whether citizens have a sense of what social scientists would call collective efficacy and whether the Government are able to do what is expected of them. Norway are called collective solutions. In other words, people think, “There is a reason why I should vote. The reason why I should vote is that I can’t provide a schooling service or a health service, but, if with my fellow citizens I elect people who can come to collective solutions, they can provide those public goods.” Thus, we have to try and engender in the UK a debate about politics that makes it plain that it is about the creation of public goods; it is about debates in the public square; and it is fundamentally about citizens and their fellows getting together to choose democratic goals. You create the right constitutional umbrella to make that more likely rather than less likely to happen. One aspect of that is how local you get when you get down to the most local level, but there are other aspects to it as well, which are
imported. Again, I mentioned the electoral system. You have to have an electoral system where it matters to most people in most constituencies to vote. It doesn’t in Westminster elections, and that is a serious problem. People are bound to say, “What difference does it make?” if they are living in safe seats and it doesn’t matter what they do; the outcome will be the same. That is a bigger debate than we can have now.

Q385 Chair: One thing I have detected over a long period is that those who have pressed for greater devolution, particularly in Scotland and Wales—it is a slightly different context in Northern Ireland—have often been fired by not being ruled by somebody else, i.e. the English, rather than being fired by, “We want to look after ourselves.” There are two motives there and both of them are strong, but what always surprises me is that other people’s freedom does not seem to loom large in their conscience. It is almost as if they say, “We’ve sorted out our devolution settlement to a degree,” but they are not particularly concerned about other people’s, particularly the English, and how they might have a devolved settlement. It seems a slightly introverted view, with some obvious historical reasons thrown in. Why aren’t the devolvers and those who want independence a little more internationalist, like you like? Why aren’t they insurgent in England and trying to spread the message in more traditional ways?

Dr Wilson: It is an interesting question. First, if you take the Spanish case, what happened initially was that, after Franco’s unaliented departure, there was clear pressure from Basque and Catalan nationalists for autonomy and possibly more. There is still clearly an issue in both cases as to their long-term future, as recent debates have shown. They were very much debates held by Catalans and Basques. The outcome was the slogan “Café para todos.” People started to say, “Wait a minute. If they are going to get their autonomy, why shouldn’t we get it?” So we ended up with the Autonomous Communities Act, which was a relatively sensible way to recognise asymmetric devolution all the way across Spain with some special situations as in Galicia and the Basque country that favoured the drawing down of—

Q386 Chair: They were made active by that drive from other people.

Dr Wilson: Yes, One might have thought that the campaign for devolution in Scotland would have led to a similar trend across the UK. This goes back to the point Stephen made about the constitutional convention. There was a certain degree of self-delusion in Scotland among civic society people who lead the debate and who would have been very keen to say, “We want independence because we are civic-minded citizens; we want autonomy for Scotland for that reason. We are probably a bit liberal in comparison with Margaret Thatcher, so we don’t like her very much, but this is not some kind of tartan/Kailyard nationalism.” The public opinion evidence in Scotland did not quite bear that out. It is clear from the evidence that there is a much greater admixture, as indeed there is pretty much everywhere when nationalism comes into play, between ethnic and civic forms, and you can’t make a clear distinction between one and the other. There were ethnic elements involved in Scotland; there are certainly ethnic elements involved in the SNP and its campaign for independence. If people are thinking of things in terms of an ethnic “us” versus “them” that they want to remove from authority, they are not going to be thinking in terms of a “we”, which might extend to other kinds of citizenship in other jurisdictions. One of the advantages of talking about a constitution for the whole of the UK in such a flexible way that everybody can be involved in it is that it will force people to think, “Yes, there are others in this ‘we’ whom we can’t ignore.”

Q387 Paul Flynn: The latest development in Spain is that ETA got 21 seats in the local election. They are only one short of doing a deal with the majority party. The party in government only got 27 seats, so ETA almost became the majority ruling party in the Basque country. There is a huge increase in the drive in Catalonia for independence, but it is not just ethnicity; it is the fact that almost every government in charge at the moment is suffering because of the economic problems that we have, and these become the drivers. If we have a crisis that becomes worse, the voters will blame the government in charge, with the exception of Obama, who will not be hit to the same extent.

Chair: I think Paul was asking, “Do you agree?”

Dr Wilson: There is a whole set of issues that we could talk about, but I am sure you don’t want go into them at this stage.

Paul Flynn: It is very interesting.

Dr Wilson: They are. There is a fundamental issue about wealth regions wanting to split off from the rest of Europe, whether the wealthy region is a nation called Germany or Catalonia. I think that is an issue that we need to sort out across Europe, particularly with the crisis, but that is just my own view.

Paul Flynn: One of the main elements is the fact that England has a long tradition going back of continuing to rule and believing in “wider still and wider”—that we must punch above our weight, which means going beyond our responsibilities. We could not see an independent Northern Ireland, Republic, Wales or Scotland ever wanting to go to war in Iraq, Iran or Afghanistan.

Chair: We need to move on to the next witnesses, but there is one quick question from Stephen before we do so.

Q388 Stephen Williams: We have a little biography of what you have done in your career. It mentions not just the political aspects but that you have studied the impact of football on identity. Do people find their identity more because the politicians sort themselves out, as they seem to have done in Northern Ireland, or are they much more likely to agree on their identity around rugby, football, hockey, shiny or whatever?

Paul Flynn: The Catalans are very jealous of Scotland.

Chair: Answer the question first, and we will come to you next on football, but Robin first.

Dr Wilson: It is an index of my commitment in that in coming to see you today I am missing a football game in which I should be playing instead. I have
only played two games of football this week rather than three, which is a major sacrifice. I hope you appreciate it.

Chair: We do.

Dr Wilson: Seriously, one of the problems in the UK context has been the confusion between the terms “identity” and “allegiance”. Habermas is very good in all this.

Q389 Stephen Williams: Who?

Chair: One of Ralph Miliband’s friends.

Dr Wilson: One of the reasons there is so much confusion between Englishness and Britishness is the failure to distinguish these two different things. Habermas basically argues that you can have a state with all kinds of diverse individual identities in it. People might define themselves in all kinds of different ways, including in terms of the football team they support, but the important thing is whether they are able to show a civic allegiance, expressed as what he calls constitutional patriotism towards properly constituted democratic institutions. If you’ve got that, then you will have a legitimate state. You don’t need to underpin it by any kind of ethnic nationalism. His concern is the history of Germany in the 20th century and all of that. The relevance of that to this discussion of a conventional convention is that need to ensure we have institutions in the UK to which people feel they can give civic allegiance, without that necessarily being mixed up with a question of individual identity, and which allows us to live in a multi-national state—Scots, Welsh, Irish, English and so on—at the same time being able to relate to some overall constitutional structure.

Q390 Stephen Williams: Calling the city airport George Best airport and, from what the tour guide told us, even having his funeral in this building, is extraordinary and something everyone can unite on.

Dr Wilson: It was interesting that, when the funeral took place here, there were politicians in attendance from Martin McGuinness through to the Unionist side, though, frankly, most were far too overweight to have ever kicked a football. What was interesting was that the flag on George Best’s coffin was the Irish Football Association flag. The interesting thing about that is that, 20 years ago, some people would have thought, “I don’t like that; that’s got a protestant connotation.” To its credit, the Irish Football Association over the last dozen years has done far more than any of the politicians have done to challenge sectarianism, using football as a vehicle to do that. It has been very effective work that has had huge pay-offs.

Q391 Stephen Williams: For those of us who don’t know, is the Irish Football Association pan-Ireland?

Dr Wilson: No. For historical reasons, there is an Irish Football Association and a Football Association of Ireland in the Republic.

Chair: I am afraid we have to leave it there. Thank you so much for coming along.

Dr Wilson: My pleasure.

Chair: There are some other witnesses. You are most welcome to stay and listen.

Dr Wilson: No, no. Thank you for listening to me.

Chair: You are very welcome. It has been very informative.

Dr Wilson: If there is anything else you want to come back on, you have my contact details.

Chair: Please feel free to drop us a line when you get out of the building.

Examination of Witnesses

Witnesses: Mike Nesbitt MLA, Leader, Dr Christopher McGimpsey and John McCallister MLA, Ulster Unionist Party, gave evidence.

Q392 Chair: Thank you for sparing the time. We should probably put on record again straight away our sadness at the fatality today. Our thoughts are with the family. We are sorry that we have come at a moment when that sort of violence, which we thought was a thing of the past to a degree, has reared its head again. We hope it will not continue on a regular basis.

Mike, welcome. It is really good of you to spare the time to see us. Could you introduce your colleague? Do you want to say something to start us off, or are you happy to go straight to questions? How would you like to play it?

Mike Nesbitt: First, can I introduce my colleague? Dr Christopher McGimpsey is a former councillor with the Ulster Unionist Party. There are a couple of reasons I have asked Chris to come along. He gave evidence to the New Ireland Forum in Dublin in 1984. That was the first constitutional convention on this island for many decades. It was quite a bold step at the time for a Unionist to engage in such a process. In 1990, he also challenged in the Dublin High and Supreme Courts the constitutionality of the Anglo-Irish agreement. In those days articles 2 and 3 of the Irish constitution laid claim to Northern Ireland, and Chris was instrumental in having that overturned and the constitution changing. So I thought this was a perfect area for him.

We may be joined by an MLA colleague, John McCallister, who is the MLA for South Down. When I was elected leader of the party in late March of this year I asked John to undertake some work in and around our own constitutional convention, primarily because we were clearly aware that the threat from Irish nationalism to Northern Ireland’s status within the United Kingdom has largely passed. There were new threats, not least the implications of Scottish independence, should it emerge, so John has been doing a bit of work, and I think it would be useful if he joined us.

If you don’t mind, Chair, I will make some opening remarks. First of all, I will thank you for your good wishes for the absolutely brutal murder of Mr Black.
The mentality of people who would sit down, plan and then execute such an act defies me. They have denied Mr Black his future. I believe they have nothing to offer anyone on these islands. It is just deplorable. That is the downside of the peace process—that, 14 years on from the Belfast agreement, we still have a number of people, albeit small, still capable of devastation, who are not engaged in the political process.

The positive side of things is that we meet here under the roof of Parliament Buildings, which is a reflection of one of the most dramatic constitutional changes over the last quarter century. Twenty-five years ago, effectively, this building was empty. I grew up just down the road; my schools were in sight of the building. I used to come and run up Prince of Wales Avenue for athletics training and had a look at this building, which was a physical manifestation of the democratic deficit. That is the positive side of it.

Within the building, our focus is primarily on our devolved arrangements set in place with the Belfast agreement in 1998. We always intended those to be transitional. In 1998, if you remember, there were groups who saw the way forward as political, some who saw the way forward as terrorist-based, through military activity, as they would call it, and others who were trying to ride the two horses. The whole process and aim of the negotiations that led to the 1998 agreement was about inclusive politics and a set of institutions so big that even the smallest group had a place and role.

From 2007 to the election last year, it seemed to me that the primary aim of what was happening here was the survival of the institutions rather than those bodies delivering what the people we represent would consider to be positive change. Now, in 2012, having secured the institutions, our focus is on positive delivery. To give you two examples, our economy still has to be rebalanced. We are far too dependent on the public sector. In recent months things have got so bad that, while employment levels are rising in GB, unemployment levels in Northern Ireland are going the other way; they are getting worse.

On education, we still have no proper agreement on our post-primary transfer arrangements. We did have an official selection process at 11 with the old 11-plus examination. That was abolished without any agreed replacement put in place, with the result that we now have two unregulated tests. Children who used to sit two regulated 11-plus tests now sit up to five different tests if they wish to have available to them the full range of post-primary schools.

We are necessarily focused on devolution and devolved matters, but as Unionists particularly we are very aware of the changing environment. I am reminded of the old Charles Handy story of the frog. The business guru Charles Handy tells the story of a frog. I am sure you are aware of it.

Chair: No.

Mike Nesbitt: I am not sure whether or not it is apocryphal, but he says that, if you put a particular type of frog into a pan of cold water and very slowly bring it to the boil, the frog dies because it is unaware of the changing environment around it.

A Unionist would look at, say, Birmingham, the second city of England, where, if I am correct, 60% of the youth would claim to be of Asian or non-white ethnicity. What is the connection between us and the youth of the second city of England? Over the last number of decades we would traditionally have said the connection was Westminster and talk about the contribution of the 36th Ulster Division at the battle of the Somme, whose centenary is only a few years away. There is no resonance with young Asians in Birmingham over that, so we have to think of new ways of engaging with Great Britain to promote the importance of Northern Ireland as part of the Union. There is a fear that the debate over Scottish independence is about the relationship between Scotland and England rather than among Scotland, England, Wales and Northern Ireland and that our voice could go by default. While we believe that the debate on a Scottish referendum is one that the people of Scotland vote on and only the people of Scotland vote on, the implications are for all of us. Therefore, it would be timely to take a look at what is going on now.

Engagement with the political process used to be very high in Northern Ireland. Perhaps one of the results of the success of the Good Friday agreement in securing our place in the Union is that turnouts are increasingly falling for political elections, and yet on this very estate a couple of weeks ago, at the centenary of the signing of the Ulster Solemn League and Covenant, unprecedented numbers took part in that parade, to the point where all estimates were blown out of the water. While the closing religious ceremony was played out and people were being encouraged to leave, parades were still arriving at the bottom of Prince of Wales Avenue. So there is a great dichotomy between people’s engagement with the political process and their engagement on something that is about their identity, heritage and culture, and that needs to be taken into account as we discuss the future of the Union.

Finally, by way of opening remarks, I would say that devolution is very challenging. As Unionists, politically, we would see our default position as parity with the rest of the UK, but, because not least we have a land border with the Republic of Ireland, there are economic issues on which we accept the need to break parity and perhaps request the devolution of powers, not least for corporation tax as the Republic operates 12.5% and we are around double that. We find that is very challenging for the ability of the Northern Ireland economy to grow.

The other issue would be air passenger duty. You can go to the international airport, get a flight to the United States and pay £60 in air passenger duty, or you can spend about £20 on a luxury return ticket on a coach to Dublin where you will be charged £3 for the same flight. You can’t do that in Birmingham, London, Cardiff or Edinburgh, so the particularities of Northern Ireland because of its land border with a eurozone country mean that economically that trumps, as it were, the political imperative of parity with the rest of the United Kingdom.
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That is what I would say by way of opening remarks. I know you sent a series of questions. Would you like us to work our way through them?

Q393 Chair: The Members will ask you some questions, Mike, if we may, and then if there is anything left at the end we will pick it up. Devolution has taken place in Scotland, Wales and Northern Ireland; it has not taken place in England. In a sense, and I say this to most witnesses, we are turning round the questions that traditionally have been asked at Westminster, which was the Northern Irish, the Welsh and the Scottish questions. There is now an English question. First, have you a contribution that you might want to make on that? Secondly, are you largely content—people are never content; they always have to move forward—with the devolution settlement as it is in Northern Ireland?

Mike Nesbitt: If I take the second one first, no, we are not. We have always aspired to the normalisation of politics in Northern Ireland. The one caveat to put on that is that I do not see a situation in my lifetime, or in the foreseeable future, where you would not have a government that had a cross-community element. If that is abnormal, that is an exception to my desire to see the normalisation of politics, but we have now reached a point where we have effectively a mandatory coalition of five parties of government, so inadvertently we have recreated what was deemed to be there previously when it was a parliament up to 1972, which was that you could have as many elections as you want but you would still get the same result. The Unionist party will win and will be the majority party, and therefore it will form the Government. You can have as many elections as you want now and you will still get the same result: a four or five-party mandatory coalition government.

In taking the next necessary step towards normalisation, we would like to see the introduction of an official and loyal opposition—loyal to the institutions of devolution—so that the electorate is presented with a choice. That would be our main call. Beyond that, what was built was a process designed to be inclusive, not necessarily efficient and effective, so that 108 MLAs and 12 government departments are too many. It is a sign of the maturity and stability of the institutions that we take the next step to agree fewer MLAs and government departments, and particularly the move to offer proper choice and a credible alternative through an opposition.

The question of English nationalism would keep me awake at night, believe it or not, because it is potentially a very powerful movement, if it were to gain legs.

Q394 Chair: Or English devolution, not going as far as nationalism per se. To go back to your first answer, I am more interested in whether you feel you have made great progress as opposed to having direct rule.

Mike Nesbitt: Yes.

Q395 Chair: Do you think thereby there are lessons that we in England—I speak only for English MPs here—could learn from your journey?

Mike Nesbitt: We have taken great strides particularly in getting to the point where an atrocious act like the one we have reflected on today is a rarity. We have done well in terms of the peace process, but in terms of the political process I do not believe anybody you would ask on the street would say this is an efficient, effective devolved administration that is really delivering for people on the day-to-day issues of the economy, education, health and housing. How we do that remains a major challenge when you still have people voting in blocks that are effectively orange and green. Is there a lesson to be learned? I am not sure, but there is a clear tension between being inclusive and effective and efficient.

Q396 Paul Flynn: You said you were fascinated with the idea of how a legislature will suffer from having a lack of opposition. We know the reasons it was done in Ireland. We foresaw a similar problem when devolution was set up in Wales, because we had the prospect of having one-party rule in perpetuity, which was attractive to me in many ways and many others. My party would have been ruling, but we also saw the great weaknesses that would come from cronyism and so on within that party. Can you see any mechanism that would allow what is obviously very beneficial in Northern Ireland now, which is that all communities are represented in government? How could you devise an opposition within that framework?

Mike Nesbitt: Before I answer that, perhaps I may introduce John McCallister MLA.

Chair: John, you are very welcome.

John McCallister: I apologise for being late.

Chair: Not at all; you are very welcome.

John McCallister: I was speaking to a European colleague.

Mike Nesbitt: We had another event earlier down the road. This is an area where John has been taking a look. Just to give him a chance to take his breath, we do see the possibility of legislating for an official opposition, but because what happened in 1998 was all about being inclusive we did not legislate to create a space called opposition. For example, if the Ulster Unionist party with 15 of the 108 MLAs decided voluntarily to withdraw, we would have no advantage whatsoever. We would not have any enhanced speaking rights; there would be no debate days where we would dictate what happened in percentage terms. We would have no research facilities. In fact we would lose a minister and special adviser at the executive table seeing the work in progress and policy development papers. We would be less well equipped to scrutinise and criticise government than we would be at the moment, but there is a way round it and that would be to legislate.

John McCallister: We have had quite a bit of evidence. You may or may not know that there was quite a big debate during our leadership election. It is also important to say in terms of opposition to reiterate what Mike said in his leader’s speech at the party conference six weeks ago. No one but no one is now talking about moving away from the concept of power sharing where there would be Unionists all ganging up, or anything like that. We have fully bought into the concept as a party. We signed up to...
power sharing some time in late 1972, so we are fairly well over the line on that one. I have always said that an opposition has two main things to do: to hold the Government to account and provide with an alternative. That is the thing we are lacking. As Mike points out, how do you best do that? You need some sort of space; you need an ability to table and set the agenda in the chamber that day. You also need support with research. Across the UK, when you are in government, you have the entire apparatus of government behind you. You know this from being both in government and opposition over your career. Others will have experienced both sides of that as well.

So it is how you create that, and is it healthy for us to continue for ever with a system that was designed to get us from where we were in 1998 and build confidence and all of the other things that needed to be done in the N Ireland Assembly, or not, or should we wait for that? to continue that indefinitely? Is one of the factors determining our voter turnout that you have no way of changing the Government here? I don’t know. Democracies across the western world have never related it to voter turnout. I am not saying that an opposition would be an answer to all that, but you need to look at all those challenges, and I think that is entirely doable within the structures, by changing some of them, without damaging, as Mike said in his leader’s speech, the power sharing and the commitment that everybody has to power sharing. The Welsh Assembly now has a single-party government, but it has had coalitions at different times. In 2007, it came very close to having a Conservative-Lib Dem-Plaid Cymru coalition. It would be fascinating for us to look at that. Broadly, you would have the Conservative and Unionist parties. Along similar lines, we would be in government with a nationalist party. It would be a fascinating example or model that we might look at.

Q397 Chair: You are talking now like a political scientist, and you are talking to a member of the Labour Party, as I think you probably know, who has a different view on it.

John McCallister: I know that with the British-Irish Paul met some of us in Glasgow when we were looking at the West Lothian question. It is entirely doable and it is very desirable to enhance our democracy in Northern Ireland.

Q398 Paul Flynn: It is fascinating. Thank you for your answers. Do you think that at the moment it is worth going ahead with a convention for the United Kingdom before the vote in Scotland on independence, or not, or should we wait for that?

Dr McGimpsey: I can see the argument that, because we will be unaware as to how the Scottish people will vote, that will clearly impact on what evolves within our kingdom over the next number of years. I agree there seems to be a view in Westminster that something needs to be done and devolution should be looked at. I don’t know that the Scottish people, or any of the sections of the UK, should be put in a position where they are setting the timetable. You put everything off until after 2014. When at Edinburgh university I voted in the previous referendum many years ago in the late 1970s. I think that 50.5% voted for independence and 49.5% of us opposed it. What if you put it back for that and that was replicated once again? You are still in a quandary. What Scotland needs to do is decide very strongly one way or the other what it wants to do and not have a split ticket again. I don’t believe that it would be useful simply to delay everything until after Scotland has decided.

As to the lead-in to this sort of thing, there has to be an audit of devolution within each of the regions: Scotland, Wales, Northern Ireland, presumably, the GLC, and any other English region, which could indicate, first, that it would like devolution, and, secondly, that it would be a good thing for the Union. You need to have an audit of this. You need to be able to assess how devolution is working, what is working well, what is proving not to work well, and how things can be improved. That is going to take a period. I would start the process immediately and tack on the Scotland result. You will still probably be in the middle of the process at that stage, bearing in mind that what the Scottish people decide is not just an issue for Scotland but it impacts on all the other regions of the United Kingdom because it will decide how we react and deal with Scotland, depending on what decision it comes up with.

John McCallister: That is an important point, even looking at the discussions with Paul in Glasgow in BIPA. We are almost in danger of doing nothing and talking about nothing until after the referendum. The big issue for us is corporation tax. The position seems to be, “You can talk about it, but we’re not going to do anything about it until after the Scottish referendum.” I would sound a note of caution, as Chris said, about the danger of almost stopping government to wait and see how the Scottish vote turns out. It would certainly have a huge impact across every region of the country.

Q399 Paul Flynn: I am grateful for your answer. With the history of Northern Ireland and great progress on power sharing—one hopes that today’s tragedy is not a backward step and doesn’t show a major return to the bad days of the past, which I am sure it doesn’t—do you think there would be interest and enthusiasm in Northern Ireland for a convention or a debate on a convention in two circumstances: if it goes through in Scotland or doesn’t go through in Scotland? If it doesn’t go through, it will be devolved probably.

Mike Nesbitt: I think there would be a huge interest in having that convention. Just at a very practical level, if you go out canvassing at the doorstep or just catching up with constituents, they neither know nor care whether you are a councillor, a member of this legislative assembly, a Member of Parliament or a Member of the European Parliament. They don’t care; it’s a pot hole and they want it fixed.

Q400 Mr Turner: How many of you—all three there?

Mike Nesbitt: It would be useful to have more clarity about the respective roles and interplay between them.
You have nationalists, who might welcome a constitutional convention so that they could talk about the need to no longer have a United Kingdom, and then you have ourselves, who are very keen to promote and advance the benefits of the United Kingdom and our place within it, and not to have our voice go by default because it is all about Scotland and England.

**Q401 Fabian Hamilton:** Do you think that the Good Friday agreement might form a barrier in any way to stopping people in Northern Ireland taking part in a constitutional convention for the whole UK or implementing any of its findings or recommendations?

**Mike Nesbitt:** I don’t see it as a barrier to having discussions. A constitutional convention could come up with recommendations that would run contrary to the Belfast agreement, but it would depend to some extent on those specifics. As to the dynamics that inform the framing of the Good Friday agreement—to constitute a form of government for a divided society—is that a good term to apply to the rest of the United Kingdom? Are we a divided society? That is perhaps something that needs to be clearly established.

**Q402 Chair:** You mean London and the rest.

**Mike Nesbitt:** I do remember a sports reporter at a world cup. Somebody said to me, “Are you supporting England tomorrow?” I said, “Don’t be silly; I’m from Liverpool.” I think this addresses some of the complexities of the constitutional question coming as a Unionist from Northern Ireland. I am going to quote you from John Hewitt, an Ulster poet, who was dominant in the last century.

**Q403 Chair:** He’s getting a lot of airplay today.

**Mike Nesbitt:** You have had him before.

**Fabian Hamilton:** No, but we have had him quoted.

**Chair:** Robin was quoting him before you came in, but fire away.

**Mike Nesbitt:** He said, “Firstly, I am an Ulsterman steeped in the traditions of this place. Secondly, I am Irish, of this island. Thirdly, I am British, and finally, in a more diffuse way, I am European. It may make it easier for you to understand if you remove one of those elements but if you do you are no longer describing who I am.”

But there is a second part, which is much more challenging for me. He said, “I always maintained our loyalties had an order to Ulster, to Ireland, to the British Archipelago, to Europe; and that anyone who skipped a step or missed a link falsified the total. The Unionists missed out Ireland; the Northern Nationalists ... couldn’t see the Ulster under their feet; the Republicans missed out both Ulster and the Archipelago; and none of us gave any heed to Europe at all.” Given last night’s vote at Westminster—

**Chair:** We are not going to go there.

**Fabian Hamilton:** We didn’t hear that part of it.

**Chair:** Otherwise, we will have a divided Committee, which is not acceptable.

**Q404 Fabian Hamilton:** Given that the Republic of Ireland is in the process of setting up its own constitutional convention—I understand there will be 66 citizens, members of the Oireachtas, the Parliament, and representatives from political parties in the Northern Ireland Assembly as well, do you think that might help pave the way for a UK-wide constitutional convention?

**Mike Nesbitt:** I am going to ask Chris to address that, but, just by way of preliminary, I did receive an invite from the Taoiseach to send a delegate. Rather than just turn it down, I did take it round to a few colleagues. We looked at the issues they would be examining in this constitutional convention. Frankly, they were all matters for the people of the Republic of Ireland. Should the President’s tenure be a five or seven-year term? How do you advance or promote more engagement by women in politics? They were not really issues that we felt were coming across the border to us, so I turned it down, but, given Chris’s background, he would be interested.

**Dr McGimpsey:** I can’t see how the southern constitutional convention is going to pave the way for the United Kingdom. It is a foreign state. We wish them well. There are major problems in the Republic. One of the planks of this coalition when it was elected was to get rid of the offshore Éireann. In actual fact, they have spent the last two years stepping back from that. There are major issues, but they are not ones that will impact specifically on the United Kingdom except if they decide to go back into the Commonwealth and take their place in NATO. Unless they are matters of international relations, it is not going to affect us.

The proposal is to have a constitutional convention because the parties in Westminster believe it is beneficial. I and the Ulster Unionist party also believe that. We would wish to play a key role within any constitutional convention within our society and within the United Kingdom of Great Britain and Northern Ireland. We are wedded to the view that being British is not mutually exclusive of anything else. You can be English and British; Scottish and British; Welsh and British; and Irish and British. Consequently, we see our future as perhaps performing an even more significant role within the mainstream of UK society.

While we have many friends in the Republic, there are key elements. We are the only part of the UK that has a land border, as Mike said earlier. We can’t see how it will impact other than looking at what their resulting decisions are. For them it is internal housekeeping and reorganisation. You don’t have to read the *Irish Times* every day to recognise just how difficult the situation has been in the Republic. They are trying to safeguard against that ever happening again. Apart from the political element of looking at their model and saying, “That’s a good idea; they’ve decided to include or exclude such and such, and we might think of that”—other than looking at their model to see if it might help—it is not going to impact in any way whatsoever, I believe.

**Q405 Fabian Hamilton:** It’s not going to form any sort of inspiration to people here, politicians in Northern Ireland or the rest of the UK, to say, “Well, if they’re doing it, we can do it”, because the two systems are so completely different.
Dr McGimpsey: Yes. For the Republic of Ireland partition has worked; it has built two states. While United Ireland is okay as window dressing coming up to the elections, those guys want to get on with their society; we want to get on with ours. We have now got over the problem, which was stopping us getting over it almost. I can’t see it impacting any more than if the Isle of Man looked to alter the House of Keys.

John McCallister: In many ways it ties in to your first question about whether a UK constitutional convention would have any impact on the Good Friday agreement. The same would apply on the other side as the two governments are guarantors of the agreement. On both sides it is internal housekeeping. I suppose their reform of the Irish Senate has been going nearly as well as House of Lords reform from a UK perspective.

Q406 Fabian Hamilton: It’s not going that well.

John McCallister: It is very much internal housekeeping for both sides. How do we do things better? What are the new dynamics particularly now with three parts of the UK having devolved governments, as well as other regions of England or the capital? How do those bits all tie in together and best work together and define out the roles? When they clash who comes out on top, or is there a set of guidelines? We don’t have a written formal constitution. The Republic of Ireland, of course, does have a written constitution, and to change that they need a referendum each time. The UK system is very different from that.

Mike Nesbitt: As to the intention behind a constitutional convention, central to our political arrangements here is the idea that we are not going back to majority rule, so the cross-community element is vital, and there are various mechanisms built in to ensure that you get cross-community support. Where it sometimes militates against what I would consider to be non-contentious areas would be with regard to the armed forces. There is an armed forces covenant. Scotland has its armed forces advocate; Wales has an armed forces advocate. Northern Ireland is the only nation of the United Kingdom that does not have an armed forces advocate, and yet this is to do with housing, education and health provision for our armed forces and veterans. It is not just armed forces from Northern Ireland. Sadly, one of the four killed in Afghanistan in the last few days was from my own constituency. An armed forces advocate would be incredibly comforting to the family, even someone doing the process of dealing with death certificates. It is also for soldiers from the rest of the United Kingdom. For example, you could have a battalion of a regiment based in Edinburgh and another battalion of a regiment based in Ballykinler here in Northern Ireland. The first battalion has access to the armed forces advocate in Scotland; the others are disadvantaged, so it is a question of inequality. How do you address that? We believe it will take Westminster to legislate. There is a bill, as you know, coming from the Northern Ireland Office next year, mostly about how we govern through Stormont, but we believe an amendment would be entirely appropriate to address that. There are times when the Good Friday agreement is in tension.

Fabian Hamilton: Duly noted; lobbying completed.

Q407 Mr Turner: Could a constitutional convention for the UK happen if parts of the UK don’t wish to take part, or, for that matter, some parties don’t wish to take part?

Mike Nesbitt: I don’t believe in vetoes. If you are going to have it, it is important that you go ahead. There is perhaps a momentum or a number that you have to look to, but who would not want to engage?

Q408 Mr Turner: Let me give you an example: the Conservatives in Wales; the Conservatives in Scotland; and many Conservatives in England. Is that a sufficiently large number to stand in the way?

Mike Nesbitt: Without being rude, I don’t think the numbers in Scotland and Wales are particularly high, are they? You are asking us to how you populate a constitutional convention.

Mr Turner: Yes. I am.

Mike Nesbitt: Should it be people with defined political views, or do you take a much broader spectrum? In terms of our own devolved administration, we spend a lot of time and money and devote a lot of resource to consulting on legislation. For example, there is a potential piece of legislation called cohesion sharing and integration, which is about how we create a shared future for all our people and not a shared-out future where this housing development is Unionist and that one is nationalist. From memory, they consulted all across Northern Ireland. It was the usual thing; you booked a hotel and advertised it in the local press. Either 0.02% or 0.002% of the population turned out for those consultations. First, a lot of money was spent, arguably not well, on those. Secondly, is that percentage a robust number, because they were probably not only a small group but were the loud, regular voices who turn up for these things? There is a huge question about how you would populate and design a constitutional convention and to what extent you go and consult, and then, afterwards, do you put it to a referendum?

Q409 Mr Turner: The problem is that those people in small but very loud numbers will take part in almost anything, but the majority of people just aren’t interested. It is when we get down to the pot holes that people are worried, but those are things that can most effectively be dealt with by local councillors and politicians. I don’t quite see what it is that this constitutional convention will be doing, except meeting, talking and so on.

Mike Nesbitt: As part of the Belfast agreement, obviously we have new relationships with the Republic and east-west.

John McCallister: I suppose that in essence your point is: how is it a convention not really for the political anorak? I go back to Paul or Graham’s comment to me about when, in political science, you talk too much about one thing. Even when we talk about the West Lothian question, it can become, yes, a fascinating debate, but how do you make it
meaningful to the lives of people in the constituencies? As you and Mike both alluded, it is to do with pot holes, jobs, schools and hospitals and the economy. It will always be much more for politicians. It is probably good for politicians from across the UK to meet, like BIPA, the Republic of Ireland to look at different projects and areas.

When you look at something like a constitutional convention, it could be done if you were looking at how some of the parts of our constitution could be tidied up and made more effective. I don’t think you will get people into a town hall in any part of the country saying, “Oh, this is a fascinating meeting.” The question is how that can be tidied up and how, if you set out a convention, you populate it and get people on board and engaged with a set time. Of course, they might come back and say, “We can’t come up with any better way of doing this. We are where we are.” Perhaps that question is: is that process worth doing and worth looking at? We probably see value in doing that from the perspective of how we link in and best represent our interests within the Union, presumably from a pro-Union perspective. That is how we would like to see a constitutional convention working without turning it into something just for political anoraks.

Q410 Mr Turner: Are you saying there are things where Ulster Unionists—I recognise that you are not represented in Westminster—can’t get their wishes taken account of and the only way to do something about it is to change the constitution? John McCallister: First, we are represented in the House of Lords in Westminster but not in the House of Commons. There will always be things over which you would want more influence. That comes down to sheer weight of numbers. I am sure the Conservatives would like more seats in Wales or Scotland, or probably more seats anywhere, as would we, but it is a question of how you get that influence and how the situation has changed. We are in a very changed situation from even 15 years ago with devolved government in Cardiff, Belfast, Edinburgh and an assembly for London. The set-up is very different from what we were in 15 years ago. It is a question of how you tie in some of those points and look at the points of influence there.

Other countries have written constitutions where it is set out very specifically. The United States would be one obvious place. There are still tensions between states; there are still parts of that which you could argue are not designed to be completely democratic, like the Senate. It is not done on proportionate numbers. It is how you would look at the UK as we now find ourselves in 2012 and say: what changes can we make? What is very different in the dynamic across the UK? There are huge differences. The Scottish Nationalists are in power in Edinburgh; there is a Conservative-Lib Dem coalition in London; there is a Labour Government on its own in the Welsh Assembly; and we have the mandatory five-party coalition in Northern Ireland. You probably never thought you would live long enough to see that number of parties governing different parts of the UK. How do they all feed into each other and work together effectively to represent the best interests of all of our citizens?

Q411 Chair: I will have to wind up at 4.30; we literally have to be out of the room by then. I am going to give Stephen the last five minutes. I have one observation, which is: if it’s not broken, don’t fix it, but in a sense the Union has demonstrated, if it is not broken, that it is unsatisfactory to a number of the constituent parts in various ways. That has manifested itself in an attempt to tackle that through devolving power in Scotland, Wales and the settlement post-Good Friday in Northern Ireland.

There is some unfinished business in reinventing the Union side. I would argue that a lot of that is about the English question. What role does England have in the Union, and how does the devolution settlement that has taken place in three nations hit the fourth one? What is the way in which we make in our own development, you may argue as Unionists—I am not trying to put words into your mouth—to make a reinvented stronger Union different from the sort of “Whitehall tells everybody what to do” Union of the past?

Mike Nesbitt: If there is to be a debate within England about what the Union means, we would feel very strongly that it is incumbent on us to make our voice heard as to why Northern Ireland is important to the English, whether that is the southern English, north-east or whatever.

Dr McGimpsey: One of the things that scare us, based on the Celtic fringe, is that it is okay for us to be nationalist in Northern Ireland, Scotland or Wales, but what the heck are we going to do if the English suddenly turn nationalist? The old joke is that, if you want the real referendum on Scottish independence, ask the English. It will make Wales seek to have a phenomenal success rate. We see the Union, which is a point that the leader made at the start, as an evolving one. He made the point about Birmingham. There are more people in Scotland, for example, who speak Urdu as their first language than speak Gaelic. That is something we have to recognise and deal with. As the Union evolves organically, the structures have to move with it. It is like a tortoise; as it grows the shell has to grow, or it is strangled. We believe this process is about amending—altering—some of the administrative structures within the United Kingdom and ensuring that a better and more progressive United Kingdom moves forward at the end of it. That is the role that the leader says we would hope to perform.

Q412 Chair: In a way, the choice between Whitehall or nationalism or separation is a false one. There is a devolved union as a middle way, a future progressive way, or whatever words you want to use. It is not one or the other; it is less about retaining a union but a union that is modernised and allows people to make much more of their own decision making in their own nations and localities.

Dr McGimpsey: At one level what we would like to see happen is the decision makers being brought closer to those people whose lives are materially affected by the decisions they take, and that is what devolution is all about.
Mike Nesbitt: As to the evolving nature of the Union, a while ago I listened to Gisela Stuart, who has been making a name for herself this week with her opinions on Europe. She represents a constituency in Birmingham, as Neville Chamberlain did in 1939. He took us to war with Germany. She is a German-born democratically elected MP. I am not saying it is a bad thing; it is just that in 1939 the people of Birmingham saw that. Things are changing, potentially quite radically.

Q413 Stephen Williams: Mike, I want to take you back to some of the language and phrases you have used while answering questions. You said that the feelings of people in England might give you nightmares or keep you awake at night. Unfortunately, we had the Daily Mail presented to us, unfortunately, on the plane coming over.

Chair: I thought you were looking at the racing results.

Stephen Williams: No. I remembered reading on the plane the Treasury figures for expenditure per head which came out this morning in the context of the Scottish referendum. Obviously, it is designed to show the contrast between England and Scotland, but public expenditure in England per head is £8,491 in the current year and in Northern Ireland it is £10,624. As we get towards 2014, obviously much more of this is going to come forth. Are you at all worried? Constituents in Bristol, Isle of Wight, Leeds, Nottingham, even Newport, might think, “Oh, my god; we're giving all that money to Northern Ireland”, and you will have to make the case a bit more strongly for continuing to be part of the British-Irish family of nations currently in the UK.

Mike Nesbitt: You have named the elephant in the room; yes, absolutely. There was a time pre-health service when Northern Ireland was a net contributor to HMT. We had a very robust economy at one point based on shipbuilding and engineering; we had the biggest rope works in the world a couple of miles down the road in east Belfast; agriculture and linen were fantastic. We need to aspire to getting back to a position where we are net contributors to Her Majesty’s Treasury. That is a huge ask from where we stand at the moment. Probably it couldn’t be done in a generation, but we must aspire to it. It is not acceptable to me that we would put our hand out with the begging bowl and say we need more and more. We need to rebalance our economy and we have to take charge of that. That is why, for example, we would like you to devolve to us the power to set our own rate of corporation tax, because with the land border with the Republic of Ireland and the legacy of the conflict, which was an economic war in Republican terms, we have a lot of catching up to do. This party is determined that we make every effort to do it and address those figures, which are potentially very damaging to Northern Ireland.

Q414 Stephen Williams: You answered the question in terms of economics, but in terms of politics do you think the Ulster Unionist party should be making a case for a UK constitutional convention in order to pre-empt some of these issues that undoubtedly will arise in the run-up to 2014?

Mike Nesbitt: I think we have to be very clear in trying to explain to people who would not take a lot of this under their notice—for example, those who might be of ethnicities that would not be steeped in the knowledge of the last 40 years in Northern Ireland. There are factors that will to some extent explain the differences that you have highlighted, but you can only do that in a valid sense if you say, “That explains it and here’s the action to address it.” You have to have the two.

Q415 Stephen Williams: Referring to the language the three of you have been using, at different times you have said “state” and “nation” and you have referred to “two states on the island of Ireland”—those are the different phrases the three of you have used—whereas the constitution of Northern Ireland is not a state or a nation; it is a constituent province of the UK. Has your understanding of what Northern Ireland is changed since the Good Friday agreement? Do you now think of it in different ways as a state within the United Kingdom rather than as an integral part of it?

Mike Nesbitt: I was educated just down the road to believe that there were four nations within the United Kingdom: England, Scotland, Wales and Northern Ireland as a nation. It would be a republican dialogue to suggest otherwise, so I would look on Northern Ireland as a nation. In European terms we are a region, so again there is fluidity depending on which perspective you look at it from. I am not sure whether my colleagues see it differently.

Dr McGimpsey: Perhaps it’s semantics. We talk about the state of Northern Ireland because we view it that way, but in any Unionist’s mind they are absolutely clear what the state is; it is the state of the United Kingdom of Great Britain and Northern Ireland. But the leader is quite right. We have had 70 years of devolution, so naturally there would be a growth in status in the psyche of the people of Northern Ireland, which will continue to grow in Wales and Scotland. There is only one state and that is the United Kingdom of Great Britain and Northern Ireland in the terms in which you were referring to it, Mr Williams.

Q416 Chair: Mike, Chris and John, thank you very much for your time this afternoon. It has been fascinating and really enlightening. I hope we can come back again and see you. If you come across to Westminster, I hope you will take half an hour to come and see us again.

Mike Nesbitt: Certainly. The views we are expressing today are probably part of an evolving thought process on our part as well as your own, so we would welcome that.

Chair: I apologise for having to cut you short at 4.30.
Thursday 8 November 2012

Members present:
Mr Graham Allen (Chair)
Paul Flynn
Sheila Gilmore
Andrew Griffiths
Mrs Eleanor Laing
Stephen Williams

 Examination of Witnesses

Witnesses: Miss Chloe Smith MP, Parliamentary Under-Secretary of State, Cabinet Office, and Ciaran Martin, Director, Constitution Group, Cabinet Office, gave evidence.

Q417 Chair: Hello, Chloë and welcome to your new duties. We are very pleased to be working with you. I hope your colleagues and the Deputy Prime Minister have told you that we have a very fruitful and constructive relationship. I think we have been especially helpful on a number of things, not least electoral registration but also on the Cabinet Manual, the parliamentary boundaries Bill and a number of other things where we have had a very good, positive working relationship. We would love to continue that with your good offices.

Miss Smith: I certainly hope so, too.

Q418 Chair: Would you like to start by opening with a short statement or shall we go straight into questions? How would you prefer to deal with it?

Miss Smith: I would be very happy to make a few opening remarks.

Chair: Please do.

Miss Smith: Thank you very much, Graham, for inviting me here today and for your kind words on my taking up this role. I think you have in front of you a very interesting topic indeed. I know that it sits with a lot of other work that you have done with my predecessor and I am very interested in taking up the opportunity to continue that work, so thank you.

The question of whether there is a need for a constitutional convention in the UK is a very broad one. In line with the written evidence that the Government submitted to the inquiry, we very much recognise the need for political and constitutional reform, primarily to restore people’s faith in the political system. I think that requirement is firmly recognised across party, and has been for some time. We have set out quite a wide-ranging programme of work that covers much of the UK’s constitutional framework but we are also very clear that this Government’s primary job is economic and is to grow the economy. Albeit an important programme of reform, we believe that it should not distract from that task, which is at the heart of Government’s business.

That is why, in response to the Committee’s call for evidence, I settled on two broad themes. The first was to consider specific issues about the relationship between the Government and the devolved Administrations, and the second, the wider context of reform. Considering the UK’s very wide-ranging, quite unique constitutional framework, I would not propose to comment in detail on how a constitutional convention would work, because I think the rather important point that we should first consider is whether there is appetite for it. On which note, we might want to go to questions.

Q419 Chair: Thank you very much. A quick one from me, which is about the economy and how it is central to the Government’s concerns, and all our concerns. Do you think that if you have an effective devolved settlement for all the nations of the United Kingdom, including England, you will be making a very serious contribution towards economic improvement and economic growth? If people—let’s say, locally—are able to get on and create jobs, or make sure the planning regime works more effectively, do you agree that devolution is one of the answers to help economic growth rather than it being seen as a bit of a distraction from focusing just on the macro international economic level?

Miss Smith: That is broadly right, Graham. I think devolution is important for many reasons and one of them is—to borrow Peter Hennessy’s phrase—to get the wiring right, in such a way that people can be empowered at the most local level possible. This morning we might want to use the words “localism” and “devolution” almost interchangeably, in fact, because I think the important thing is to give power to people. Yes, I do think that absolutely can have an economic effect. I would just note that devolution, though, is obviously one tool in the box for economic development at a local level, albeit a very important one.

Q420 Chair: Briefly to follow up, and perhaps in your previous guise I would not have dared to ask you this question, in terms of the Treasury, you sometimes get the sense that it wants to control just about everything on a micro-managing basis. Don’t we now have to try and break that down a little bit and give people a bit more opportunity, as they do in most Western democracies, to go ahead and do stuff on bond issues in local government or freeing up local government? We tend to get the Treasury looking at this as a problem about public sector borrowing and thinking, if we have devolution, how is it going to affect that borrowing. Don’t we somehow need to—and you can say this now you are not in that department—loosen up a little bit?

Miss Smith: Graham, one of the very greatest pleasures of my previous role was to come very often before select committees of various types and, on the whole, to be asked questions along the lines of the one you have just asked, namely: does the Treasury...
not try to either stop everything or block everything
or do everything, or any variation of the same
question that suggested it was all the Treasury’s fault.
Of course, as a Treasury minister, my prime interest
and responsibility was the good management of the
finances rather than necessarily to comment on inter-
departmental relationships.
If I may take your question slightly more seriously,
there is a good example in what the Government is
currently doing with the city deals that provides a
great amount of information in response to your
question. For example, if you take my colleague, Greg
Clark, who was the Minister for Decentralisation but
is now the Financial Secretary to the Treasury, he took
with him to that role his great passion, interest and
responsibility for city deals. That is a really important
point, and reflects your desire for some flexibility as
matters move through government. It is very positive
when you have a man with the dedication that Greg
shows to that agenda. That agenda benefits from the
discipline of applying both the economic questions
and some structural questions to how cities can run
themselves. The crucial thing in those deals is that
cities are being empowered. To start with the eight
core cities, and then move on to others—and indeed,
my own city of Norwich is named in the second
wave—offers immense opportunities for cities, and,
indeed, addresses both economic matters and structural
matters.

Q421 Sheila Gilmore: Welcome to your role. Obviously we have heard what you have said about
why the Government does not think this is an
appropriate time for consideration of a convention. In
previous debates that took place about, for example,
the reform of the House of Lords, Members from
various parts of the House challenged the Deputy
Prime Minister, suggesting that it was not an
appropriate time to reform the House of Lords and
that it would take up too much time. They said, “No,
the economy is the big problem so we can’t do House
of Lords reform” but he was always adamant that a
government could do more than one thing at a time
and therefore he did not see it as a conflict. However,
you appear to be saying that in terms of the
constitutional convention.
Miss Smith: What I would say is that the Government
does have to talk in the language of priorities, any
government does. I do not think it would be a matter
for this Committee to argue about what are the
economic priorities, but in terms of the constitutional
convention, the Committee is saying “We need to
spend quite a significant amount of time going into
the detail of a very large question”. If you look at the
academic work that has already gone on, which is
quite extensive and much of it really excellent and
interesting, is that something the Government needs
do in addition? Is there a governmental job in
addition to the very extensive academic work that is
currently being done?
I also think it is worth returning to the point of
whether there is a public appetite for a constitutional
convention. I do not necessarily see a clear route to
justifying time spent on a convention when I think
that the public is clearly very focused on the economy
and on the cost of living.

Q422 Sheila Gilmore: In reality we have a number of
piecemeal bits of constitutional thinking going on
at the moment; we have the Silk Commission looking
at further devolution for Wales; we have the McKay
Commission that will be reporting in due course on
the West Lothian question. Given that these pieces of
work are going on, and given that one of the criticisms
of our approach to constitutional reform has been its
very piecemeal nature, does that not in fact reinforce
the case for having a UK-wide look at this rather than
simply picking up individual bits and pieces?
Miss Smith: I would make another of my major points
today, which is that if you look at the extent of what
we are doing, it adds up to a great deal already. I
would turn your point around and say we are doing a
large amount. I can give examples of what we have
achieved in constitutional reform already, for
example, fixed-term parliaments, legislating for
people to have their say on the voting system, and
items under the heading of devolution. There are two
very big ones in the latter category, one being the
referendum in Wales and the second being the
Scotland Act which has just been completed. That, in
other words, the Scotland Act, represents the greatest
devolution of fiscal powers for 300 years. There are
some major achievements that this Government has
made and, as you say in your questions, some major
pieces of work are going on from there. Look at the
bill that is speeding up individual electoral
registration, look at other items, such as talks on party
funding, and other items that I know Graham is very
interested in, such as the recall of MPs and lobbying.
There is a range of work on a range of subjects,
which, to my mind, suggests that there is already
much work going on in this field. That brings me back
to the question whether there is appetite for the further
work that is suggested by a constitutional convention.

Q423 Sheila Gilmore: Leave aside the question of
whether the bill to speed up individual voter registration
is speeding anywhere at the moment—as it appears to
have gone into a siding for the time being—you can
turn around what you have just said, because one of
the problems about considering the West Lothian
question or indeed further devolution for Wales must
be how that fits into the wider picture. The West
Lothian question is the West Lothian question because
we have never answered the English question, so in
some ways trying to deal with that, in the absence of
addressing the wider picture, is what makes it so
difficult.
Miss Smith: I disagree that there is the absence of a
wider picture. I think the pieces that we are both
talking about—the Silk Commission, the McKay
Commission, which deals with the West Lothian
question, and of course the Scottish independence
referendum, which I am sure we will come on to talk
about in more detail—do add up to a very broad
picture. To my mind, those three pieces are major
parts of what anybody would wish to talk about under
a putative constitutional convention, and we are
already doing that.
Q424 Sheila Gilmore: Finally, do you not accept, though, that the West Lothian question, for example, would be resolved in its entirety if we had a constitutional settlement that incorporated a different way of dealing with English issues, because that is what the debate is about, and it arises because we have this completely asymmetric governance at the moment?

Miss Smith: There are two points in response to that. One is the substance of what an English settlement perhaps ought to look like. That is exactly what the McKay Commission is looking into, so I would not wish to pre-judge that in any way. You are raising a question that our Commission is dealing with, because we think it is important to be dealt with, so, as I say, we are on to that.

The second point that is worth making in terms of the characteristics of the UK—you use the word “asymmetric”—is that we do have different devolution processes going on because of different historical positions. I think that is a fair point to make. It would never be simple or straightforward to attempt to pull all four nations’ histories into a single starting point. It simply isn’t like that.

Chair: To pick up one of the points that Sheila made, the McKay Commission is looking much more at the legislative issues and how Parliament works rather than at the English question. We are immersed in this stuff, but from my point of view—and I do not want to put words into Sheila’s mouth—the issue is about the devolved settlement for England, which I think is slightly broader than McKay, but perhaps we can leave that in the air and colleagues might pick that up a little later.

Q425 Stephen Williams: Can we turn to your written evidence. Right at the very end in the conclusion, where you say that the Government policy is focused on tackling the economic challenges as a top priority, I think, Chloe, you said it was the most important work the Government is doing. You can only have “top” and “most” if you have other things going on as well, because if it does not say it is exclusive. Is the suggestion that the Government is implacably opposed to a constitutional convention or would just rather it did not happen?

Miss Smith: As the written evidence sets out, the point is that the Government, crucially, on behalf of the people they serve—and we are talking here about people and power, and how people use power—are endeavouring to get the economy right for those people. We see that as the priority.

Q426 Stephen Williams: Is the Government trying to say, “We can’t have a constitutional convention in which the UK Government has a role, because we are so busy sorting out the economy” or because a constitutional convention would be expensive?

Miss Smith: I said in my opening remarks that I do not think it is right to go into detailed questions about a convention, which, in my mind, would include the cost of it, because I am not yet convinced of the public appetite for one. To answer your question in those terms, it is the case that the Government sees greater public appetite for other priorities, namely the economy.

Q427 Stephen Williams: It is fair to say that even members of this Committee are probably more aficionados of constitutional reform than the average MP and that there is very little public demand for quite a lot of what we talk about but that does not mean it is not a worthwhile exercise. If we started with the premise that there is no uprising demand for particular Acts of Parliament, we probably would not have much to do, so I am rather sceptical whether that is a reasonable excuse. Has the Treasury, to the best of your knowledge—either current or former—made any attempt to quantify what a constitutional convention would cost?

Miss Smith: I do not think I am in a position to answer that question.

Q428 Stephen Williams: All right. Do you think it is a reasonable assumption that the constitutional convention would not be terribly expensive, so demands on the public purse should not be an excuse for not going ahead with it?

Miss Smith: I am not in a position to answer that question, as I say, mainly for the reason that the Government regards the detailed question about how a convention might work, which very much would govern its cost, as a second order to the question of whether we need one.

Q429 Stephen Williams: Let’s just suppose, hypothetically, that there was some pent up demand for this—at least among politicians, academics, church leaders, trade unionists, whatever—as there was in Scotland at the end of the 1980s, and a voluntary constitutional convention was created that represented quite a lot of engaged British civic society. In those circumstances, do you think it would be tenable for the Westminster Government not to participate or contribute in any way to those proceedings?

Miss Smith: You said yourself that is a hypothetical question, Stephen.

Stephen Williams: You can give me a hypothetical answer.

Miss Smith: I would not dream of it.

Stephen Williams: Back to your evidence. In paragraph—

Q430 Chair: Stephen, just before you move on, the question of public demand is always a fascinating one. There is obviously a role for some leadership, and is it not true that there are some problems with the Union at the moment and the status quo view may not be adequate to tackle some of those problems, particularly about the largest nation of the four nations in the Union not yet having effective devolution? Chloe, you mentioned a number of areas where we are moving towards that, but does the Government feel that there is a problem that does need to be addressed here, whether it is by a constitutional convention or not is for you to judge, but does it feel that there is a problem?
**Miss Smith:** As I said in answer to some of Sheila’s questions, we are doing an extensive programme of work on some of the component parts of what you might talk about under a constitutional convention. Each of them is extremely weighty and not to be underestimated, the Silk Commission are doing extensive work, and the McKay Commission you just spoke about, Graham. We all have high hopes for the continuation of the Northern Irish peace process, clearly, and in terms of Scotland—perhaps one of the most current of that set of questions—the discussions going on about independence are an example of the need to respond respectfully to the mandate of the SNP. It is important to work with them to empower people to make their choice. As you well know, it is the UK Government’s belief that Scotland has a strong and vibrant place within the UK. I do think that is positively true. As an example, among the extensive work we are doing already, of where there is a real interest in people being consulted.

**Chair:** You would not want the Government to be seen to be somehow underplaying what is currently a serious threat to the Union, which is the possibility of one of the nations separating from the Union and the fact that the biggest country in the Union often does not feel that there is an adequate devolution settlement compared with the other three countries in the Union?

**Miss Smith:** I do think that raises some important questions that people are very interested in, and I do think the McKay Commission is looking into aspects of those at a very detailed level.

**Chair:** Sorry, Stephen, I interrupted. Do you want to continue on your original line of questioning?

**Q432 Stephen Williams:** Back to your evidence, Chloe. In paragraph 21, where you refer to the Scottish referendum, and the Secretary of State for Scotland’s programme of work to inform the public about the pros and cons of the referendum question that they are going to be asked, are you involved in that in any way, or was it purely seen as a Scotland Office issue, with the information purely written from a Scotland Office and Scottish voters’ perspective, or are you involved in order to give the wider United Kingdom perspective?

**Miss Smith:** The whole of the UK Government strongly believes that Scotland is better served within the UK, as I laid out just now and as my written evidence lays out, so absolutely, yes, there is collective agreement on that across government and collective work accordingly. The Scotland Office naturally takes a co-ordinating role on issues to do with Scotland. Outside of this particular referendum question, the Cabinet Office does have responsibility for matters such as the electoral system. In terms of the specific referendum question, yes, indeed, the Cabinet Office is involved and I am very excited to be playing my part in that.

**Q433 Stephen Williams:** What is the extent of the involvement?

**Miss Smith:** As I say, it relates to electoral matters mainly. In this instance that will include policy responsibility for PPERA, and the read across of that to the referendum, and—

**Q434 Stephen Williams:** Is it more about the administration of the debate rather than the content of the debate?

**Miss Smith:** Yes. Certainly the Cabinet Office takes an interest in the good administration of referenda. That is implied in being the owner of PPERA, as it were, as legislation. As I say, the whole of the UK Government has a passionate interest in the debate as it gets underway. By means of the section 30 order and its memorandum, we are pleased to have got beyond some of those initial points of process and to be able to get stuck into the debate.

**Q435 Stephen Williams:** As you said, the United Kingdom Government is very firmly—and rightly, in my opinion—of the view that we are better together, whatever the phrase is we are meant to use. So is the whole of the United Kingdom Government involved in constructing the “Scotland should remain part of the UK” argument?

**Miss Smith:** Yes, in short, absolutely, and indeed—

**Q436 Stephen Williams:** I suppose it is across government and other departments as well?

**Miss Smith:** I am fascinated to know what conspiracy you might be seeking, but yes I am sure.

**Q437 Stephen Williams:** No, I am not. I am trying to find out what is going on.

I am afraid this is another hypothetical, so you might not want to answer it, but if Scotland votes to remain part of the United Kingdom, is part of the argument being formulated about what that post-2014 constitutional arrangement between Scotland and the other members of the UK might look like, or is it assumed that we carry on as we are?

**Miss Smith:** I am so sorry, could you repeat the question.

**Stephen Williams:** As part of the debate about the benefits of Scotland staying within the United Kingdom, is the UK Government’s viewpoint going to be, “Scotland should remain within the United Kingdom. You have the Scottish Parliament and, after 2014, if you vote to remain part of the UK, we will proceed pretty much as we are now”, or is there a view that that relationship will develop further and there could be more devolution, more powers for the Scottish Parliament?

**Miss Smith:** I think both the Prime Minister and the Deputy Prime Minister have been very clear on that and see the first matter in hand as the referendum. In fact I can give you the exact quote, which the Prime Minister gave in February this year, “When the referendum on independence is over, I am open to looking at how the devolved settlement can be improved further”. He said, “I am happy for that debate to continue, but I think we need to settle the independence question first”. I believe the Deputy Prime Minister’s evidence to this Committee in April goes down similar lines, so I think that is a very clear position.
Q438 Stephen Williams: From a UK Government perspective, if there is some contemplation that the post-2014 referendum situation may change within the United Kingdom, what thought—going back to the Chairman’s line of questioning—is being given to the fact that English voters, in Norwich, Bristol or Nottingham for that matter, might think, “Well, actually, we do not want the Scots to have even more soft independence compared to what they have at the moment without our having more power in Norwich, Bristol, Nottingham” and so on?

Miss Smith: I understand your hypothesis, but I do think it is a question of completing the debate on independence first. It would be particularly hard to answer that question without, no doubt, the very complex debate that we should have.

Q439 Stephen Williams: The danger I am alluding to is that, if an effort to maintain the integrity of the United Kingdom, the debate is so skewed to the Scottish dimension of promising more, perhaps to a post “yes” vote to stay in the United Kingdom, Scotland, without thinking, “What on earth do we do with 50 million people in the United Kingdom who live in England?”

Miss Smith: Let’s just come back a step, though, and not forget what is in the Scotland Act 2012, the Act that has now been passed. I do think it is worth recalling that the extent of devolution represented by that is quite significant, particularly when you look at the fiscal powers. It is worth looking at that, in terms of what has already been achieved in devolution. I do think strongly that, what with that Act, and now the referendum debate that is upon us, it is too hypothetical to ask about other matters of devolution for Scotland after 2014.

Q440 Stephen Williams: Is Norwich the capital of East Anglia?

Miss Smith: It certainly is.

Q441 Stephen Williams: Bristol, of course, is the capital of the west of England.

Miss Smith: Mrs Laing may disagree with me.

Stephen Williams: Nottingham is the capital of the east midlands, for sure.

As several of us have said, when we speak for major regional cities, shadow Minister of State is concerned—as MPs representing those cities—that, “We want a bit of this action as well. We have been left behind”?

Miss Smith: We in cities, and people in any type of local area, do want a bit of the action. That is what this Government is meeting. If you look at what we are doing in the city deals, specifically—which I know Bristol has enjoyed already and, as I have mentioned, Norwich will have its opportunity, as well as other cities—and through the localising agenda that this Government has pressed forward, you will see some fabulous opportunities for local areas. I think it is probably incumbent on all of us to be talking to our constituents, and to encourage anybody who seeks opportunities and powers for their areas to take up what is already available. Through some of the local government legislation that this Government has put through we have created extensive opportunities for local people, which I very much look forward to see come to fruition.

Stephen Williams: As I have to leave for Bill Committee in one minute I had better stop there.

Q442 Chair: Okay. We have had lots of witnesses. Chloé, who have said people are unclear in Scotland about what happens after an independence vote if it says “No”, and perhaps I should not even frame this as a question but put the Committee at your disposal. Everyone has a view about Scottish independence—the Government, the pundits—but it looks like Parliament is waiting to be filled up by the debate outside. I think I speak for all the Members on this when I say that this Committee and Parliament will have a view, and should have a view, but we could perform quite a useful service of being the honest broker, in terms of getting evidence together. We have done some of that in Edinburgh in the Scottish dimension of promising more, perhaps to a post-2014 referendum situation may change within the United Kingdom, Scotland, without thinking, “What on earth do we do with 50 million people in the United Kingdom who live in England?”

Miss Smith: For which I am extremely grateful, and can I just take the opportunity to say how impressive it is, as a new minister to the brief, to come in and see the extent of the work that a committee such as yours has done?

Q443 Mrs Laing: Chloé, we have already been over many of the main issues this morning but, for the sake of clarification, can I just take you back for a moment to the point about the Government’s and Parliament’s abilities at any one time. I have asked the Deputy Prime Minister about this on several occasions and he has argued vociferously against me when I suggested to him, during the course of last year, that it was wrong for Parliament and the Government to be spending time, money and effort, tinkering with House of Lords reform when we had a much larger problem in the face of the difficult economic situation, and that the Government’s real responsibility is to the people and that should have been first priority. He said over and over again to me—and was rather making fun of me, as if I did not understand—that the Government can do more than one thing at a time, so I am absolutely delighted to see the evidence from your department to this Committee. I appreciate you cannot take responsibility for this, hardly—you have only been there for a few weeks, so that is really not fair. In any case I cannot ask you to answer for the Deputy Prime Minister. I am merely seeking clarification that the department has changed its mind, and is no longer of the opinion that the Government can do many things at once but must concentrate now on the economy and put aside constitutional reform.

Miss Smith: I am afraid you might be trying to lead me astray, Eleanor. The point is as I have set it out in written evidence, and I am very happy to say here again today that this is a government committed to
political and constitutional reform. Look at the extent of what we have achieved. Indeed, there are elements that the Government is disappointed it has not been able to achieve, as is on public record. What is crucially important is that we do retain a sense of priorities. I think any one of our constituents would be clear about what they seek for us to do in this place. The only addition I would make to that is about the importance of manifesto commitments, which is to say that all three parties had the House of Lords reform in their manifestos.

Q444 Mrs Laing: Yes, that is a different issue and I would not dream of taking you down that route. Of course, the Committee fully appreciates that you cannot answer for the Deputy Prime Minister—that would not be fair at all—but the evidence that you have put before us is very helpful in that respect. Thank you.

Looking again at the fact that you have mentioned a lot of the work that is going on at present, and looking at the wider picture, over the last half an hour you have given some very good examples of the work that your department is doing at the moment on constitutional reform generally. In terms of properly considering a constitutional convention, it is important to consider the fact that, in practice, the basic elements of a constitutional convention are happening in various places, in that there are inquiries going on—and you talked about the Silk Commission and the McKay Commission—as well as the work of this Committee, that of various academics who have given evidence to us on this matter, of which you are very well aware, and again the fact that, having considered the matter of parliamentary reform for nine months, the alternative report of the Joint Committee on House of Lords Reform recommended that this was a far bigger picture than merely looking at House of Lords reform alone, and they did recommend a constitutional convention. Given that all of that is going on, as you yourself have described, should the Government not be part of that?

Mrs Laing: I think the Government is part of that in the work it is doing, and that you have very kindly reiterated. We have a very extensive programme of constitutional work going on. There is one rather important piece of it that I did not mention in my original list, which is what we hope will be the forthcoming bill on royal succession. It is again a very important facet that we are covering in our programme of work. By means of that, the Government is very much part of that constitutional conversation—if I could call it that—in a way that I think is reasonable, is practical, and that I hope adds to the work that is going on elsewhere.

Q445 Mrs Laing: I was just about to come to that very point. In answer to some other questions, you spoke about public demand and in your evidence you wrote about there being no current evidence of strong public appetite for a wide-ranging convention. Do you think seriously that there will ever be strong public appetite for a wide-ranging constitutional convention, really public appetite for it?

Mrs Laing: I should be clear, of course, I was referring to a previous Government’s aims, and I think it is on those terms it was not a resounding success.

Mrs Laing: Indeed, it was not a resounding success in bringing about the aims of the Government, but would you agree that, in involving the public in a decision about their future and, as a consultation exercise, a plebiscite, it was a resounding success?

Miss Smith: I have a few of the numbers in front of me, and I note that the turnout was 47.05%, on an all-postal ballot, which suggests there was engagement with the question. However the result of it was very clear and, as I say, I think it also sits alongside the work that the Government is doing elsewhere to look at all parts of what people might seek across the UK as a whole. The previous Government attempted that. As I have mentioned already, this Government is running a far broader programme of work—which I think is better able to meet the demands of people—specifically around devolving power down to the most local level possible. That is what this Government is particularly setting out to do and successfully so, if you look at some of the legislation we have been able to pass already, such as the Localism Act 2011. I think that is where you might find greater public appetite.

Q448 Mrs Laing: I entirely take your point there. Given that there is never going to be a march through the streets of London saying, “What do we want?” “Constitutional reform.” “When do we want it?” “Now.” It is not going to happen. We must measure that. Therefore, it would not be right to say that there should not be a look at the wider picture unless there is tangible public demand. Given that case, shouldn’t the Government lead on this rather than react in a piecemeal fashion?

Miss Smith: I dispute that we are acting in a piecemeal fashion. If you look at the extent of the Government’s programme on constitutional reform, it is certainly broad and it is certainly deep in terms of the detail. For example, I am sure the McKay Commission will be very stringent in its level of detail and I reject that that is piecemeal.

Q449 Mrs Laing: I accept what you are saying. I was going to come to the matter that you have mentioned, which is about the Crown, about male primogeniture, and so on. Some of us have been calling for many years—personally for well over a decade—for this matter to be looked at, saying that in
the 21st century it is nonsense for us to have a system where the eldest male, rather than the eldest child, should succeed the monarch. Of course nobody was interested, until the point where there might be a new heir appearing in the immediate future, or foreseeable future, and that this might now be an issue. I remember thinking, although I was a student at the time—but a law student, so I suppose I always thought about these things—on the day that Prince William was born, “Oh well, that is, the issue of male primogeniture will be kicked into touch for 20 years”. Wrong. It was 30 years, because no government is willing to look ahead and say, “We ought to be looking at the whole”. Shouldn’t we be looking at the whole? Instead of getting hooked on devolution and the political topic of the moment, shouldn’t the Government be looking responsibly at all of those things, at other aspects of the Crown, marrying a Catholic, and party funding, the composition of Parliament, not just the House of Lords but the whole of Parliament? In order to do so, don’t we need something along the lines of a constitutional convention?

Miss Smith: There is so much I could say in response to this. Graham, you will have to allow me to get my thoughts in. I don’t want to interrupt. If I can start with a total aside point, I am delighted to know that is what you were doing, Eleanor, on that day in 1982. I know where I was at that point. My mother was in hospital at the very same time producing me. Prince William and I share the same month of birth.

Of course you make a very fine point that there is relevance to that piece of legislation which we are seeking to put through. For the information of the Committee, we hope for legislation in this session on the constitutional convention. We think a constitutional convention is necessarily the best way to go about that. I do not see the appetite for some form of portmanteau exercise. Of course you make a very fine point that there is relevance to that piece of legislation which we are seeking to put through. For the information of the Committee, we hope for legislation in this session on the constitutional convention. We think a constitutional convention is necessarily the best way to go about that. I do not see the appetite for some form of portmanteau exercise.

Q450 Mrs Laing: rectangles, one of the driving factors behind the Government looking at constitutional issues. Do you think there was a public appetite for Lords reform or for a vote on AV, or the other issues that government have brought forward so far? If not, why did those have a priority and not a constitutional convention?

Miss Smith: I think, yes, in short they did. It is never going to be possible to quantify and use a scientific scale to measure public appetite, so as we conduct this debate in the Committee this morning we should probably all accept that. In short, yes, I think they did. I have already mentioned that the desire to reform the House of Lords was present in all three manifestos. The Coalition’s Programme for Government was very clear in its desire to reflect people’s interests in improving and reforming our political system. I think many people do feel that politics can be seen to be broken in different ways and it is in all of our interests to make sure the wiring works, to use the analogy I began the session with.

Q451 Andrew Griffiths: That is interesting. The voters of Norwich must be different from the voters of Burton, because I have had lots of conversations with people discussing the perceived unfairness between the way England is treated and the way Scotland is treated, but I do not think I have ever had somebody come up to me and say, “What we need to do is reform the House of Lords”. Perhaps my Liberal Democrat opponent might have been the only one that has ever said that to me.

Can I move on then to an issue that was partly a responsibility of your previous role and partly of this role—the issue of the Barnett formula? Among English voters, there is perceived unfairness because they receive a lower per capita spend compared to their Scottish and Welsh counterparts. Are you concerned that that perceived unfairness is causing a rift between the Union and that, if there were a referendum tomorrow on Scotland remaining part of the Union in England, we might get a pretty unfavourable vote?

Miss Smith: Let’s deal with the things that are in front of us. First of all, what we want to see is a legal, fair and decisive referendum on independence in Scotland. Let’s begin where we are. I have made the Government’s view absolutely clear that we do not believe independence is in the best interests of Scotland but we have sought to work with the Scottish Government to enable that referendum to take place. I think I have also articulated to the Committee this morning that the questions of broader devolution ought to come after that referendum. The point of whether we ought to be considering the position of England at the same time as Scotland is, I think, what is really behind your question. I do recognise there is legitimate debate on that point. Of course I do. As I said in answer to a previous question, that is the kind of discussion that we continue through Parliament in many different ways. I return to the central point in front of the Committee today, which is that I do not think a constitutional convention is necessarily the best way to go about that. I do not see the appetite for some form of portmanteau exercise.
Q453 Andrew Griffiths: Do you accept the argument—and fact the Committee has heard evidence to back it—that there is a perception that there is no English voice in Cabinet? We have a Welsh Secretary, we have a Scottish Secretary but we do not have an English Secretary. Do you perceive that to be an issue around the Cabinet table and do you think it is something that needs to be addressed by government?

Miss Smith: It is a point of symmetry. If I were being flippant, I would wish you all speed in becoming the first English Secretary, perhaps, in 10 years’ time, who knows?

Andrew Griffiths: In 10 years? Why wait?

Miss Smith: Just to pick a figure out of the air.

More seriously, it is worth returning to the point I made earlier about the reason why we do not necessarily have symmetry between the nations in this Union, between the nations’ current statuses, if I can call it that very carefully. The answer is some very major reasons of history. It would serve anybody to try to draw a facile line of equality and symmetry where there are otherwise very large questions of history at play as well. Of course, I do see the point you make about the need to ensure that England has a very strong voice. I share your interest as an English MP. How can I do otherwise? I share that desire to see my constituents just as well represented as any other member of the UK may be, but I return to the central point, which is that I think we need to deal with these issues in an orderly fashion. We need to look at the referendum for Scotland at this time—with due respect for the mandate that was secured by the Scottish Nationalist Party at their recent election—and it is the business of government to seek to deal with priorities in a way that would be commonly agreed. We have spoken about the priority for the economy, but it is also the role of this Government to get power down to as local a level as possible and we have taken significant steps to do that across the UK.

Q454 Andrew Griffiths: As somebody with a Scottish grandmother and a Welsh grandfather, I think I am the epitome of the Union. I am the Union personified. I certainly agree that we are better together, but do you not think that a constitutional convention could play a role in engaging with the public and making the case for the Union, that it could be a mechanism by which we can begin that discussion and that dialogue?

Miss Smith: I do see that point of view, and the work of this Committee sits in its place alongside—as I mentioned already—the very extensive academic work that has gone on on that topic, but I remain to be convinced that a government-sponsored hefty convention would add to that.

Q455 Chair: That is why I offered a parliamentary-sponsored convention and therefore, hopefully, that may be seen as less prejudging an issue and more open-minded.

Miss Smith: I thank you for that, and I beg your pardon if I have not done so. We will consider that very carefully.

Q456 Andrew Griffiths: Going back to the McKay Commission, I would be interested to know if anything is off-limits. If the McKay Commission comes back and recommends that we should have an English Parliament, is that something that the Government would consider?

Miss Smith: It is very hard to prejudge the work of that commission and I would not wish to sit here and do that, but I will certainly look at its findings with interest.

Q457 Chair: Professor Robert Hazell told us that the UK is the most centralised of all the Western democracies. Do you think he was right?

Miss Smith: You will have to forgive me, I do not know exactly when he was writing that but if he was writing that after the Local Government Act 2011—

Chair: Quite recently.

Miss Smith:—I would be hopeful that the work we have already done is going to meet that concern very much. That is absolutely one of my passions—and that of other members of the Government across the piece—to get power down to the most local level. As I think I have already referred to, a personal interest of mine is to encourage my constituents to see the opportunities that are already there, whether that be looking at opportunities to run community pubs, or community post offices or assets like that, or to take the chance to hold their council to account on the level of council tax, which might be set with new powers that we have given people to do just that. We have created a whole range of really exciting opportunities that often go unsung, and I am sure this Committee would do its bit in making sure people are aware of what we have already legislated for.

Q458 Chair: This Committee is already involved in a serious inquiry on greater independence for local government, which has produced an avalanche of interest, the most interest we have ever had on any of the topics we have covered. It might be true to say that regionalism in England, as a concept, is well and truly dead, given the experience of the last Government. Therefore, if there is to be greater devolution in England, if that is seen as part of bringing England into the devolved family of nations in the United Kingdom, that devolution must find voice not in the regions but in the localities, and the Government’s drive for localism is something that might be nudged forward to meet that demand for devolved power.

Miss Smith: There is much in what you say, Graham. I am conscious of the work you are personally engaged in—along with the LGA and many other partners—to look at the question of how central and local government relate, and how that might open up other opportunities for people, in addition to the technical means that you might need to make such a change. I do agree there is much to do in that area. The state always has to have regard to how best it can do what it needs to do. What does the state need to do? For example, it delivers public services, such as schools and hospitals. By properly opening up local power and local accountability, I think we can do far better on those things for our citizens.
Q459 Chair: Finally, just back to this old chestnut of public demand, which we have returned to most weeks at the Committee. There is always this question of leadership in politics. It is often about pre-empting problems rather than reacting to when there is either public demand or public crisis. Having people in the streets demanding this, that or the other is a sign of failure, not a measure of market research. In terms of pre-empting problems, isn’t it really important that the Government itself now takes very seriously something that I had never really paid a lot of heed to, which is the Barnett formula? Frankly, if you are in a family, some members of the family at certain times need a bit of help more than others, and at other times other members of the family do. I took that as part of the deal, but now the recent statistics are putting that pretty much out of kilter and I personally would be anxious if elements who aren’t represented currently in mainstream politics started to latch on to that and develop an unpleasant form of English nationalism, rather than have a balanced pre-emptive leadership view about how we start to make sure that the English feel that they are just as an important part of the family of nations of the United Kingdom as all the other nations.

Miss Smith: You make a very considered point. If I may, I will answer it on a couple of different levels. There is the point about whether the Barnett formula functions well. It was clear in the Programme for Government that the Coalition does recognise those concerns expressed. There is also a rather hard economic truth at play there, which is that our first priority—as I have been mentioning several times—is to reduce the deficit. I think we need to seek stabilisation in public finances before perhaps being able to embark on those larger reform questions. You then raise a very interesting point about extremist politics. This is in my mind very much at the moment, because the English Defence League is intending to march through Norwich this Saturday and I do not welcome that in any way. In fact, I think they are divisive and harmful and I would far rather my fine city was not to be dragged down by that. Of course I do see the point you make that any of us, who aspire to lead people, to represent people and to serve people, need to listen, hear and learn and act accordingly. Of course that means confronting some difficult emotions and it means having some pretty stiff conversations with people at times. Sometimes you have the luxury of doing that one to one with somebody and sometimes you have to do it on a much larger scale, as the Prime Minister and other leaders do. Of course there is a need and a demand for strong political leadership that seeks to act in the best interests of everybody in the United Kingdom.

Chair: Thank you very much, Chloë. Thank you for coming along today. I should put on the record that Mr Flynn has been here.

Miss Smith: Just arrived.

Chair: Amazingly quiet, but nonetheless he gets his mark in the register. Chloë, it has been really nice of you to come along and spare the time to talk to us. I do not know whether you are coming along when we see the DPM on the next occasion. I think it is the DPM only, but we look forward to seeing you again. As always, if there are things, as there always are—whenever I leave a meeting I think, “I wish I had said so and so”—feel free to interact with us, formally or informally. I am very serious about the point I made first off, which is that this Committee is an all party committee, we work very well together and we want to make a contribution, if we can do that. I am specifically thinking again about doing something that is not seen to have the imprimatur of government on it but is parliamentary, so feel free to use our good offices in whichever way you feel appropriate. Thank you.
Q460 Chair: Welcome, please come and join us. Paul, what is it like to be back in your old stomping ground?

Paul Silk: I never stomped in this room!

Chair: Very good to see you and many congratulations on your report, by the way. Paul and Noel, welcome. We are discussing a view that I think many people are catching up with in politics, which is the question, “Do we need a constitutional convention for the UK?” It needs to be answered given what is happening in Scotland in particular, but also given the contribution that you and your colleagues have made in producing the report from the Commission. Does there need to be an overarching view now of devolution and some of the questions arising from that, not least the English question? There are also some fascinating proposals in terms of financing this in a relatively pain-free way, which would have positive implications for all the four nations within the United Kingdom. We are very pleased that you could spare the time today to come and see us and give some evidence. Would you like to make an opening statement, Paul or Noel?

Paul Silk: Perhaps I could just explain the genesis of the Commission if that is helpful. In Scotland, the Scottish Government of the time and the Scottish Parliament set up the Calman Commission that reported back in 2008, I think. In the Coalition agreement there was a commitment to have a Calman-like process in Wales and we are the outcome of that; known as “ap Calman” at one time, the Calman-like process in Wales. We have been asked to do two things. We had two separate orders of reference. We reported on the first in November of last year and that was to look at the case for the devolution of fiscal powers to the National Assembly. As I said, we reported on that in November and we are due now to consider the second part of our remit and report on that in the spring of 2014, and that is to review the powers of the National Assembly in the light of experience and to recommend modifications to the present constitutional arrangements to enable the United Kingdom Parliament and the National Assembly for Wales to better serve the interests of the people of Wales. That is what we are engaged in at present. We have just sent out our call for evidence. We have not begun considering the second part of our remit but, as you know, we have reported on the first part. I would just say one other thing about one important difference between us and the Calman Commission. The SNP was outside the Calman Commission; in our case we had all four parties represented in the Assembly and in the House of Commons. We had all four parties as members of the Commission and that, I think, added immeasurably to our work and to the strength of the recommendations we made. We had all four parties as well as three independent members of the Commission for the first part of our remit. We now have four independent members of the Commission. Noel is one of those independent members and was a member both for part 1 and for part 2.

Chair: Noel, do you want to say anything on that?

Professor Noel Lloyd: I felt the Commission worked very well as a group. Our report was a unanimous one, as you know, and I think we were very careful in looking at the evidence that was submitted to us. It was entirely a good experience to be part of it.

Q461 Chair: Paul, would you agree that, in a sense, some of what you are proposing means that Wales is following on from a precedent set for Scotland in the Scotland Act 2012, where there is a movement from a block grant to a mixture of block grants and an assignment of income tax, a retention of income tax, certainly in Scotland. Is that your proposal in Wales?

Paul Silk: We were very careful at the beginning of our work to say that we were going to look at solutions that were appropriate for Wales. There are differences between Wales and Scotland, not least that the number of people who live close to the English border in Scotland and the Welsh-English border are quite different proportions of the population, and we had to look at things that suited Welsh interests. Having said that, many of the proposals that we made in our report are very similar to or identical to the proposals made by Calman and enacted in the Scotland Act 2012, but there were differences. There were differences in our proposals about income tax from what was enacted in the case of Scotland and we felt that was appropriate to reflect the needs of Wales. In many ways we did follow what happened in Scotland. It was useful that Scotland had gone before and provided a template and a precedent for us, but we did not feel that we were restricted by that.

Q462 Chair: Is there anything that would stop England following a precedent set in Wales and Scotland?

Paul Silk: Since we were considering Wales that was something we did not consider. We had quite enough
on our plate thinking about the interests of Wales to consider the interests of England, but if England had devolved government in some way, I imagine that what applies in Scotland, and we hope will apply in Wales, could equally apply in England. Of course, we do not have devolved government in England.

Q463 Chair: Although we do have local government. Now I need your help on the mathematics. In Wales, if the Welsh Government retained the product of a 10 pence income tax band, as indeed is the commitment in Scotland, I understand that to mean that about 40% of the Welsh income tax would be retained for disposal by the Welsh Assembly. Am I right so far?

Paul Silk: As soon as you mention mathematics I ought to tell you that my colleague Noel is an academic mathematician with a specialty in very large numbers. Yes, you are broadly right. Perhaps Noel will want to come in on this, but in our report we say that if our proposals are to devolve 10 pence from each band of income tax are adopted, that would yield £2 billion, which is about 40% of the income tax take in Wales. Together with the other smaller taxes we recommend for devolution to Wales and if you include council tax and business rates, it would amount to 25% of the tax taken in Wales. That is the amount we would propose.

Chair: It would amount to 25% of spending in Wales, rather than tax take?

Paul Silk: Yes.

Q464 Chair: Okay. Just to read across to Scotland, the comparable figures are that if 10 pence were retained from each of the income tax bands for Scotland, which is going to happen in 2016, taken with the other taxes, like council tax, that will be retained, it would meet one third of Scotland’s requirements. Half of that, in other words one sixth, would be the retention of income tax in Scotland. I am just trying to get these big figures in my head.

Paul Silk: I am not familiar with the figures for Scotland, sorry, I can’t confirm that.

Professor Lloyd: We have the figures for Wales in the report. For the figures for Scotland, we would have to defer to others.

Chair: Would it be possible to drop us a note if you have a chance to talk to your colleagues about it?

Paul Silk: Yes1.

Chair: I do not want it down to the last penny but just to give members of this Committee a sense that if there is an assignment or retention of income tax in Wales, it would meet, with other taxes, about a quarter of the expenditure, and in Scotland it will meet about 25%. Details are set out in paragraphs 9.2.17 and 9.2.18 of our report. The Scotland Office’s paper “Strengthening Scotland’s Future” Cm 7973 indicates that the Scottish figure arising from the Scottish proposals is around 35%.

Q465 Chair: Yes. There is no proposal to change the method of collection through HMRC? We would still be paying our tax as now?

Paul Silk: I think what is happening in Scotland is that there is a discussion about whether there should be a Revenue Scotland established. In our proposals we leave open the question of whether HMRC would be responsible for this or not. Since HMRC has all the equipment in place at present it might not be prudent to move away from HMRC in the case of Wales, but we leave that as an operational matter for agreement between the UK Government and the Welsh Government. It is not something we reported on.

Q466 Chair: The name over the door of some of the offices might change, but in fact the method of collection, what appears on your wage slip, would be precisely the same as it is at the moment?

Paul Silk: For income tax, that would be the sensible way of doing it. For the other taxes, for example stamp duty, it might be that a different method of collection would be more efficient and I think that is what is being studied in Scotland at present.

Q467 Chair: It is all about transparency and accountability, in this case letting the Welsh people know that this amount of expenditure goes on their spending programmes.

Professor Lloyd: Absolutely. Accountability was the watchword.

Paul Silk: Yes. You were going to talk about our principles, I think.

Professor Lloyd: Yes, I was. We established a number of principles right at the beginning. Accountability was one of them, and empowerment, which appears in the title of the document. Incentivisation we felt was an issue as well, so that a Welsh Government has responsibility for collecting some of the taxes as well as spending them. Equity was the other one. In doing that, we looked at international comparisons, not just in Scotland and Northern Ireland but on a much wider basis, to learn from experience elsewhere. Not to follow in any sense slavishly, obviously, because we were looking at a particular set of circumstances in Wales within the UK, but I think those international comparisons are important when you look at what is possible and what is current thinking elsewhere.

Q468 Chair: The income tax system will stay as is and the collection will stay as is, but to aid accountability did you consider letting Welsh taxpayers know on their wage slips or their salary slips that, “Yes, this is still the income tax but, by the way, 40% of the income tax is going to be spent a little more directly; still on the same services but more…”
directly by the people that you have elected in your Assembly?“
Paul Silk: Yes, we did and we recommended that.
Q469 Chair: How would that work?
Paul Silk: I believe there are proposals in the last Budget to have more information sent to taxpayers about how income tax is spent. We would envisage that as something that would be replicated in the system that we had in mind so that people would be aware how much of what they were spending in income tax was being spent by the Welsh Government rather than being spent by the Government in London.
Q470 Chair: This is about clarity, not hypothecation?
Paul Silk: It is about clarity and people being more aware and, through that awareness, the Welsh Government being even more accountable than it is at present. I think we were very clear in our minds that the Welsh Government was already accountable. We heard from some people who felt that it was wrong to imply that the Welsh Government was not accountable; we would not want to do that in any sense, but we felt that if they are also responsible for raising their revenue rather than simply spending their revenue then that enhances the level of accountability that they have.
Professor Lloyd: It enhances the level of accountability and transparency, but also it gives empowerment to the Welsh Government.
Q471 Chair: Finally, if a rate of 10% of the income tax is levied by Scotland, that would mean no change to the UK rates. If 10% was levied by Wales, that would mean no change to the UK rates, unless at a future point someone wished to change it by agreement. As far as I can tell, you do not think there is anything in the water in England that would preclude the English from doing something along similar lines.
Paul Silk: Our proposal is that 10 pence should be taken off each band of taxation in Wales and, of course, there would be a commensurate reduction in the funding through the Barnett formula and then it would be for the Welsh Government to determine whether it reimposed 10 pence or imposed a different amount. Under our recommendations—this is one of the differences between us and Scotland—the Welsh Government could impose different amounts on the different bands. What a taxpayer in Wales would pay might be different or might be the same as a taxpayer would be paying in England.
Q472 Chair: I suspect the politics of this are that people would want to do precisely what already existed in terms of the tax band because there would be a natural inclination to establish and bed in the concept, rather than slash or increase taxation. I guess stability would be important.
Paul Silk: We are clear in our report that we do not recommend anything about this. We recommend that the power should be given to the Welsh Government, but we do not recommend how they should use that power. That is the empowerment that we see as an important part of our recommendations, but I think you are right in saying that it seems, from all I understand, very unlikely that a Welsh Government would radically alter the levels of taxation in any band because of the consequences that might flow from that; not least, as I mentioned before, the amount of the population who live close to the Welsh border. One would not want to have tax-related migration flows across the border.
Q473 Stephen Williams: Could we just go back to the first principles about the mindset of your Commission? We have taken evidence in this long-ranging inquiry from quite a lot of people who have been involved in various aspects of Scottish devolution, including Canon Wright who was involved in the first Scottish convention. One of the questions I put to him was, “How could you be sure that your Commission represented the will of Scotland given that some of the political parties were outside it and essentially looked from the outside as though it was a coalition of the like-minded who had probably already made their minds up they were going to arrive at a predetermined conclusion?” Your Commission does seem to have the full set of mainstream political parties in Wales, but are you confident that your Commission members were not also in the same mindset as the Scottish convention—that they wanted devolution of fiscal powers and were trying to concoct a justification for arguing that position?
Paul Silk: As I said before, the fact that we had all four parties as members of the Commission was enormously advantageous to us, but you are right in saying that there is that strain of thought in Wales. There is an organisation called True Wales and I think True Wales, if they were giving evidence to you, would say “Well, the Commission on Devolution would have said that, wouldn’t they, because they all have exactly that mindset.” There is a strain of thought in Wales that has been critical of what we have concluded, but we made it our business first of all to go around Wales; we had 28 meetings all over Wales. We met at least once in every local authority area in Wales. We had open sessions where members of the public could come. We did not always have large numbers at those sessions, but every community councillor, county councillor, was asked to attend one of those sessions. We felt that we had done as much as we could to reach out to people so that they could contribute to what we did. We also commissioned an opinion poll by ICM, which gave us some confidence that the recommendations we made have support from a majority of the population in Wales.
Professor Lloyd: Could I just say that, certainly as one of the members—but I think it is true of all the members—we went into this exercise with an open mind. We invited evidence. We looked at everything that was submitted to us, the views conveyed at the meetings that we held throughout Wales and the opinion poll, and our task was to look at what was presented to us and come to conclusions with no preset views or agenda whatsoever.
Q474 Stephen Williams: But is it fair to say that there is now a consensus among the four parties who
were represented in the Assembly then that they are hungry to get their hands on fiscal levers?

Paul Silk: I was very pleased that before Christmas the Assembly unanimously passed a resolution calling for the full implementation of our recommendations. That is a pretty good indication that the four parties in the Assembly support what we are proposing.

Q475 Stephen Williams: Was what your Commission doing then effectively implementing what was likely to be the will of the Assembly members but given in some academic, social justification, but also sifting through the various taxes and basically saying, “It would be sensible for this tax to be devolved or partially devolved but not for that one”? Was it a sort of sifting exercise and was there a range of taxes that could be devolved?

Paul Silk: Yes. We were preceded by a commission that had been established by the Welsh Government, the Holtham Commission, which Gerry Holtham, David Miles and Bernd Spahn—three academic economists—sat on. They had looked at these issues already. A lot of the academic work had been done in advance. We were then asked by the UK Government, rather than the Welsh Government, to look at these issues. We had the advantage of having politically nominated members. Unlike the Holtham Commission, which consisted of technically able people but without the political involvement, we were able to give that political consideration as well as assess each tax, both in terms of its technical suitability for devolution and also its political suitability for devolution. I hope that process gave confidence to members of the National Assembly when they, as I said, voted unanimously to endorse our proposals.

Q476 Stephen Williams: Did you look at other devolved assemblies and parliaments from around the world? Is Wales in the peculiar position of now having not just the administrative powers that it was originally set up with, but after the referendum more legislative powers, of not having revenue-raising powers? Is that a unique position?

Paul Silk: As far as we could establish, it is unique. Yes.

Q477 Stephen Williams: Once you had done this sifting exercise among the various taxes that should be devolved, apart from income tax that the Chairman was asking you about, the only taxes, from what I could see, you have recommended should be devolved are stamp duty, the aggregates levy, land fill tax and the long-haul element of air passenger duty. Do you think that is an ambitious range of taxes or a very conservative range of taxes that could have been devolved?

Paul Silk: I am tempted to say that was what we concluded was the right range of taxes to devolve. For example, I believe the Scottish Government is arguing for the devolution of corporation tax to Scotland. Of course, the devolution of corporation tax to Northern Ireland is actively being considered at present. We considered that and came to the conclusion that, both because of the mobility of corporation tax and its volatility, it was not appropriate to devolve the headline rate of corporation tax, although we make some proposals about capital allowances under corporation tax. There will always be people who will think that we could have been more ambitious and there is a group of people in Wales who are opposed to any devolution, let alone further devolution. So there are people who think we have been too ambitious as well.

Professor Lloyd: We did look at all the taxes, corporation tax and others, very carefully and came to what I think were reasoned conclusions about what taxes were appropriate to be devolved and what elements within those were appropriate as well. As Paul said, in corporation tax in particular, it is not just the headline rate that is relevant but the system of allowances, and we have comments on that in the report.

Q478 Stephen Williams: I should say at this point, Chairman, that Mr Silk mentioned in his opening remarks he had looked at the border aspects of this. You very kindly took evidence from me, as a Welshman who happens to represent a seat in Bristol, about the cross-border economy on the other side of the Severn. You might think it was sensible to devolving corporation tax and I am glad you at least took that on board. Coming back to the taxes you have decided on, do you think that range of taxes, which in UK terms are small revenue raisers, give the Assembly members who are in the Government in Wales enough fiscal flexibility to do anything particularly interesting? I do not know how much landfill there is in Wales. We know Cardiff Airport is in trouble. There are not that many long-haul flights to attract air passenger duty and presumably they would want to lower it anyway to get more long-haul flights. Property prices in Wales tend to be lower than the UK, so you would have to have a completely different regime presumably and bands of stamp duty. Have you come up with some sort of estimate of what this small range of taxes might raise for the Assembly?

Paul Silk: What it might raise or whether it gives enough flexibility for things to be done differently? I think we have an estimate of what it would raise and these are modest amounts: stamp duty land tax, £150 million; land fill tax, £62 million; aggregates duty, £21 million; air passenger duty, £1 million.

Q479 Stephen Williams: What is the total budget of the Assembly Government?

Paul Silk: This would amount to £2.2 billion. That is about 15% of the total budget of the Assembly Government, but the Welsh Government would see the devolution of these taxes as giving them extra tools. For example, stamp duty land tax might stimulate the housing market. It might be able to stimulate it in a particular way the Welsh Government would think desirable. Our empowerment agenda said, “Give these taxes to Wales and let the Welsh Government decide how it is going to use them”. We hope beneficially in the interests of Wales, but there is a responsibility that goes with that empowerment as well, and the Welsh Government should be able to decide in these cases how it uses these taxes in a way
that it is then politically accountable for. For example, if it wanted to remove air passenger duty to stimulate Cardiff Airport, that would be something for which they should be politically accountable and able to decide. As I said before, there are always arguments that more taxation should be devolved, but we felt that this was the judicious mix of taxation and reflected broadly what the Welsh Government had asked for, and indeed the other political parties in Wales.

Professor Lloyd: It is a case of enabling the Government to take policy decisions that it feels appropriate at the time.

Paul Silk: I should add that we also recommend, as in Scotland, that there should be the ability to introduce new taxes if the Welsh Government thought that was appropriate and they met the same criteria as are set out in the Scotland Act in the case of new taxes in Scotland. For example—it is not a tax but it is akin to a tax—the levy on single-use carrier bags in Wales has resulted in very many fewer carrier bags being used.

Stephen Williams: Welsh relatives of people that live in England plead for plastic bags to be taken over the border in Wales.

Paul Silk: Yes. That does have a distorting effect just on the border. I go shopping just across the border from Hay-on-Wye sometimes and I am very surprised when I get my plastic bags given to me. That is an example of a relatively minor use of in that case not a taxation power but what could be a taxation power to bring about a change that the Welsh Government feels is desirable. We do not make any recommendations about what those changes ought to be. We just think they should have the power to do that and be accountable politically for the decisions they make. We also think that what we propose will enhance the political process because political parties, when they are fighting Welsh elections, will need to say how they are going to use the taxation powers they have, whether they are going to reduce taxes or whether they are going to propose increasing taxes, and we think that will enrich the political debate in Wales.

Q480 Stephen Williams: Other taxes that are perhaps more easily described as having a local element to them would be council tax and a uniform business rate. The council tax will simply be given the PAYE coding in the business, most of the work will have been done by HMRC. People who work both in England and Wales and in England plead for plastic bags to be taken over the border, it does add some complication potentially to disposal to landfill, and you have a different tax regime in Wales from the regime on the other side of the border. This might have changed their mind now. Your report states that more taxation should be devolved, but we felt that it is then politically accountable for. For example, if it wanted to remove air passenger duty to stimulate Cardiff Airport, that would be something for which they should be politically accountable and able to decide. As I said before, there are always arguments that more taxation should be devolved, but we felt that this was the judicious mix of taxation and reflected broadly what the Welsh Government had asked for, and indeed the other political parties in Wales.

Professor Lloyd: It is a case of enabling the Government to take policy decisions that it feels appropriate at the time.

Q481 Paul Flynn: You received evidence from the Federation of Small Businesses suggesting the power to introduce new taxes would lead to a system that was overly complicated. Is this a valid point? If so, what can be done to avoid problems?

Paul Silk: I think the Federation of Small Businesses was very supportive of our recommendations when they were made and spoke publicly in support of them. I do not recollect the evidence that they gave originally, but I could imagine that they might have been arguing at that time that any extra complication in the taxation system was something that small businesses would find particularly difficult to cope with. We recognised that in the case of corporation tax and that is one of the reasons why we did not recommend the devolution of corporation tax. In the case of income tax, it is already the case, following the Scotland Act, that any business that employs people who work both in England and Wales and in Scotland will have to cope with Scottish taxpayers. We do not think that is going to be particularly difficult for businesses because most of the work will be done by HMRC. Similarly for a small business that might employ people on both sides of the English and Welsh border, if under our proposals there are Welsh taxpayers because they are domiciled in Wales and English-domiciled taxpayers working in the same business, most of the work will have been done by HMRC rather than by the business themselves. They will simply be given the PAYE coding in the business and that might be potentially different for a Welsh taxpayer than for an English taxpayer. I do not think that we do add a great deal of complication and it would be for that reason, I suspect, that the FSB was supportive of what we recommended.

Professor Lloyd: In each of the taxes we looked at, we did take into account the implications of making any changes that would be necessary, and that is in our report. In each of the instances that we considered in relation to income tax in particular, because of the changes that have to be made in relation to Scotland, as Paul indicated, we do not think that it is an onerous task and I think that is accepted broadly within Wales.

Paul Silk: We do recognise and address in the report that, if you are, let us say, a business that is involved in disposal to landfill, and you have a different tax regime in Wales from the regime in the other side of the border, it does add some complication potentially to your business, but we think that those complications are able to be coped with.

Q482 Paul Flynn: What I was quoting from was their written evidence but, as you rightly say, they might have changed their mind now. Your report states that if income tax revenues grow at a faster rate in Wales than in the rest of the UK then the budget of the Welsh Government would be higher than if it were wholly dependent on the block grant. What would be
the budgetary impact if the reverse happens and income tax revenue grows more slowly or not at all? **Paul Silk:** Then the opposite would be the effect. We set this out in an appendix to the report. What almost counter-intuitively has happened in Wales is that income tax revenues have grown at a greater rate than income tax revenues have grown in England. If that trend continued in the future, then under our proposals Wales would do better, but it is only relatively marginal amounts of money we are talking about.

**Professor Lloyd:** Yes, it is relatively marginal but the point is—and this relates to the principle of incentivisation—if Wales does better than the average in the UK it benefits and if it does less well, of course the other side of the coin is that it loses. It is a small effect one way or another, but it is very much at the heart of the principles of empowerment and incentivisation.

**Q483 Paul Flynn:** If Wales becomes more prosperous than the rest of the United Kingdom one can see a spiral of prosperity going there but there is the opposite, the nightmare of a spiral of decline; that if the Welsh economy is doing badly the incomes then go down. It would be possible now to balance that. If Wales was in a situation where we were trying to deal with de-industrialisation as has happened in the past, at a faster rate than the rest of the United Kingdom, those problems could be balanced out if the rest of the United Kingdom was more prosperous. Is there not a danger there that if we look forward to prosperity, which we all would expect and wish for, if it does go the other way that decline could be accelerated by having these Welsh-dependent taxes?

**Paul Silk:** It would be wrong for us to pretend there is not some risk. I am just turning up the figures here. If the historic trends were projected into the future, we would be talking about £27 million over five years. If it went the other way, we would be talking about £27 million less over five years. It is relatively marginal, but it is obviously an appreciable amount. As Noel said, what we believe is that the extra incentivisation the Welsh Government would have as a result of our proposals should result in an optimistic outcome. We did not start our work with an expectation that Wales is in a spiral of continuous decline. We rather thought the opposite. We rather wanted to think the opposite, at least, and so we wanted to produce a report that reflected, we hope, not a naively optimistic view of the future but an optimistic view rather than something that, as you well know, we are all too inclined to do in Wales, which is be pessimistic about ourselves.

**Q484 Paul Flynn:** I wonder how you assess the value of evidence from various groups. You mentioned one group that is a relatively small group. I know the people involved in it very well. What credence do you give bodies like the one that you mentioned?

**Paul Silk:** We made a great effort to listen to organisations like them. They came in for a very productive session with us. They said afterwards, “We don’t agree with the way you are going, but thank you very much for taking the time to have us in and listen to us”. I have done that with Rachel Banner on several occasions. It does represent, as you know, an authentic voice in certain parts of Wales and among certain groups of Welsh people. It is very important to listen to them as well and not be part of a devolutionist bandwagon. It was very important for us to do that.

**Q485 Chair:** Just to pick up those points so I am clear. You are not proposing, as I read your report, to do anything that ends the equalisation mechanisms that currently exist.

**Paul Silk:** That is correct, yes.

**Q486 Chair:** I did not want there to be a certainty of dependency that we need to preserve somehow. Is it true to say that devolving and, in your proposals, devolving financial capability, might have tremendously liberating and creative impacts upon the Welsh economy and the ability of people to make their own destinies and to retain some of the additional income that that dynamism generates?

**Paul Silk:** Yes, I think that probably was the leitmotif behind us all. I do not want to predict a golden future any more than a pessimistic future, but you are right in saying that we had an optimism that we hope comes through in the report.

**Professor Lloyd:** Which is encapsulated in the word I have been using—incentivisation.

**Chair:** Could you elaborate on that a little bit?

**Professor Lloyd:** I think it gives the point of incentivisation, which is that the Welsh Government has the ability to develop and to take positive decisions that are for economic benefit in the longer term.

**Q487 Sheila Gilmore:** I think we have covered the business fairly well. One of the questions I was going to ask was your response to Plaid Cymru’s criticism about business taxes not being devolved, but do you feel you have covered that sufficiently?

**Paul Silk:** Plaid Cymru was certainly disappointed that corporation tax was not in our proposals, but perhaps I should say again that our report was unanimous and we did have a very distinguished representative of Plaid Cymru in the Commission. I am sure that he will have explained to his colleagues inside Plaid Cymru why we made those proposals, but we came to the conclusion that that was right in the interests of Wales. I remember reading a striking piece of evidence to the Scottish Parliament that the one thing one did not want to do as a result of tax devolution was to create more business only for accountants. I think we felt that, in the case of corporation tax, it is a very easy tax to move to one side of the border or another and to bring no economic benefit to Wales simply by claiming that a business was domiciled in Wales and was paying a lower rate of Welsh corporation tax. There was no benefit for the United Kingdom as a whole or indeed for Wales.

**Professor Lloyd:** We looked at it very carefully and, in broad terms, the mobility of corporation tax and its volatility persuaded us that it was not one that would be appropriate to devolve.

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2 True Wales, campaign director
Q488 Sheila Gilmore: I suppose to some extent one of the big issues about the current move is the question of these taxes internationally as well. One of the big issues—I do not want to categorise it as a kind of Starbucks—is precisely people being able to decide where their business is making its profits.

Professor Lloyd: That is what I mean by mobility.

Q489 Sheila Gilmore: Yes. Do you think we would be creating our own internal problem, in terms of the UK, that many people are against when they see it? People are very quick to say it is terrible that Starbucks have managed to put their profits somewhere other than where they appear to be making them. Do you think those people who say, “We want it devolved”, have thought through those consequences?

Paul Silk: I think I should confine myself to saying what we thought was right for Wales because obviously there is a different argument in Northern Ireland and there may be a different argument in Scotland, but the fact that it would be very easy to move a business from Chester to Wrexham without moving the headquarters of the business from Chester to Wrexham if there were a lower corporation tax in Wales than in England without moving any economic activity or any benefit to Wales, simply reducing the tax take for that business, did not seem to us to be a very sensible proposal to make.

One proposal we did make about corporation tax was that if it were devolved to both Scotland and to Northern Ireland then we felt it should be devolved to Wales. Gerry Holtham, who I mentioned before, in his report on taxation did make some interesting proposals about varying corporation tax rates, as I understand them, throughout the United Kingdom depending on the economic prosperity of the area where the business is based, so the North East of England would benefit as well. I think the difficulty with that is the European Court rulings, which only allow the devolution of corporation tax to an area of legislative competence. So the only places where corporation tax could be considered to be devolved are Scotland, Wales and Northern Ireland. Our view was that if Scotland and Northern Ireland both had corporation tax then the level playing field should allow the to be devolved to Wales, but absent it being devolved to Scotland and Northern Ireland we did not think it should be devolved to Wales.

Q490 Sheila Gilmore: I think your Commission says it is a radical transfer of power from London to Cardiff that is being proposed here. What challenges do you see in implementing that?

Paul Silk: One of the challenges that we address in the report is the capacity issue. The capacity in terms of the Welsh Government, that they at present do not have a function akin to the Treasury. We suggest that they would need to have that sort of capability before they dealt with taxation matters. There is also a capability issue in the National Assembly where, of course, they have not had to consider financial legislation yet. There are certainly challenges, but there will also be some challenges for business—we talked about those before—in implementing different systems inside Wales from England. As Noel said earlier, the international evidence is that this is the norm in sub-national units, in federations most typically where people do this as matter of course; that they have taxation that they administer locally, and we see no reason why Wales could not do just as competently as any of those other sub-national regions around the world.

Q491 Sheila Gilmore: In terms of your timetable, for example the changes to income tax for Scotland—of course subject to the referendum—are due to kick in earlier. Do you think that is an opportunity for Wales to learn from the Scottish experience, assuming we get to that point?

Paul Silk: Yes, absolutely. We set out a timetable in our report. We recommend that there should be a referendum before the devolution of income tax powers to Wales and that would mean that the Welsh Government would have had experience of operating the smaller taxes, if our proposals were followed, and the Welsh people would have been able to see what the consequences will have been in Scotland through the devolution of income tax before that referendum happens. There is a gradual build-up for our proposal for the devolution of income tax, which we do not think could happen before 2020.

Professor Lloyd: I think that process of developing experience within the Welsh Government is important but also, as I mentioned, it is a case of being able to learn from experience elsewhere. That itself is part of the development of that experience.

Q492 Sheila Gilmore: Do you think the UK Government is ready to cope with these changes?

Paul Silk: The UK Government’s formal response to our report will be out in April—that was announced in the autumn statement—but I have to say that we have had very cordial and optimistic discussions with both Ministers in the Treasury and Ministers in the Wales Office. I have emphasised optimism already. I am pretty optimistic that we will get a favourable response to our recommendations.

Q493 Sheila Gilmore: There are significant consequences in terms of both administration and, potentially, financially as well for the UK Government if Wales takes the option of removing what is clearly a substantial chunk of income tax. Do you think that has been taken on board?

Paul Silk: In the case of our recommendations, it is simply that more of the Welsh budget will be funded by income tax raised in Wales and that will have a consequence on the Barnett grant. It will not have any adverse consequences for the UK Treasury.

Sheila Gilmore: Not even in terms of administration?

Paul Silk: One of the issues in terms of administration is who should pay for the changes and the practice, as you know, in the past has been when something is devolved then Scotland or Wales picks up the administrative consequences of that. Take the case of stamp duty where it is wholly to be devolved; HMRC

3 Chair, Holtham Commission into Finance and Funding for Wales

4 Witness correction: the announcement was Spring, rather than April.
will not be responsible for stamp duty inside Wales, so they presumably will save some money by not having to do it inside Wales. Who picks up the bill for the new administration, to what extent Wales will receive some sort of subvention from HMRC for that, is for negotiation in the future.

Q494 Sheila Gilmore: In terms of what you have done, do you think you have achieved your objective of commanding a wide degree of support for the proposals you are making?

Paul Silk: Yes, we do; I think both in terms of internally inside the Commission by having a unanimous report and in terms of having a unanimous resolution of the Assembly saying, “Implement it”, and indeed from the majority of people we met when we went around Wales as well as the public opinion polls. Yes, I think we did.

Professor Lloyd: It is important to emphasise that both in the preparation of the report and in the meetings that we had and the evidence that was presented to us, but also in terms of the response to the publication of the report, I think we are quite encouraged that it is seen as a rational, well thought-out set of recommendations. It is up to the two Governments to decide.

Sheila Gilmore: Now we are just waiting for the UK Government to respond. Thank you.

Q495 Chair: Just so I am clear, under your proposal HMRC will continue to collect tax wherever it is based, whether it is Scotland, Wales, England, and you are not suggesting the creation of a super Welsh HMRC that sends out separate bills and raises different rates? I think we all need to be clear about this.

Paul Silk: I was perhaps not entirely clear when I answered a previous question about this. In the case of income tax then, yes, HMRC would carry on doing it because it is a tax that is shared. In the case of the other taxes, it is possible that HMRC will not want to do the tax in Wales if it is an entirely different tax and the Welsh Government will have to find some alternative means of raising stamp duty land tax. That is being considered in Scotland at present, but in the case of income tax, yes, we envisage that will be done by HMRC because it is a shared tax.

Chair: That is very helpful.

Professor Lloyd: We do not recommend any change to the structure of income tax, which is quite important.

Chair: I think that is not only economically but also politically important to underline if this is to progress in the way that I know you would like it to.

Q496 Mr Turner: Are there any lessons for England in the devolution of finance to Wales and Scotland?

Paul Silk: It would be difficult for me to say that there are lessons that ought to be drawn by those who make decisions for England from what we have proposed. I hope that what we have proposed can be read by people who are interested in, I do not know, regional government inside England, devolution inside England, and that something can be drawn that is useful and relevant for them. But we did not, quite clearly, write our report with the intention of producing lessons for England. If other people draw conclusions from our report that are relevant in England then I would be delighted, but I would not like to say that anything had an English label.

One thing that I would say about England, though, was it was rather difficult in producing our report to hear a voice that spoke on behalf of England. Mr Williams mentioned that I met him. We contacted all Members of Parliament with contiguous or nearby constituencies. We contacted local authorities that border Wales and we had some interesting evidence from them, but of course they do not speak on behalf of England. They speak on behalf of cross-border issues. So we had difficulty thinking about who speaks for England and I believe that is something that your Committee has also encountered.

Mr Turner: It is true, yes. You did not take evidence from England. One might well ask who does speak for England.

Paul Silk: Yes.

Q497 Mr Turner: I think you recognise the difficulty. Do you recognise the difficulty finding a voice for England?

Paul Silk: Yes, certainly in the narrow context of our work. It would have been very nice to test some of the ideas we had against somebody who spoke on behalf of England. Clearly we spoke to Ministers in the Treasury, one of whom represents an English constituency and one of whom represents a Scottish constituency, and the Treasury in some sense speaks on behalf of England, but I think this is a problem.

Mr Turner: I think we may have been searching for something further down.

Paul Silk: Yes.

Professor Lloyd: We hope that the research underlying our report is going to be helpful in general terms, I think that the research papers that were produced are very good papers and I hope they will be beneficial to others.

Q498 Mr Turner: Do you think people will read them? I am sure they are very good. The question is whether people in the Isle of Wight, for example, will ever turn to page WA, rather than WI. Do you think people in the rural areas, in the small and for that matter the large towns, understand what is happening over the whole of England is responding to what you are asking for or is there a way of finding them more locally?

Paul Silk: Do you mean people in England now or people in Wales?

Mr Turner: No, I am talking about the Isle of Wight or West Berkshire or Westmorland.

Paul Silk: That is a very difficult question to answer because it is not one that we have had to think about. There is a problem in Wales itself of people not really understanding the purport of our recommendations. People don’t understand the way in which government works, they don’t understand the way the tax system works. It became quite apparent to us as we went around Wales that that is a general malaise in Wales, and probably a general malaise in England as well. Sometimes one can be depressed by that and feel
people ought to know more about the way in which the government system and taxation works, but the optimistic side of that is that people often expect their elected members, others who go away to do these sorts of things, to go away and do it for them and trust them to do it well.

Q499 Mr Turner: I would deduce from that that you feel that representative democracy is okay and that you feel—from relatively limited connection with England I realise—that we should have a responsibility for representing England as well as representing the UK?

Paul Silk: As a Member of Parliament for an English constituency you have a role in representing England. I know that the commission on the West lothian question is considering some of these issues now and I think we are all waiting to see what they conclude. One thing I will mention is our recommendation about a referendum. In the particular case of income tax we felt that that was a decision that ought to be put to the people of Wales as a whole by means of a referendum because it was an important issue, an issue that some might think from the last referendum we had in Wales would be subject to another referendum and, of course, was subject to a referendum in Scotland. I am going to be rather theoretical now. There are circumstances when choices should not be left to representatives but perhaps given back to people to decide by means of a referendum. Whether the UK Government agrees with this we will wait and see in April when they respond to us.

Professor Lloyd: We felt that we were talking about something that was of significance to Wales and that it was proper to test that in the referendum, and that is the recommendation we have made.

Q500 Fabian Hamilton: When Lord Prescott was Deputy Prime Minister he tried very hard to emulate the devolution to Wales and Scotland to the regions of England, and we know what the result of that was. To some extent it was quite a surprise. I am an MP in Leeds. Leeds proudly styles itself as the capital of Yorkshire, although I think Sheffield and Bradford might disagree. West Yorkshire certainly is an area of large cities and towns, unlike the parts of England, the Isle of Wight, that my colleague has described. Do you believe, from the information you have gathered in Wales, that regional devolution in England is just impossible because of the diversity and that a more likely form of devolution would be the city region model? How do you think that might work? Is that something you looked at, for example with Cardiff and Swansea?

Paul Silk: The straight answer to that is, no, it is not something we have looked at. I understand that the issue of the city region is being considered in both Cardiff and Swansea by the Welsh Government but it was not something that we addressed.

Professor Lloyd: That is clearly outside the remit of the Commission. We did not consider those issues and the Commission does not have a view on it.

Q501 Fabian Hamilton: Mr Turner raised a very important point, and the question that I know we have tried to discuss, of who really does speak for England. If you ask local authority leaders in Yorkshire who speaks for Yorkshire obviously you are going to get several voices from the leaders of the major cities and districts in West Yorkshire, South Yorkshire, Humberside and North Yorkshire, North Yorkshire being far more rural. Presumably you did not look at devolution or at concentrations of power within Cardiff and Swansea and the major urban and city areas of Wales. Is that something that concentrated your minds? You have a huge diversity, haven’t you? You have hugely populated urban areas and then you have vast wildernesses of very little population. How do you have a model that satisfies the needs and demands of that variety?

Paul Silk: Again, the reform for local government in Wales was not something that was inside our remit but is something that is always being actively discussed inside Wales because of precisely that diversity of small areas in the south and in the northeast of high development and otherwise a very large rural hinterland.

Turning your question slightly on its head, one of the things that you can do in Wales is you can talk to people who represent Wales, so you have a First Minister and it is quite clear that he represents something called the Welsh Government. You have bodies like the FSB for Wales who represent Wales, and the political parties, indeed, organise at a Welsh level. So you do have interlocutors you can speak to and it is clearly more difficult to find out who represents Yorkshire.

Professor Lloyd: The Commission engaged with those bodies, of course, in relation to the very specific terms of reference that we had to look at fiscal devolution in Wales.

Paul Silk: When we look at international examples, the ones we habitually come back to are federations and then it is quite clear what the relationship is between the centre and the sub-national units. When we come to address the second part of our work, I think that is one of the questions we are going to have to think a little bit about—the relationship between the centre and, in our case, Wales, but of course also for Scotland, Northern Ireland and the regions of England.

Q502 Fabian Hamilton: It would certainly be interesting to know why regional government in Saxony, for example, works well, as far as I can see having visited there last summer, but won’t work in Yorkshire, or the people of Yorkshire don’t want it. Let me move on a little. Do you think that the recommendations and proposals contained in your report strengthen or weaken the Union?

Paul Silk: We think they strengthen the Union.

Fabian Hamilton: Why is that?

Paul Silk: We think that a strong Wales, which we think will result from our report, leads to a stronger United Kingdom. Our terms of reference instructed us to look at Wales inside the context of the United Kingdom as a whole, so we did always ask ourselves the question about whether what we were
Q503 Fabian Hamilton: Can you understand why some parts of England feel a slight resentment that Wales has this devolution, this self-government, and yet Yorkshire or Hampshire or other parts of the country that feel quite a clear identity of their own don’t have it? Yet there is a contradiction, isn’t there, because the only referendum we have had in the North East said, “No, we don’t want it”?

Paul Silk: We certainly do. We spoke to the IPPR who had done some work on this some months ago and there is a growing evidence of English resentment of, particularly, Scotland but also of Wales. I referred earlier to the Azores judgment of the European Court, which would allow the devolution of corporation tax to Wales, Scotland or Northern Ireland because they have legislative competence, but would not allow the devolution of corporation tax to Yorkshire or to the North East. I can understand why people might feel resentful about that but, of course, it was definitely outside our brief to look at the future of England.

Fabian Hamilton: Perhaps we need a Silk Commission for England.

Chair: It could be called the Constitutional Convention.

Q504 Mrs Laing: Before we move on, just on that very last point, it would be within the competence of the United Kingdom Government to vary corporation tax in one way or another for, let’s say, Yorkshire or the South West or any part of the country that it chose to do so, wouldn’t it?

Paul Silk: I think we should take advice and write to you about that, but my understanding is it is not in the competence because of European law.

Professor Lloyd: That was my understanding but we will check on that.

Mrs Laing: Thank you. That opens such a can of worms. I love it. Thank you very much.

Paul Silk: Please wait until we have written and confirmed that before the can is entirely opened.

Q505 Mrs Laing: There are layers and layers and layers, are there not, and that is what you have been looking at? If it transpired that, let’s say, Sheffield and the area around Sheffield was at some economic disadvantage because of its geographic or historic position, then there are ways in which the United Kingdom Government can give a tax advantage or an economic advantage of some kind to an area, and I take your point about European law putting restrictions on corporation tax. For example, what needs to be done with development agencies, enterprise zones, variation of business rates? Is it the case that the United Kingdom Government has the competence to treat different parts of the British Isles, let’s say, because I am not talking about the United Kingdom as an entity, differently according to their economic status?

Paul Silk: I am not an expert in how European law relates to the competences of the UK Government in respect to the regions of England, but there are things like enterprise zones and so on that the UK Government does to stimulate growth and development in the parts of England that it thinks needs those sorts of interventions. There are clearly things that can be done in an area with legislative competence, like Wales, Scotland and Northern Ireland, that can’t be done inside England.

Q506 Mrs Laing: Thank you very much. I will steer away from the can of worms and come back to safer ground on the question of our general investigation of whether we need a constitutional convention and the way in which devolution has developed. Given that the devolution that was started some 15 years ago has now evolved and, for example, the 2012 Scotland Act gives Scotland new powers to vary income tax, which we have already discussed—your Commission report recommends income tax powers for Wales, as we have also been discussing—do you think it is time to look at the future of the union from a UK perspective and have a national conversation of some kind about what the future of the United Kingdom should look like?

Paul Silk: Again, this is something that is beyond our terms of reference and not something the Commission has really engaged with. Speaking as an individual, I am always a bit of an anorak about these things. I am always interested to hear conversations about the future of the constitution, but I think the Commission has no view and I can’t express a view on behalf of the Commission about that.

Professor Lloyd: I think that is right. It is not something that was within our remit. It is not something that we have discussed and it is an issue that we have to say the Commission has no view upon.

Q507 Chair: If I may press Eleanor’s point. Surely something as significant as the Scotland Act 2012 or the Silk Commission and its proposals—let’s imagine the proposals have been unanimously accepted by the Assembly, that they become law—while not trying to say that you should take on the role of a constitutional convention for the UK, nonetheless surely something as important as that has consequences for the UK that would need to be examined in that broader context, as Eleanor says. Isn’t it really an obvious consequence of your work?

Paul Silk: I agree that it is what we have already recommended and the issues we are going to be discussing in part 2 have a salience outside Wales. I hope that if there was such a convention they would...
look at the sorts of conclusions that we would come to, as Calman came to and as Mackay will come to.

Q508 Mrs Laing: Looking more deeply into all of that, do you share the concerns that some of our witnesses have expressed? For example, Dr Robin Wilson said to us that codifying the relationship between the UK and its constituent parts could help avoid the devolved assemblies and legislatures from becoming what he described as “hermetically sealed political spheres”; which he considered to be a risk with the way devolution is currently being applied—his words, not mine. Do you share that concern about hermetically sealed political spheres within the UK?

Paul Silk: I have not read that before. I can see that that would be a concern if it were a reality. I know that in part 2 of our work we are going to be considering broader issues than we considered in part 1. I mean, I think that the questions of the relationship between the centre, between London and Cardiff, will clearly be questions we will be considering over the next year. We have not yet had our evidence but there are issues clear to us already that are going to be raised with us about the sort of relationship that ought to exist between the Government in London and the Government in Cardiff.

Professor Lloyd: Some of the recommendations that we have made and the content of our report do require there to be a mutual understanding between the Welsh Government and the Government in Westminster.

Paul Silk: If I may just add, on the first part of our report we made quite a lot of recommendations about how to improve the dialogue between London and Cardiff, because it seemed to us it was in the interests of Wales and also in the interests of the United Kingdom for that dialogue to be a fruitful one.

Q509 Mrs Laing: Would it help your future deliberations about the position of Cardiff and London to examine, for example, what has happened here in the UK Parliament over the last two days when the House of Commons on Tuesday and then the House of Lords yesterday debated a particular order under the 1998 Scotland Act? Originally back in 1998 it was envisaged that the Scottish Assembly, as it was then referred to, now Parliament, would not need and should not have powers to hold a referendum on the future constitutional position of Scotland. We are talking about evolution of the relationships within the United Kingdom. The situation having evolved, namely by the political developments, depending on the way in which the people of Scotland voted, exercised their democratic rights, changed the situation so significantly that the Scotland Act has, over these last two days, now been amended in terms of the order under section 30 giving power to the Scottish Parliament to hold the referendum, for which 15 years ago power was specifically withheld. Do you consider that that sort of evolution is significant?

Paul Silk: It is clearly significant in the case of Scotland. Issues like that are the issues that we are going to be considering in part 2 of our work—what areas ought to be devolved. I think one of the questions we probably are going to need to address very early in our own thinking is what the intellectual case is for certain areas being devolved to Wales and certain areas being reserved to London. Why do you reserve something to London and why do you devolve something to Cardiff? Do we have the boundaries right? Should things move either way? Some people suggest things should move back to London. More people perhaps suggest things should move down to Cardiff. What is the reason for that boundary being set at a particular place is one of the questions that I hope that our Commission will address.

Professor Lloyd: That is very much at the heart of our remit.

Q510 Mrs Laing: That is a very interesting point. Would it be right to say then that it is not just a question of place but of time, the example that I have just given you of section 30 of the Scotland Act 1998 and its change over the last two days? Is it logical or politically acceptable to say that those lines of what is devolved and what is reserved should be set down at any point in time? Should they not be allowed to evolve?

Paul Silk: The model in Wales does allow evolution and change at present and there has been a process of change constantly since devolution happened in Wales. I think that has been also the case in Scotland and Northern Ireland. What I would like us as a Commission to think about is—this is the first time I have mentioned this to Noel—is there a line that ought to be drawn somewhere and if so why, or do you always need a flexibility? Events happen, things change, circumstances change, and what might have seemed a sensible demarcation in a particular year no longer seems a sensible demarcation 10 years later. I was talking to somebody yesterday about the Government of Wales Act. He was saying to me that quite a lot of the things that are in that Government of Wales Act reflect issues that were very important at that time and now have disappeared as important issues. They are enshrined in legislation.

Professor Lloyd: Evolution is inevitable, isn’t it?

Paul Silk: So that is a danger, isn’t it?

Q511 Mrs Laing: I would suggest that it is, but I have to ask the question so I am glad you say that it is. It is potentially a danger. My colleague Mr Hamilton talked about the referendum that took place in the North East of England regarding a possible regional assembly and we all recall the massive vote against a regional assembly. In your deliberations have you detected any real appetite for extra layers of government in England?

Paul Silk: In our deliberations we neither asked that question nor detected any, no.

Q512 Mrs Laing: You have not been searching for them so perhaps it is an unfair question, and I don’t mean to ask an unfair question. Let me put it another way. From your examinations in respect of Wales, are there any lessons to be learned for England about devolution of power from the centre?

Paul Silk: As I said to Mr Turner, if politicians and others who represent England feel there are things that they can glean from our recommendations then we are
delighted but they were not written with that audience particularly in mind.

Q513 Mrs Laing: But nevertheless they are scientifically constructed deliberations and one would hope that the work that you have done could possibly be extrapolated.

Professor Lloyd: It is the comment I made earlier really, that the work and the research behind our report is available for wider consideration.

Mrs Laing: We appreciate that. Thank you very much.

Q514 Chair: Noel, do forgive me. I had forgotten that you have an appointment elsewhere. Please feel free to—

Professor Lloyd: You don’t really mind, Chair?

Chair: Not at all, no. It is my fault. I should have said something about 20 minutes ago. Thank you very much for coming this morning.

Professor Lloyd: I do apologise. I appreciate the opportunity to come along. Thank you very much.

Q515 Chair: In looking at English local government, one of the considerations the Committee has had is how much further devolution goes beyond local government, in other words parish councils, town councils, neighbourhood councils and so on. There are lots of different varieties. I don’t want to pre-empt the Committee’s view, but I think the Committee felt it was very important that a centralised state was not replaced purely by a local central state, if you know what I mean, that there was room to breathe to let lower forms of government develop if necessary. Does this read across to the work that you have done, Paul, in the sense of, while many would welcome strengthening of government in Cardiff, were there concerns or were opportunities seen that this could go further into the local councils and perhaps beyond? Did you have a similar experience to our learning curve?

Paul Silk: That wasn’t something that we addressed in our report on fiscal powers. The second part of our work is going to be directed principally at the relations between London and Cardiff. But I would say that when we went around Wales it was an interesting and salutary experience, because when you go, as we did, to Llangefni it is a very long way from Cardiff. People in Llangefni sometimes feel that their interests are not heard in Cardiff. I guess exactly the same as happens in England, where people think that if you live in Truro your interests are not being properly considered in London, certainly applies in Wales as well. I say this as an observation, there is a dynamic relationship between government in Cardiff and local government in Wales.

Q516 Mr Chope: I think everybody seems to have been very gentle with you about this, I must say. I am surprised that the Government’s priorities include spending money on this type of commission. That is no reflection upon you as an individual. One thing that did emerge from your earlier evidence was that it seems as though you think you would be able to have more flexibility and freedom if you were outside the European Union. Is that right?

Paul Silk: I am surprised you deduced that from what I said. Perhaps I shouldn’t have said what I said about England and Wales.

Q517 Mr Chope: For example, the Azores judgment would not impinge, would it?

Paul Silk: You are absolutely right. The Azores judgment would not impinge if we were outside the European Union but since we are inside the European Union it does. It was certainly beyond our terms of reference to consider whether Wales would be better off or worse off if we were outside the European Union.

Q518 Mr Chope: You say you have not really discussed this with the English but your terms of reference said that you had to, “Bring forward a package of powers that would improve the financial accountability of the Assembly, which are consistent with the UK’s fiscal objectives and are likely to have a wide degree of support”. Can I ask you specifically about the air passenger duty proposal? At the moment if somebody goes from Cardiff to Dublin airport and they want to take a long-haul flight to America, they can change planes at Dublin but they have to get a fresh ticket in order to avoid the long-haul air passenger duty. Under your proposal it would be possible to go from Cardiff to Dublin and get on a long-haul flight without having to re-ticket. Therefore, it would give a significant competitive advantage to carriers that were offering a flight from Cardiff to the United States via Dublin with one through ticket, whereas people who wanted to make the same trip from, say, my local airport in Bournemouth would not be able to take advantage of that. They would have to have fresh ticketing.

At the moment the Welsh Assembly would not get any notional revenue from long-haul air passenger duty because, as you have said, you do not have any long-haul flights going out of Cardiff. You do not have any income at the moment, therefore any change in the arrangements could only be beneficial because if you have any income, which you probably wouldn’t under your proposal, that would not matter but what you would be doing is taking income away from the United Kingdom airports and the United Kingdom taxpayers. What you would be doing is attracting people to go to Cardiff airport rather than to Heathrow, for example, and then stop off, whether it be at Schiphol or Dublin, in order to fulfil their long-haul journey without having to pay long-haul air passenger duty.

How is that proposal consistent with the remit that you were given, which was that it had to be consistent with our fiscal objectives? The Chancellor has said that the whole purpose of air passenger duty is to raise revenue. He has admitted that. He has abandoned the original environmental case for it and said it is in order to raise revenue. Your proposal here would undermine the UK’s revenue raising capacity in that particular respect.

Paul Silk: It is exactly the same proposal as has been implemented in the Finance Act 2012 in respect of
long-haul flights from Northern Ireland. HMRC’s justification for that was the economic development of Northern Ireland. We felt that this proposal was right in the context of Wales for the economic development of Wales.

Q519 Mr Chope: But what is happening in Northern Ireland is that people are going into the Republic of Ireland to take long-haul flights from there in order to avoid the air passenger duty. I don’t think you can say that the arguments are analogous, but would you accept that the consequence of what you are proposing is that it would undermine the tax revenue of the rest of the United Kingdom?

Paul Silk: There were two justifications in the case of Northern Ireland. One was the Dublin flight and also the economic development of Northern Ireland, so the stimulation of more flights into Northern Ireland, in the view of HMRC and the UK Government, would stimulate the economy of Northern Ireland. We felt that the economy of Wales could be stimulated in the same way by the same method. So, unless you would say that the UK in its own proposals in the Finance Act 2012 was undermining the fiscal stability of the United Kingdom, I can’t see that that doesn’t apply equally in Wales.

Q520 Mr Chope: Surely the difference is that the United Kingdom Parliament passed that legislation. The United Kingdom Parliament decided collectively that it would be reasonable to allow this exception in relation to Northern Ireland. What you are proposing is that the Welsh Parliament on its own should be able to decide this in relation to Wales, irrespective of the consequences for the rest of the United Kingdom and, in particular, England.

Paul Silk: No. What we are proposing is that the United Kingdom Parliament should, in the same way as they devolved that power to Northern Ireland, be asked whether they want to devolve that power to Wales, and there clearly will be an argument that it should not be devolved to Wales because it has adverse effects on airports in England. Bristol airport has been quite clear in their opposition to the proposals we make as the closest competitor airport to Cardiff. Certainly, yes, there are arguments that this is unfair competition to English airports. The argument was put to us by some, including the Welsh Government, that all air passenger duty should be devolved to Wales. Our conclusion was that it was right to devolve long-haul air passenger duty for the time being and then to ask the commission that is considering congestion in London—and we are going to probably look at the way in which regional airports throughout the United Kingdom might be stimulated—to look at the issue more generally and perhaps their conclusions will be that there ought to be some sort of regional variation of those duties.

Q521 Mr Chope: Doesn’t this whole argument show that this sort of piecemeal approach—the sort of Balkanisation by default, by stealth—is not the right way forward? I am very much against it, but if there was a coherent argument for changing the balance of powers between different parts of the United Kingdom it should be done through a proper constitutional commission rather than on a piecemeal basis as seems to be happening at the moment.

Paul Silk: I can certainly see the argument for all of the constitutional changes that have happened in the last 20 years having been considered altogether in some sort of Kilbrandon type commission. Our responsibility was to do what our terms of reference asked us to do, and it is really not for me to say whether it was right to establish my Commission. It was part of the coalition agreement and when I was asked to chair it I accepted because I thought it was a worthwhile thing to do, but whether there should have been a much wider commission looking at the United Kingdom as a whole is really beyond my pay grade.

Q522 Mr Chope: Would you support a UK-wide constitutional convention?

Paul Silk: As I said before, I would be very interested, as somebody who is interested in these things, if there were such a body but, speaking on behalf of the Commission, it is not for me to support that or not.

Q523 Chair: Can I press you a little bit further on Chris’ last question? The Commission is not operating in complete isolation. It has its terms of reference, and we all accept that. But let me just turn this round. If there was a commission on England and it made proposals about taxation and corporation tax and airport passenger duty and it did not make reference to our fellow nations within the union, I think Scotland, Wales and Northern Ireland would be hopping up and down pretty rapidly. Perhaps the English don’t hop particularly well but take this as a hop, that if Wales is coming forward with a proposal to be a sort of Kilbrandon type commission. Our last 20 years having been considered altogether in some sort of Kilbrandon type commission. Our responsibility was to do, and it is really not for me to say whether it was right to establish my Commission. It was part of the coalition agreement and when I was asked to do, and it is really not for me to say whether it was right to establish my Commission. It was part of the coalition agreement and when I was asked to chair it I accepted because I thought it was a worthwhile thing to do, but whether there should have been a much wider commission looking at the United Kingdom as a whole is really beyond my pay grade.

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are domiciled in England work in Wales. We can’t pretend, and we wouldn’t want to pretend, that the interests of England are not something with which we ought to be concerned.

**Chair:** Devolution, looking after your own affairs, raising as much of your own income as possible are principles that I think we would all wish to adhere to and learn from each other, from our friends in different parts of the union. Distinguished as this Committee is, I am not sure that we can take up the mantle of speaking for England but we would certainly wish to engage with the Commission if you felt that was appropriate.

**Mr Chope:** Why don’t we take it to the European Union?

**Chair:** I think we can delegate Chris to be our ambassador to speak and engage with the European Union?

**Q524 Stephen Williams:** I wasn’t going to say anything about Bristol airport or APD. That is a micro-parochial detail, but Mr Chope has now provoked me. I assume, because it is in fact the long-haul element of APD that you have asked for, that rather than incentivising people to take short-haul flights, which obviously there would not be any duty for because you have not asked for the power to Dublin, in order to take a long-haul flight from Dublin, you are actually trying to incentivise carriers to have long-haul flights from Cardiff?

**Paul Silk:** Yes.

**Q525 Stephen Williams:** So the basis of Mr Chope’s question was misguided, perhaps. Given that there are also no long-haul flights from Bristol airport—the New York service that we did have failed—if the incentive to have long-haul flights from Cardiff to New York or somewhere like that worked, it would be quite good for people who live in Bristol, Gloucester, Cheltenham, Hereford or wherever because they would then have a more convenient flight, good for the environment, than trundling up to Heathrow. I am not trying to lead you, but do you agree with that?

**Chair:** Not much. One-word answers are fine.

Paul Silk: I don’t want to lift the veil of the discussion in the Commission too high but I will say we had an awfully long time discussing air passenger duty and our conclusion, as you will know from the Select Committee process, represents the fact that there was a long and quite difficult discussion about air passenger duty.

**Chair:** Which we will not repeat here, but thank you very much for that insight. Paul, thank you so much. It really is nice to see you back in the House of Commons. Again, congratulations on your report and we look forward to interacting with you in future.

**Paul Silk:** Thank you.
Thursday, 28 February 2013

Members present:
Mr Graham Allen (Chair)
Mr Christopher Chope
Paul Flynn
Sheila Gilmore
Andrew Griffiths
Fabian Hamilton
Tristram Hunt
Mrs Eleanor Laing
Mr Andrew Turner

Examination of Witness

Witness: Professor Gerald Holtham, former Chair of the Independent Commission on Funding and Finance for Wales, gave evidence.

Q526 Chair: Gerry, welcome. We were worried about you. We thought at one point we might have to keep Gus with us, keep him talking for half an hour, but glad you made it.

Professor Holtham: He would have had no difficulty.

Chair: We are moving from the very interesting topic of reshuffles to another interesting topic: the need for a constitutional convention. We are very pleased that you can join us. Would you like to start off with any opening remarks, or do you want to jump straight into questions?

Professor Holtham: Yes, Chair. I am happy to say just a few brief words. I understand that the Committee is investigating the question of whether such a convention would be useful and, indeed, whether it should happen before or after the Scottish referendum. In my opinion, it would be useful. I do not think we should be thinking that we are going to construct a beautiful symmetrical federal system. That is not generally what happens in a unitary state where there are, shall we say, overlapping loyalties and different pressures for devolution in different parts of the state. When that happens, as in Spain and as in Canada, you do get asymmetric solutions. That is perfectly normal and, indeed, unavoidable.

But we do want to avoid rank inconsistencies, and the way things have been going with bilateral discussions and solutions arrived at under short-term political pressures, we are in danger of inconsistent solutions. So the Scots, for example, are told, in the tax area, you cannot have corporation tax, of course, and you certainly cannot have passenger duty as devolved taxes; and then the only two taxes under discussion in Northern Ireland for devolution are passenger duty, which has been partially devolved there, and corporation tax, which the Treasury is resisting but it is under discussion. So we are in danger of rank inconsistency, and for that reason, a constitutional convention would be a good idea to generalise the bilateral discussions that have been taking place.

It would be a very good idea to have it before the Scottish referendum. As I understand it, from the polls and the bookmakers, the Scots are likely to vote no. It is a matter for them entirely which way they want to go, but I think we can all agree it would be good if they made a decisive decision. A close vote would be as if we were all in Quebec with the risk of a rather destructive replay at too frequent intervals.

In order to get a decisive result, it might be useful to have it clear that the Union is looking at itself, considering what makes sense and arriving at a considered position on what additional powers might be devolved to Scotland in a way that is consistent with the integrity of the Union, and that any restrictions on devolution are not arbitrary but have been thought through and are sensible. I think that would help, and if a pattern emerged before the referendum, that could only help those people who are arguing to preserve the Union.

Q527 Chair: Does a federal system have to be symmetrical, or is it possible to have a federal system where there are slight or significant differences in the parts of the federation?

Professor Holtham: I would argue that it is not only possible but inevitable that it will be asymmetrical. If you look around the world, the only symmetrical federations are ones where there are no particular ethnic divisions. The federation exists because you are covering a larger geographical area, as in the United States, or because occupying powers decided they wanted to make you radically decentralised, as in Germany. Any federation that has emerged because of bottom-up pressures for extra autonomy have always been asymmetrical, as in Spain and as in the UK now, because in that situation different areas have different demands for autonomy.

Moreover, there are different circumstances as well. For example, comparing Wales and Scotland, the Welsh economy is just much more entangled with the English economy than the Scots economy. They are both pretty well entangled, but the Welsh one is much more so, and therefore the distortions that would arise from radically different fiscal regimes in Wales and England would be greater than in the Scottish case. In the Scottish case, they would be greater than in the Northern Irish case. So the objective circumstance is different. The demand for autonomy is different. It makes sense to have an asymmetric solution.

Q528 Tristram Hunt: The Scottish referendum is now 18 months away. To have a constitutional convention of any sort of credibility up and running, you would not want it running at the same time as a Scottish referendum, would you? So, effectively, it is not really going to happen, is it, before the referendum?

Professor Holtham: It does not have to be desperately formal with absolutely all the great and good represented. I am sure something reasonably credible
could be constructed. I do not know why you would not want it running at the time of the referendum either.

Q529 Tristram Hunt: Well, because the SNP is very clear that it will not have anything to do with it prior to the referendum, and it would be willing to have a conversation after a referendum with themselves representing the views of Scotland, as the Scottish Government, in that sort of post-referendum moment.

Professor Holtham: Yes, it would be certainly somewhat crippling if they boycotted it. They did, of course, boycott the Calman commission, which was the basis of the Scotland Act, as well. Even if it were a Unionist thing, I do not know that it would be bad if it were clear that some sensible proposals for further devolution were emerging, even from a Unionist body.

At the moment, if you are going to vote no, you are voting for it not to happen in a poke: “We will be you all right. We will do something but do not ask us what.” If the Scots are cynical, they may think “once we have taken our boot off their neck, as it were, they will do what the hell they like?”. I do not think it is bad to start showing some readiness to think these things through before the referendum. If I have read the political situation correctly, there is not much sign of the Unionist parties getting their act together to do this voluntarily, so some sort of quasi-official effort to do so might be a good thing.

Q530 Tristram Hunt: Then this would be, as it were with Calman, a civil society effort, rather than having an official thing with MPs, AMs and MSPs under some kind of royal charter or something.

Professor Holtham: I have not really thought through what the appropriate institutional mechanism should be. Everybody knew that Gordon Brown had adopted Calman, so there was a certain amount of blessing from on high there, even though it was a civil society exercise. I absolutely acknowledge that it bears thinking about exactly how to do it, but I do think there is some case for doing something.

Q531 Tristram Hunt: In terms of your own report and then the Silk commission, and looking, as you already suggested, at the tax codification, how far do you believe it is possible or beneficial to go in terms of devolving the fiscal powers and tax-raising powers?

Professor Holtham: There are clear limits if you want to maintain the integrity of the Union. I, for example, do not think so-called devo-max makes any sense at all. If I were the British Government, I would say, “If you want devo-max, why don’t you just become independent?” There is no percentage in devo-max for anybody, even if you have a democratic mandate. I do take the view that the local government in the UK has too few prerogatives, but the fact that there are some limitations is quite normal.

Q532 Tristram Hunt: How do you marry that with the autonomy that would come from a democratic vote for a devolved Administration?

Professor Holtham: We have layers of government now; both the EU and local government. It is understood that different layers have different prerogatives, even if they have a democratic mandate. If I were the British Government, I would say, “Give it or not give it.” That is what I mean when I say there is a case for a convention that sits down and says, “There is a pressure to devolve this tax. Can we do so? If we do, what limitations on the power to manipulate it must we insist on?”

Q533 Tristram Hunt: Just in terms of where you have done your work most recently, sketch out for us how you see the devolved administration in Wales emerging, developing or evolving over the next 10 to 15 years, both politically and in terms of fiscal powers.

Professor Holtham: I think the proposals for tax devolution in the Silk commission, which are similar to the ones we proposed in our work, do not raise any threat to the Union at all, and they do not really give rise to any substantial distortions. I think that is a fairly solid, conservative step that could be made. It would still leave the Welsh Government raising only 15% to 20% of its own revenue. It would still be highly dependent on the block grant, but the Silk measures would at least start to close that gap between what the Welsh Government spends and what it is responsible for raising, and it is a good thing to close that gap. At the moment, they are in the situation that they may as well spend every last cent they get, because if they don’t, it goes back to the Treasury. The tendency to look with a beady eye at that last item of expenditure must be weakened in that situation, so I think that they should be responsible for raising part of the revenue. It is just basic good public finance.
Could it go further? It could go a bit further, yes.\(^1\)

One of the issues is how far you should attribute tax revenue to a territory, even if you don’t give it powers to alter rates. For example, instead of getting a block grant, the Scots would be quite keen on saying, "Let us keep in Scotland all the receipts of VAT or something that we raise in Scotland." This makes things look a bit less of a grace and favour situation: "We are keeping our own money, rather than it all being centralised and us getting a grant." You could do more of that, but it does have dangers in that it tends to weaken the political possibilities for redistribution. At the moment, we have a system in which the origin of tax revenues is not really publicised—in fact, it is not even collected. Revenue could not tell you exactly what proportion of the given tax comes from which territory. There is a central pot, and it is then distributed supposedly according to need. It is according to need within England, but we have the Barnett formula for the rest, which is totally arbitrary. But at least there is an idea that taxes are central and then expenditure is on a basis of need. As soon as you start earmarking taxes and saying, "These are your taxes," it becomes a question of transfers, rather than just, "We are all in it together; we will spend according to need," and I think that is bound to weaken politically—not logically, but politically—the ability to equalise social services across regions.

Q534 Mr Chope: What do you think is the public perception of the Barnett formula, which means that people in Scotland are getting the best part of 20% more per head than people in England? What do you think is the future for the formula?

Professor Holtham: Unfortunately, there is no law that says expectations or perceptions have to be consistent, so everybody feels hard done by by the Barnett formula, as far as I can see. The English certainly do. The Welsh do; that is partly my fault. The Scots even manage to feel hard done by, though goodness knows how. The work we did, and I think it stands up, shows that if you regard this as a matter of from each, according to his ability, to each, according to his needs—that is, if it is just, "Tax is centralised, and everybody gets the money that they, in some sense, need to preserve a broadly similar level of public services in different parts of the Union"—and I am aware there could be other criteria, it is pretty clear that the Scots were getting about 15% too much when we analysed it. It is probably down to about 10% or 12% now. The Northern Irish and the Welsh are probably within error margin. They are 1% or 2% up or down. The Welsh are probably a couple of percent down and the Irish are a couple of percent up, but if I were in the Treasury, I would have no trouble finagling those figures away. They are within error margin.

Basically, what stands out is that Scotland gets a bit of a premium. If the English want to feel hard done by about that, they are paying, so they are entitled to do so.

Q535 Mr Chope: But how would a constitutional convention resolve issues such as that if it cannot even get a consensus on the Barnett formula?

Professor Holtham: It seems to me that the deal that was possible was the deal that said, "Okay, we think you are, on a needs basis, getting a bit too much." The Scots’ response, of course, is to change the basis of the discussion into saying, "Never mind that. What is the net transfer between different parts of the UK?" If that is your criterion, you are in totally different territory, because if you give the Scots North sea oil, their relation with the rest of the UK is not very different from balance. It depends on the oil price; get a high oil price, they are in a small surplus vis-à-vis the rest of us; with a normal price, they are in a small deficit. They want to focus on the transfer. Wales receives the largest transfer. Even though we can argue it is hard done by on a needs basis, it is actually getting the biggest transfer per head, because it is poor. The Scots will shift the debate. It seems to me that the only way to resolve this is to say, "It is a package. We want to give you the autonomy you want and need, but if you get that, there is no reason why you would expect to be treated differently from the rest of the Union, so whatever criteria we then have for transfers, you fall subject to them. Of course, any adjustment will be done over a period of time. We would not slash the budget in a year, but over a decade we would expect any transfer mechanism we have in place to be applied fairly across the Union on obvious criteria. The trade-off for you is this is all part of a deal that gives you all or most of the autonomy you want."

Q536 Mr Chope: You say this is based on criteria, but who is going to agree those criteria, and how are we going to divide up responsibility for the national debt, for example?

Professor Holtham: I would not want to divide it. If they go independent, we have to worry about that, but if we are all staying in the Union, the national debt is a central issue and I would not attempt to formally allocate it. When they draw up the Government expenditure and revenue accounts in Scotland, they do allow for the Scottish share of national debt expenditure. They just do it on a population basis; just the proportion of the population equals the proportion of the debt. I don’t deny it to be a difficult conversation, but I think we have shown conspicuous cowardice in not wanting even to broach it, especially in a context where we are discussing changes that the Scots want. If you say, "That is fine. It is reasonable that you want these. We are going to try a way to satisfy everybody," part of that must surely be putting the transfer system on a reasonable basis. Need is of course a highly contestable notion, but we do do it. When we allocate health expenditure around England, we do it on the basis of formulae that take relevant factors into account, so we do it all the time. It is not impossible.

Q537 Mr Chope: Need, as you say, is very difficult to establish. One of the problems is that it would be open to a country or part of the UK to increase its needs because of its own behaviour, and we had this

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\(^1\) Note by witness: They could take a larger share of income tax than the 10p that Silk suggests and receive or commensurately smaller grant.
I don't see any alternative. Gerry, you probably read our last report. That sounded almost like a compliment. Just one quick point. There is a...  

Q538 Chair: Gerry, you probably read our last report on local government in England. Do you feel local government is the vehicle for devolution in England? England is now the only country of the four in the Union that does not have effective devolution. 

Professor Holtham: I don’t see any alternative. Obviously, people in the Celtic fringe have often said they would like England to be regionalised so that a federation could be more balanced—I think Owain Glyndŵr had the same policy—but I do not think it is realistic. You cannot wish on the English what they do not want themselves. There is no evidence that they are ready for that. I think local government is the only way to decentralise within England. I read the Committee’s report and admired its radicalism. To have a system in which local authorities’ powers were set on a reserve powers model, we have not got that far in Wales yet. That is very radical, and I am not sure it is wrong, either. It could be rather interesting. 

Q539 Chair: That sounded almost like a compliment, Gerry. Thank you.

In terms of the financing, Scotland, under the last year’s Scotland Act, will get the product of 10p income tax retained in Scotland. The Silk commission, building on your own work, has proposed exactly the same—or something quite comparable, anyway—for Wales. Have you, in your long experience and delving into the science of this, ever found anything in the water in England that means that the English could not do what the Scottish are going to do, and the Welsh will do shortly, and retain the product of 10p income tax for its own devolved settlement through local government? 

Professor Holtham: Just one quick point. There is a substantial difference between what the Scots have and what Silk is proposing, and it is material. Silk is basically saying 10p points of each tax band, whereas Calman said there is a 10p wedge that applies across the whole tax base. This is crucial, because it means that if the Scots put up or down that 10p by a penace, it is affecting the margin rate of everybody—basic rate and higher rate taxpayers. Silk is demanding the right to do that differentially on higher and basic rate, and in Wales I think, that is absolutely essential. If you did what the Scots have done, you never could use that power, for reasons I am happy to go into, if you like, but I think that is a—

Q540 Chair: But whatever shape assignment of tax income takes, why is it not possible to do that for England, or is it possible and we just have not quite got around to it yet? 

Professor Holtham: I think you could do assignment, although it would be assigning the revenues. It would introduce some additional administrative costs for the Revenue to know exactly where it had all come from, but you could assign the revenue. 

Q541 Chair: There are no additional costs for Scotland doing that. You would just have Her Majesty’s Revenue and Customs allocating it as they do now from the Treasury. You would not need to know every locality’s tax take. 

Professor Holtham: The thing is that if you just assign without devolving the power to alter rates, you are not going to run into problems of people levying different rates and then people having every incentive either to move or to pretend they have moved. One of the things here is it is pretty clear that if either Wales or Scotland changes the rate of income tax, the local income tax rate will be partly voluntary, because the Inland Revenue does not have the mechanism for really policing that. There is no way anybody is going to impose on employers, for example, the statutory obligation to make sure that their workers are where they say they are, so they will just report the guy’s address or the lady’s address, and the ability to police that in any very serious way is quite limited, so you will be relying on honesty and patriotism—whatever you want to call it—or lethargy for the tax that—

Q542 Chair: Lethargy is the strongest of the three characteristics you mentioned. 

Professor Holtham: There will be some leakage.

Q543 Mrs Laing: The population of Carlisle will increase. 

Professor Holtham: Or second homes in Carlisle will suddenly become first homes. There is that sort of thing. I think there would be fewer problems with a straight tax assignment. If you allowed people to vary

2 Note by witness: The ideal is to make the block grant depend on needs factors that are not under the control of the devolved government so that they cannot manipulate the factors to increase the grant. If as a result of their own actions their tax base grows more slowly they have to bear the consequences of that.
the rates locally within England, that would lead to a lot of difficulty.

**Q544 Sheila Gilmore:** You have commented about need and how you assign all this. A very strong perception for Scotland is that if you look at spending per head in London, it is very high indeed, and probably higher. England is such a big population—not in a big area, but a big population, and very different—that those comparisons are really quite difficult. Would there then be a call to disaggregate in England and say we should be looking more closely at how spending is split up?

**Professor Holtham:** No, I think there is a strong case that London also receives more than it would do on a straight needs basis. In the work we did, we did disaggregate England. We looked at the nine or 10 administrative regions of England, because we were looking at the distribution of public expenditure across those regions and how that responded to certain factors that were included in the formulae for the distribution, in order to say, if we were applying the same criteria across the UK as are applied within England, what would it look like? We were not coming out and saying, “Look, we know what is fair.” We were just saying, “Let’s just impose consistency on this system. We have formulae within England, and also within Scotland and within Wales, for how we distribute public expenditure regionally within those countries. What would we do if we took those formulae and applied them to the whole system?” That is where we derived our statements from that Scotland was doing relatively well. If Scotland was an English county, it would get less money. If Wales was an English county, it would get a bit more. That was all we were saying.

If you look within that, we couldn’t explain how much money was going within England, to London. We just had to say, “Look, London is getting a lot more. Perhaps it is because costs are higher and it costs more to employ people in London.” We just take London out. We have nothing very deep to say about London. It looks to us very much as if it gets too much as well. Yes.

**Q545 Andrew Griffiths:** Professor, to coin a phrase, “It’s the economy, stupid.” The Government have stated that their No. 1 priority is tackling the economic challenges that we face. If that is the case, how politically would you argue that the Government should also make a priority a constitutional discussion about the future? How politically do we square that circle?

**Professor Holtham:** I don’t think it is at the Government’s volition that Scotland is holding a referendum on independence. This is a response to a situation, if you like.

**Andrew Griffiths:** But in terms of a constitutional convention—

**Professor Holtham:** As I say, I think it would help. It would help the Scots in making their decision if they had some sort of idea of what the alternative really would be, and if there was evidence that we were thinking about it collectively in a rational way, rather than just doing bilateral deals and reacting to short-term pressures. I am not claiming that the constitutional convention will do much for growth in the short run; I cannot see it doing much harm to it either. It is just the case that it is the right way to respond to this particular political problem.

**Q546 Andrew Griffiths:** Obviously, any constitutional convention would need to have legitimacy in the eyes of politicians and in the eyes of the public, if we are going to convince them that this is something that it is worth while for the Government to spend their time doing. What do you think is the mechanism—the nuts and bolts—to ensure that both politicians and the public are satisfied with that legitimacy of a constitutional convention?

**Professor Holtham:** That is an excellent question. I am not sure I can really answer it properly. The way Calman did it was to have an expert group of people who are supposed to know about these things, who produced expert evidence, and then the Calman commission itself consisted of the great and good, excluding the SNP because it did not want to take part, but there were representatives of civil society and each political party. In Wales, we sort of did the same thing, really. My group was not representative; it was just a group of so-called experts put together. We produced a report. The Government then set up the Silk commission, on which all the political parties were represented, and they chewed over our report, plus other evidence, and produced their report. I think the two elements are that you want some expertise—people thinking about it from first principles—but then you do certainly need an umbrella that is representative of as many political forces as you can persuade to take part.

**Q547 Andrew Griffiths:** Is it possible—in fact, is it necessary—to engage the public? Is it important for ordinary members of the public on the Clapham omnibus to take part, or at least feel some involvement, in a constitutional convention, or is that not necessary?

**Professor Holtham:** No, I think it is necessary. It is certainly necessary that they feel able to do so. Experience shows you must not be too disappointed if they don’t take you up on it. There does not tend to be a huge wave of responses, especially if you get into talking about which taxes can be devolved and which cannot. With things like that, the general public tend to glaze, in my experience. Yes, certainly there must be a strong suggestion that this is an open process and anybody who wants to contribute should certainly do so.

**Q548 Andrew Griffiths:** Do you have any ideas about that mechanism; about how that might be done?

**Professor Holtham:** You can hold evidence sessions. You can have a website. You can get people to send in their comments and you can publish them all online—things like that.

**Q549 Paul Flynn:** In your evidence to the McKay commission, you suggested that the House of Lords could be used as a way of representing the “emerging
sort of quasi-federalism of the UK”. Because of doubts about the democratic legitimacy of the House of Lords—because there are still a substantial number of Members there who were elected by the “first past the post” principle—and other doubts about membership of the House of Lords with the appointment of political toadies there, who are improved on by the Whips, can you really see it in its present form taking any part in a reform of democracy, or are you thinking in terms of an elected House of Lords?

**Professor Holtham:** I don’t pretend to have expertise on Lords reform. It did strike me, though, that it was very interesting that when Lords reform was being discussed and there were various proposals knocking around and a Bill was being suggested, there was no talk at all in the metropolitan press or among the commentators of how or whether the House of Lords should somehow reflect the fact that the state appears to be evolving towards something quasi-federal. In all federal states, the upper House reflects the federal structural, rather than simply being on a majoritarian sort of basis. Obviously there are grave difficulties about doing that in the UK, where England is such a huge proportion of the total. It does seem odd to allow any one of the other states to veto something, for example, when it represents 3% of the population or something. I do see the difficulties, but it did strike me as odd, none the less, that there was not even any consideration of whether this element in the emerging constitution should be reflected in the House of Lords.

**Q550 Paul Flynn:** Can you say briefly which state you have in mind that you regard as being a model for this quasi-federal system?

**Professor Holtham:** Virtually all of them. If you look at the United States, the Senate has two representatives from each state, whether it is Delaware or New York.

**Q551 Paul Flynn:** It is an outrageously undemocratic system as well, is it not? You have tiny states and enormous states.

**Professor Holtham:** It is outrageously undemocratic from a majoritarian point of view, but if you are worried about liberal values and that people in different places should have some protections, one sees the point of it.

**Paul Flynn:** Thank you.

**Q552 Chair:** I will ask one thing, Gerry, which you triggered me, which was about economic consequences. I do not know if there has been work on the economic consequences of devolution, but certainly when we were looking at English local authorities, we had a welter of evidence from local authorities, saying, “If you got off our back, we could actually do our job way better. We could get much more stimulus into the local economies if we were allowed to do our own thing. We could use the powers we have and the tax incentives we have.” Have you any comment on that? Is there not a very strong argument for devolution that is based on improving the economic situation locally?

**Professor Holtham:** I do agree with that as a generalisation. I spent part of my youth in Birmingham, in the Joseph Chamberlain tradition and all of that. The leader of the council was a big figure, and the city had done a lot for itself in those and in earlier years. I am sure that if local authorities had their powers restored and their tax powers restored and even augmented, the better ones would do a much better job.

A corollary, of course, is you get much more divergence in performance, and I think what we have done is to level—we have probably levelled down, but we have levelled. One of the things you would have to be robust about is that some places would thrive and other places would screw up, and that is just the way it is.

**Q553 Chair:** Yes. I am always so tempted to talk about the prudence in the centre compared with the prudence I have experienced in the localities, which has all been incredibly rigorous, and with the centre just losing its credit rating but many local authorities having triple A, but that would be an abuse of the Chair, so I will move on.

**Professor Holtham:** That is completely true. If I may say, there is little ex-ante control in this country for local authority borrowing. If they wanted to go mad, there is nothing much stopping an individual council from doing it. There is no institutional mechanism, so the fact they do not go mad is entirely down to their own caution.

**Chair:** This Committee has proposed something that would stop them going mad, which would be that they would have to have the consent of their electorate to change whatever tax-raising powers they had, so they would need to win people, which takes us back to an earlier argument about building political parties and strengthening them at a local level, but therein lies another debate. I think, Eleanor, your question was answered, was it not?

**Mrs Laing:** Yes, Professor Holtham has totally done the Barnett formula.

**Q554 Chair:** All right. Gerry, there is one last thing, which is all the technical stuff around tax assignment, which, as you say, does not exactly turn people on in the Dog and Duck. If I may, could I drop you a line just about perhaps giving us a little bit more technical information and your view on that? We will write to you.

**Professor Holtham:** I am very happy to do so; yes, indeed.

**Chair:** As always, when you walk out the door, there is bound to be something you wish you had said, so feel free to supplement your excellent evidence we have already received. Gerry, thank you so much indeed. Good to see you.

**Professor Holtham:** Not at all; thank you.
Examination of Witness

Witness: Alan Trench, gave evidence.

Q555 Chair: Alan, how are you? Welcome. Would you like to say a few words to us? You know what we are about today. We are looking at the need for a constitutional convention. Would you like to make any opening remarks?

Alan Trench: Not particularly. As the Committee is aware, I am somewhat sceptical about both the practicalities and the principle of a constitutional convention as a way forward, even though I think that there are very grave problems with the way that the centre of the UK has approached the various constitutional debates. Although I would agree with your starting point that there is a problem, I am not sure that the solution is a constitutional convention.

Q556 Chair: So we just leave it with the people who got us into the problem in the first place.

Alan Trench: We can discuss that, but it may be better to approach that by way of responding to—

Q557 Chair: How would you do it?

Alan Trench: I think that the question is: what is the problem that you are seeking to address, and what does the proposed solution of a constitutional convention achieve in doing that? The problem that you are seeking to address is a disjointed approach from the centre, both within Government and within Parliament, in thinking about the various aspects of the constitution, whether it is the territorial constitution and the fact that devolution for Scotland, Wales and Northern Ireland has developed in different ways and in different directions, or the various items of the agenda as far as the centre is concerned, whether it is matters like human rights and freedom of information, or it is institutional questions like Lords reform or electoral reform in Westminster elections. These problems would, I suspect, be an awful lot less acute if the centre had been willing and able to take an active and coherent role in doing that. That, as I say, is agreed.

The problem with a constitutional convention is that it is liable to be a very unstructured approach to a sequence of questions, because the questions are so big and they affect each other in so many varied ways.

Q558 Chair: Alan, I am going to ask Sheila to come on to some of those points. Forgive me for interrupting, but I want to press you on this. If that is not the way, what is the way?

Alan Trench: I think that the way to think about it is to think about the other sorts of solutions that can happen. It depends what you mean by a constitutional convention. A constitutional convention as I would understand it would mean a relatively large body of people selected by varying mechanisms, some of whom would be nominated by political institutions, whether Governments, Parliaments or devolved legislatures, or other bodies such as local authorities, and some of whom would be appointed by some undisclosed mechanism. It would also have a very broad remit and function. I suspect simply that something like that is not likely to work terribly well.

There are other approaches that one might adopt. One would be a process of brokerage either through Parliament, led within Parliament, or by political parties. Another option would be—

Q559 Chair: How would that work, sorry?

Alan Trench: Let me just give the options. Another option would be some sort of royal commission, which of course has a number of parallels and precedents, and a further one would be some sort of Speaker’s conference. Both the latter two, of course, have been used in the past as ways of addressing constitutional issues. Parliament in principle ought to be able to undertake this role. That is historically the role of Parliament in a representative democracy such as that of the United Kingdom. There are a number of problems with Parliament doing it; one is the way that party discipline works within Parliament. Another is the way that Parliament does or does not succeed in integrating all the various interests within the UK as a whole, and a third, particularly relating to the House of Commons, is the various skews that are introduced by the electoral system, because we have a majoritarian electoral system that advantages some parties in various parts of the UK and disadvantages others. It is relatively harsh on the Liberal Democrats, particularly in England and Wales. It is relatively harsh on the Conservatives in Scotland, for example. Parliament is in a degree of difficulty in doing that. Doing these things through political parties seems to me to be the sort of thing that political parties actually are there to do. Political parties are there to talk to each other and work out the answers to tough questions such as these, and to try to find some common ground between them about ways forward. It is, I think, a matter of regret that the parties have not been able in their own interests to make the most use of that and have found themselves so concerned with maintaining disputes and disagreements between themselves that they are unable to identify those areas of common ground and articulate them to a wider public.

Q560 Sheila Gilmore: I was going to ask you whether we could have a constitutional convention this side of a Scottish referendum, but if you are saying we should not have a convention at all—

Alan Trench: I think one would be a deeply problematic exercise, not least for another reason, which I have hinted at in a blog post that I believe has been drawn to your attention. The interests of the various parts of the UK, in the Union as a whole, seem to me to be very varied. What makes the Union work from the point of view of Wales or the north-east of England is very different from what makes it work from the point of view of London or Scotland. If you have such a range of different and asymmetric understandings, putting everybody in a room and hoping that they will simply come to an agreement between themselves is fairly unlikely to succeed when it comes to territorial issues. If you are going to try
to do that, you have to be particularly well braced for failure.

The track record of similar efforts seems to me to be pretty patchy. I scribbled myself a few notes about attempts at conventions in the relatively recent past.

One of the two that jumped out at me was the Australian constitutional convention, which had a very narrow set of terms of reference. It was concerned with whether Australia should become a republic or not, and what sort of a republic it should have, and that convention got nowhere. That was in 1998. The citizens’ assembly in British Columbia had a similarly narrow set of terms of reference. Its concern was whether the electoral system used for the provincial legislature of British Columbia should be changed, and the Assembly reached a perfectly satisfactory conclusion that then had to be put to a referendum, where it failed to achieve the super-majority it needed. It got a straight majority, but it didn’t cross the 60% threshold that it needed. Those seem to me to be fairly discouraging examples. You then have more confined processes. Professor Holtham earlier mentioned the Calman commission in Scotland, which I had a peripheral involvement with. He could also have mentioned the All Wales Commission, which advised as to whether there should be a referendum on legislative powers.

Those were more successful but more closed processes. To answer your question, what they have in common is that they took place in times of relative calm. If you are going to embark on a convention process, it simply cannot be undertaken in the light of the referendum campaign in Scotland. The referendum campaign is going to be a complete mêlée for the next 18 months or so. It will be impossible to identify anything that would try to resolve these sorts of issues in advance of the holding of the referendum. That is not to say that other processes cannot take place, but I think the idea of some sort of large convention being convened before October 2014 is going to be a very, very tough one indeed. This is going to be a very difficult period between now and the referendum.

The problem with postponing debate until the referendum is that that will then make it harder for people in Scotland to believe that there can be change in the way devolution works to produce a sort of settlement that seems pretty clearly what Scots voters want. Scottish voters seem pretty clear that they like devolution, that they want more of it and that they want enhanced self-government within the Union, and that they do not want independence but they want something more than the status quo. The difficulty then becomes: how do you reconcile finding a way to deliver that with this very charged political situation that develops around the referendum campaign, which is a simple yes/no choice?

Q561 Sheila Gilmore: It is part of the problem of this debate that there has not perhaps been a proper convention of any sort, whether within Scotland or more widely, of late, because Calman was quite limited in perhaps its participants and so on, and in fact a lot of people in Scotland do not seem to be aware that they are getting more powers anyway—

Alan Trench: Indeed.

Sheila Gilmore:—which, unfortunately, in terms of timing, kick in after the referendum, which I think has not been particularly helpful in spite of that debate. Was it too much of the great and good, and not a popular enough convention?

Alan Trench: That is certainly a valid criticism, and I think that in a Scottish context one would have to say that the Scottish Government’s National Conversation certainly made much greater efforts to engage with the public. I still very much doubt that they were talking about it in the local pubs of Dundee, but I think that probably did do a better job. I think also one could draw attention to some of the Welsh processes. While the Richard commission in 2003–04, the Silk commission and the All Wales Convention all had a wide range of public outreach events, in the Welsh context, there was a lot of laughter—almost derision—about some of the events organised by the All Wales Convention. They had a tea dance in one town and organised a curry night in a miners’ institute on another occasion, but those were genuine attempts to get to ordinary people in places where ordinary people can be found, rather than by having events taking place in relatively cloistered settings that would not engage the public in the same way. I think that sort of engagement is a necessary part of the process, but it will still only ever reach a very small number of people.

Q562 Sheila Gilmore: Is one of the problems here that perhaps—this is probably part of the asymmetric situation—the English are not really particularly interested in having a constitutional convention or having constitutional change?

Alan Trench: I think that is probably broadly right, but it would come with a number of caveats. One is that, certainly in the early years of devolution, there was quite good public opinion evidence that said the English were quite happy to see Scotland and Wales having devolution; they just were not very interested in it for themselves. That may help to explain why attempts to develop regional governments floundered. Equally, it is clear, and becoming clearer, that the evidence is not absolutely unambiguous that the English are getting unhappier about the status quo, and their unhappiness seems to have two specific directions when one is talking about devolution. One is in relation to Scotland and Wales. One is the question of Scottish and Welsh MPs participating in decisions that relate only to matters regarding England. That is an issue, of course, that has been of considerable concern to the Conservative party, and it does appear to have some degree of popular support. The second, which appears to attract greater political concern, is public spending and the relative generosity with which Scotland is seen as being treated. Something, I suspect, ultimately needs to be done about both of those. What it is remains unclear. What is also evident in relation to those issues is that the English appear to be starting to think and behave as a distinct national community. While I would strongly support the idea that forms of local self-government are also very important, and these are going to need to develop and be reinforced, that is one side of the equation, and you
need to think about the other side of the equation: how you respond to those public demands for there to be some perceptible English voice within our structure of government.

Q563 Sheila Gilmore: The one thing you did not mention, which might be fuelling some of that—I don’t know if it is—is the European dimension, because that is part, I think some people would argue, of the constitutional thinking. Is it not just in relation to Scotland, Wales and Northern Ireland now, but about where we are in relation to Europe?

Alan Trench: Again, I think that is right. There is a question then to be asked: what are the English doing when they are thinking about Europe in this sort of way or responding to Europe? Are they simply treating Europe as an “other” to which they are hostile to intrusions, which is in an abstract sense, because, as it is from the outside, it is something different? Or, is it that what they are trying to do is to recover some sort of nation state that operates in what would now seem a very old-fashioned way: with complete freedom of manoeuvre to operate as a sovereign state in the wider world, and not subject to the fetters that come from trying to run the sort of politically decentralised, multi-national union that we are in the process of becoming, as regards Scotland, Wales and Northern Ireland on the one hand, and the multi-national union of which the UK as a whole is part in Europe on the other? If the English want to recover that sort of sovereignty and it is what they think they are going to recover, I am not sure they ever had it, and I do not think that sort of sovereignty is likely to exist very comfortably in the modern world.

Q564 Mrs Laing: Alan, is it possible that we are misled somewhat in considering a constitutional convention by the model of a constitutional convention that occurred in Scotland in the 1990s, which I would suggest was actually a campaign with a particular political goal? Is that really what a constitutional convention is?

Alan Trench: I was intrigued that in the evidence that you have had from people talking about the Scottish constitutional convention as a particularly successful sort of convention. I noticed that Professor McLennan did that. I think you would have benefited if you had been able to have Professor McLennan and Professor James Mitchell talk to each other about that. I don’t think Professor Mitchell has published on this yet, but he and I have discussed this in the past. He, as he said in his evidence to you, has done extensive work in the archives of the Scottish constitutional convention. As I understand it, his argument generally is that the convention was notable for achieving agreement between parties about a variety of second-order issues. I think he mentioned—

Q565 Mrs Laing: But not all parties.

Alan Trench: Not all parties. Only the parties that were involved, because of course the Conservative party was not part of that process.

Q566 Mrs Laing: Notably not the Government of the time.

Alan Trench: Not the Government of the time, and not the Scottish Government of today either—not the SNP. It encompassed parties that commanded a broad degree of support, probably at that time a majority degree of support. It by no means represented the whole swathe of Scottish public opinion in the form of Labour and the Liberal Democrats, but did include a swathe of wider public opinion through organised civil society, whether it is through the churches, the Kirk, the STUC and so on. The convention, I suspect it could be said in hindsight, achieved two things. One was to crystallise and articulate public opinion about the need for a form of devolution, and at the very least to make it plain that something needed to be done, rather than necessarily to broker the form of that. The second, as I say, was to resolve certain second-order issues about such matters as size of the Parliament, electoral systems and so on, which should not be regarded as matters of detail but are not top-order matters.

Q567 Mrs Laing: Would it be more accurate to say that it was clever of the people who set up that body to call it a constitutional convention, but it was not actually a constitutional convention, but a political campaign?

Alan Trench: I think I would agree with that, yes.

Mrs Laing: Thank you.

Alan Trench: But it was a campaign that had a broad degree of support.

Q568 Mrs Laing: Therefore if we are examining the prospects for a constitutional convention now, would it be possible to set aside what happened in Scotland in the 1990s and look at a different sort of model? Would a constitutional convention necessarily be a finite exercise with a specific agenda, or could it be an evolving body looking generally at the constitution?

Alan Trench: I suppose it could be, but the question is what is it meant to do. If that was its purpose, how would you compose it and what would its ongoing broad remit be? Most of the examples of constitutional conventions that one thinks about, whether it is the Australian one of 1898 to 1900 that led to federation in Australia, or the most famous example of the American constitutional convention, which produced the Constitution of the United States in 1787, tend to be in newly constituted states, which of course the UK is not. Where you have processes of extensive constitutional revision, they tend to be much more limited forms of institutional brokerage between established interests. We have seen that, for example, in the past decade or so in both Germany and in Switzerland. The Swiss completely rewrote their constitution in 1999. I think the new version did not substantially alter very much, but included a number of second-order changes and a lot of tidying up of what had become a very messy document. Those processes may be better lessons to look at, and may offer ways of trying to engage a wider public, but I think one needs to be clear about what the convention actually means as part of that.

Q569 Mrs Laing: Would it be possible, if it was set up in that way, that a constitutional convention might
be a mechanism to stop or slow down, or to make more difficult, a Government’s ability to use long-term constitutional change for short-term party political gain.

Alan Trench: That is, of course, something that all parties seem to have been involved in in the last 15 years or so. I suspect that it probably would. Again, it would depend on what your remit for such a convention might be: whether it is to be some sort of advisory body in the sense that it is consulted but can then be ignored, or whether it is intended to be the sort of advisory body that issues advice that has a high degree of weight, from which Ministers would not normally be expected to depart. That certainly would be a possibility, and it would, for both good and ill, alter the way in which Ministers would be able to act unilaterally.

Q570 Mrs Laing: Turning, Alan, to your paper Funding Devex More, in which you say that the mismatch between the financial framework of devolution and the constitutional powers and political accountability of devolved government has reached a point where it is clearly no longer sustainable, is tax devolution in your view the only way to make devolved Governments more responsive to taxpayers?

Alan Trench: I think responsiveness is one issue, and in the Scottish debates there are now three sets of terms that are used to describe varying forms of this. We have fiscal accountability, which was the concern of the Calman commission. We have had fiscal autonomy, which has been advocated—some have called it full fiscal autonomy—by the Scottish Government, and we have had a form of fiscal responsibility, which appears to exist somewhere in the middle, that has been articulated particularly by something called the Campaign for Fiscal Responsibility. That form of responsiveness is certainly one thing that fiscal devolution can achieve, but there are other objectives as well. One is to enable the devolved Governments to make a much wider range of policy choices. At the moment, devolved Governments are in the position of essentially being distributive bodies. They are spending agencies, and that has various consequences. They have very extensive spending autonomy. In the case of Scotland, the Scottish Government has 70% of the identifiable public spending in Scotland. In the case of Wales, it is about 55%. They are not responsible for social security spending, which is obviously the largest single item. Those figures exclude defence spending, which is not identifiable in that sense. These are big spending agencies, but that is, to a very large degree, all they are, so when it comes to making decisions about matters that fall within devolved competence, they don’t have access to the same range of policy levers as the UK Government.

We saw quite a clear example of that arising over long-term care for the elderly and the announcement of a couple of weeks ago, where the UK Government suddenly announced that they were going to alter the way in which inheritance taxes are charged and the rating of the nil rate band, in order to help fund a policy that would apply only in England. The cost of that new policy should result in an extra element of grant funding for devolved Governments through the Barnett formula, but there was nothing in the announcements to make that clear. At the very least, that was a spectacularly unclear set of public announcements, and it confused me, and it clearly confused quite a lot of other people as a result. The UK has access to inheritance tax; the devolved Governments do not. The UK made a unilateral decision to alter the rules about inheritance tax, which will affect people in Scotland, Wales and Northern Ireland, as well as in England, for a policy that in this form will apply only in England, and that seems to me an inherently wrong way of approaching the problem. For example, I would like to see devolved Governments in a position where they are able to make decisions about alcohol and tobacco duties, because they are responsible for dealing with most of the consequences of alcohol and tobacco abuse, or excessive use. The costs may obviously most directly fall on the health services. Tax is one of a number of levers that they can use. They can use conditions of sale, which the Scottish Government are pursuing very energetically. They can use minimum pricing in relation to alcohol, which again the Scottish Government is pursuing—and the UK Government is pursuing—but there are a variety of levers they can’t use. The UK Government has been trying to use tax for a long time through excise duty without a huge amount of success, but these problems are different in Scotland, certainly compared with Wales, and it seems to me appropriate to devolve those policy levers.

That said, in that particular instance, that is a very difficult thing to do, but there is a set of policy arguments as well as accountability and constitutional arguments about devolving tax powers. That is why I would argue strongly for it.

Mrs Laing: Thank you. You anticipated my next question so I am done.

Q571 Chair: Just very quickly, do you see any reason why England could not have tax assignment?

Alan Trench: Not as such, but you have to decide what assignment is going to achieve. Assignment is something that most specialists in tax—and I would not consider myself to be one of them; I have a working knowledge of the forms of tax assignment—would be somewhere between a second best and an unsatisfactory option. It certainly would not promote any form of fiscal accountability or responsiveness, because what you are doing is substituting one stream of revenue that comes from another source, in the form of a grant for local government, presently calculated using standard spending assessment methodology, for a source revenue that comes from a calculation based on an estimate of tax receipts. It is not going to promote that. It may give you a greater degree of public engagement, but it will not directly promote responsiveness in one sense. One ought to note also that there is not much empirical evidence to support the argument about tax devolution supporting accountability either. There are questions about whether these will in fact achieve political goals, even if they will achieve other goals.
The other problem with any form of tax assignment is that it exposes the recipient Government to a volatility risk through the fact that tax receipts may fluctuate, and it does not have any control over the fluctuation, so it cannot decide—

Q572 Chair: It does not at the moment. It is told what to do by the centre.
Alan Trench: It does not at the moment. The thing about grants like SSA, as with the Barnett formula—it is less true for the SSA arrangement—is that they at least in principle can be very stable. That is one of the great virtues of the Barnett formula. It does deliver stable revenue.
Chair: And slavery. You always get three square meals a day. Sorry, Alan, that was totally uncalled for.
Alan Trench: Often not. SSA, I suspect, ends up not being far from the worst of both worlds, because it gives you quite a high degree of volatility and is not all that predictable, especially because it is calculated from year to year.

Q573 Chair: One very last one, Alan, because I know we have reached closing time, so to speak. It revolves around devolution as a concept. Is devolution an expedient device, or is it a principle of government? What I mean by that is: is devolution something that is good for Wales, good for Scotland, good for Northern Ireland, and therefore, surely, good for England, or is it a little bit of a wrinkle to get Whitehall round some difficulties?
Alan Trench: That is a good question. It has certainly been a very useful expedient, but is an expedient that, in relation to Scotland and Wales and, with a different set of qualifications, Northern Ireland, accords with what the public want. Whether that is the same for England is another question, because the English seem fairly confused about these things and, I am sorry to say, not terribly good in the way that English public debates try to address them. There is, I find, a much greater sophistication, certainly in Scotland and Wales, in the debates about the relationship of their part of the UK with the whole, and then with a wider world.

Q574 Chair: Do you raise devolution from being an expedient and a device back to being a principle by showing everybody that we are applying it fairly and equally—not necessarily symmetrically—throughout the nations of the United Kingdom? Do not all the nations then look at each other and say, “This is something we all share,” rather than, “It is something that has been used in the past for particular reasons”?
Alan Trench: I think that finding a way to articulate greater self-government at levels where people want to exercise it becomes a way to reinforce the effectiveness of the UK as a state. If people are able to do that and if they are able to call on and exercise a wider range of powers when they want to do that, that is probably good for the UK as a whole because it means that the form of government is responsive to what the public want, and can change as the public want it. Flexibility is always supposed to be the virtue of the British constitutional system and the principle of the sovereignty of Parliament. It seems to me that this is a way of making use of that to try to accord the constitution with what the wider public seem to want.
Chair: Great. Alan, thank you very much. Fascinating and challenging, as always. Thank you very much for giving your time today.
Alan Trench: You’re welcome.
Chair: As you heard me say to Gerry, no doubt there will be things you will think about on the train on the way home. Feel free to pop those in as supplementary evidence if you wish.
Alan Trench: Thank you.
Chair: Thanks, Alan. Good to see you. Thank you, colleagues.
Scotland and UK Constitutional Change

“Our constitution is wearing out” Lord Hailsham

1. A Constitutional Convention for the UK, which addresses the central issue of the constitutional relationships between the component nations, must begin by recognising (and seeking to resolve) the fundamental conflict between the Scottish and the English (now British) constitutional understanding and traditions.

2. To do this, it might be helpful to identify the distinctive elements that created the Scottish Constitutional Convention, and that in the end led to its success.

3. The most important of these was the traditional Scottish understanding of popular sovereignty, expressed dramatically at the very first session in 1989 when all members solemnly lined up to sign the “Claim of Right for Scotland”. This affirmed “the sovereign right of the Scottish people to determine the form of government best suited to their needs”. Our Convention did not begin with a political aim. It began with a fundamental constitutional principle, and all our work flowed from that.

4. Perhaps not all who signed that day (or who reaffirmed it in the Scottish Parliament earlier this year) fully recognised the implicit rejection of the claim of Westminster, or more accurately, of “the Crown in Parliament” to absolute sovereignty.

5. We reaffirmed a theme that runs through Scottish history—from the Declaration of Arbroath to the two previous Claims of Right of 1689 and 1842, both of which were in different ways a rejection of the Crown’s or Parliament’s right to impose on Scotland. Lord President Cooper, probably the greatest Scottish lawyer of the last century, said “The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law.”

6. That principle has in practice meant the growing power of the Government and especially the Prime Minister rather than Parliament—a situation the new Scottish Parliament has explicitly renounced.

7. This principle was massively strengthened by the perception, right or wrong, that the Thatcher Government was not only imposing policies that Scotland manifestly rejected, but was seen as an attempt to impose an alien ideology. We saw what could be done by a political system which Lord Hailsham called “an elective dictatorship.”

8. This combination put a strong wind in our sails.

9. The Church of Scotland Assembly in 1989 spelled this out and said we had a crisis—“a crisis more real than apparent, within the constitutional foundations of Scotland and the United Kingdom. It is real in that it involves a clear conflict between two totally opposing notions of sovereignty in the Scottish and English constitutional traditions—made apparent by the polarising tendencies in British society in the 80’s but always present and underlying. From a Scottish constitutional (and theological) perspective this English tradition of state absolutism has always been unacceptable in principle. It is now intolerable in practice. The Scottish Parliament must be built upon philosophical foundations that are more coherent and credible than the notions which underpin the existing British constitution.”

10. On this basis, the Convention’s final Report in 1995 said the coming of a Scottish Parliament “will usher in a way of politics that is radically different from the rituals of Westminster; more participative, more creative, less needlessly confrontational—a culture of openness......much more than a mere institutional adjustment. It is a means not an end.”

A Constitutional Convention for the UK?

11. There is a strong case for a Constitutional Convention for the UK. There are I believe a number of crucial questions which Scotland brings to the debate.

12. The main roadblock to real change is the unwritten constitutional doctrine of the absolute sovereignty of the Crown in Parliament, with the enormous powers of patronage and royal prerogatives which this gives in reality to the Prime Minister.

13. It is of course true that in practice alternative bases of more or less secure power have been created in the smaller nations, but the legal right of Westminster to have the last word remains. Indeed it may be used to shape the coming Referendum.

14. Any Convention must therefore have the mandate to look at the constitutional foundations of each of the nations, and at alternative models of relationship.
This would include such issues as:

— the need for a written constitution defining the relationships of the four nations;
— the principle of subsidiarity and real sharing of power;
— the meaning of Autonomy within a reformed Union;
— the anomaly of the “West Lothian question”;
— the case for an English Parliament and government;
— the case for a Federal, Quasi Federal or Confederal system;
— the role and shape of the UK Parliament in any new system; and
— the role and shape of a second chamber in a new UK.

15. This inquiry is a real opportunity for some bold and imaginative thinking about the future of a Union in need of reform. Let us not be too timid or afraid to think innovatively. May 2012

Further written evidence submitted by Canon Kenyon Wright

“We must not let ourselves believe that a bit of technocratic tinkering here, a bit of constitutional consultation there, will do the trick. I believe there is only one way out of this national crisis we face: we need a massive, sweeping, radical redistribution of power. Through decentralisation, transparency and accountability we must take power away from the political elite and hand it to the man and woman in the street.”

David Cameron, then leader of the opposition Speech to the Open University in Milton Keynes. January 2009.

1. I believe that the Scottish constitutional story is more likely to embody that “massive, sweeping, radical redistribution of power” and therefore, as the Constitutional Convention recognised, has profound relevance to the constitutional debate in the UK.

2. My purpose now is, first, to suggest some of the issues raised by the coming referendum; then to outline the historical Scottish view of constitutional power which was the firm foundation of the Scottish Constitutional Convention; and finally to propose what this might mean for a possible UK Constitutional Convention.

The Referendum—Scotland the What?

3. Like many individuals and organisations in Scottish civil society, I pressed for the inclusion of a second question, offering not just more devolution, which by definition leaves the constitutional dilemma basically unsolved, but rather “Secure Autonomy”. My reason is simple. I hoped this unique opportunity could be used to offer a solution that recognised Scotland’s constitutional sovereignty, but kept the integrity of the Union—albeit a radically reformed Union! The only way short of independence which could really recognise Scotland’s position, is a move towards a Federal or Quasi-federal Union—but I recognise that the F word is a red rag to a bulldog.

4. However this is now academic. The case for a second question has been lost, not by debate in Scotland or her Parliament, but effectively by an edict from Westminster. That alone might come back to haunt the debate before 2014. There may be many in Scotland, deprived of any other hope of real secure constitutional change, who will feel disenfranchised, and may reluctantly turn to independence as the only opportunity for real change on offer for a generation.

5. The crucial need is to get beyond the narrow slogans which make the debate so shallow. Both sides need now to define positively and with clarity, the kind of Scotland they offer, and how it will be different, and take its place as a new democracy among the nations.

6. For the “Yes” campaign, this means the development, not just by politicians but by wide consultation the length and breadth of the land, of at least the principles of a written constitution for Scotland which would articulate the vision of the nation’s future, and define the nature and limits of power, and relationships.

7. For the “No” campaign, this means telling us clearly and positively what the future of Scotland would then be, and promising and defining what changes could be expected, which go beyond just a bit more devolution. Scots can then make an informed judgement between the two serious options.

8. In the 1997 referendum, the people of Scotland did not vote on the vague desire for a parliament; they voted with knowledge, for a detailed plan worked out by consensus by a Convention that was widely representative of Scottish political and civil society.
9. In the 2014 referendum, the same must be true. It must not be a vote for some emotional slogans of independence or status quo, based on hope or fear fuelled by political slogans and stunts. The people must know what kind of nation they will be voting for—or against.

10. The Constitutional Commission of which I am President (www.constitutionalcommission.org) will be working with the Scottish Government and others to develop the principles of such a positive constitution—and if wanted with the “No” group to clarify their position.

Scotland’s Founding Principle—Popular Sovereignty

11. The founding principle of the Convention was the “Claim of Right for Scotland” of 1989, solemnly signed by all members—and incidentally reaffirmed a few months ago by the whole Scottish Parliament apart from the 15 Conservative members. That Claim simply acknowledges “the sovereign right of the Scottish people to determine the form of government best suited to their needs”.

12. It has deep historical significance, as twice before Scotland has issued a Claim of Right. The first in 1689, by the then Scottish Parliament, deposed King James VII because he had “turned a legal limited monarchy into an arbitrary despotic power”.

13. The second, in 1842 was issued by the General Assembly of the Church of Scotland to reject the imposition by Westminster of patronage.

14. The important principle which unites all three historic Claims is constitutional—the rejection of the absolute authority of the Crown, or the Crown in Parliament to impose policy or governance on Scotland against her will.

15. Lord President Cooper, the greatest Scots lawyer of the 20th century, states “the principle of the unlimited sovereignty of parliament is a distinctively English principle, which has no counterpart of Scots constitutional law.”

16. I have spent time on this historical account because it is essential to an understanding of Scottish constitutional thinking and tradition—and was the driving force behind the Convention’s successful achievement of a Scottish Parliament.

17. It may be of interest that the proposal to start the Convention, not just with a political goal, but with a fundamental restatement of constitutional sovereignty, though accepted by all members, came from the Churches’ representatives.

18. The Kirk’s General Assembly of 1989 supported the Convention, issued a detailed constitutional and theological analysis of the constitutional Crisis, and concluded “It is not possible to resolve the question of the democratic control of Scottish affairs ... apart from a fundamental shift in our constitutional thinking away from the notion of the unlimited or absolute sovereignty of the British parliament towards the historic Scottish and Reformed constitutional principle of limited or relative sovereignty. Any settlement must be built upon philosophical foundations that are more coherent and credible than the notions which underpin the existing British constitution. The English constitutional tradition of state absolutism has always been unacceptable in theory. It is now intolerable in practice”.

19. The Scottish perception that the Thatcher Government had used the British constitutional position to impose policy after policy that were manifestly rejected by the people of Scotland and by their elected representatives, led us to see that the problem was not just political but constitutional; not just about policies but about power, not just about who governed, but about how we were governed.

Scotland’s Working Principles—Towards a New Political Culture

20. Based on this founding principle anchored in Scottish law, history and tradition, the Constitutional Convention planned for a parliament that would in the words of our final Report, “usher in a way of politics radically different from the rituals of Westminster; more participative, more creative, less needlessly confrontational ... a culture of openness that will enable the people of Scotland to see how decisions are being taken in their name, and why”.

21. Four working principles were agreed:

   — The sharing of power by Executive, Parliament and People.
   — Accountability, Executive to Parliament, both to People.
   — A participative approach to the development, consideration and scrutiny of policy and legislation.
   — Equal opportunities.

22. To this end, we put in place an electoral system that is broadly proportional, and was designed to make it very difficult for any party to secure an absolute majority—though to our surprise that has now been achieved! We also proposed a Committee structure and standing orders that ensured openness and participation.
23. The Parliament was seen by the Convention as “much more than a mere institutional adjustment. It is a means, not an end.” It was seen as (and has at least partly succeeded in being) a process not an end; a new political culture. The Consultative Steering Group (CSG) which drew up the draft Standing Orders and Code of Conduct, said “We see the Parliament as the central institution of a new political and community culture. A more open participative democracy requires innovative institutions and attitudes in Scottish Society”.

A Constitutional Convention for the UK?

24. Do we need one? Do we perceive any problems with the existing constitutional arrangements?
— David Cameron, quoted at the start of this paper, clearly did.
— Chris Patten agreed when he wrote “We have an electoral system riddled with unfairness; a bicameral legislative structure that the government reorganises at regular intervals on the back of an envelope; courts whose judges are attacked by the executive because it does not care for the way they seek to protect our liberties; local government gutted by manic centralism; an executive that displays under both Labour and Conservative leadership the attributes of what Lord Hailsham memorably called an ‘elective dictatorship’”.
— Scotland’s constitutional path is built on the perception that there is indeed a serious problem of the concentration of power, in the UK.
— The erosion of trust in the whole political process indicates a real problem.

What Would be the Remit of a Constitutional Convention?

25. The central issue is the concentration of power, and the urgency of a “radical redistribution”. This means at least considering serious changes.
— In the enormous powers of patronage exercised by the Prime Minister.
— In the end of the “royal prerogatives” and the move to a truly constitutional monarchy.
— In ways of ensuring the regular accountability of Parliament and its members to the people, not just at elections. This may include powers of recall.
— In the recognition of subsidiarity, ie that power should be shared, and exercised at the lowest effective level.
— In the development of a Federal or Quasi Federal system which recognises alternative sources of secure power, including Scotland’s Claim of Right to constitutional sovereignty.
— In the establishment of an English Parliament and Government, to take its place along with the Parliaments of the other three nations, all with similar defined powers, and with fair proportional electoral systems.
— In the transformation of the UK Parliament into the Federal Legislature and Executive.
— In the development of a written constitution, to guarantee rights, establish the nature and limitations of power at all levels, and define relationships between the parliaments in the UK.
— In support for the new institutions and “culture” needed for the development of a participative, rather than a representative democracy.

26. I am not naive enough to expect these ideas to be greeted with wild enthusiasm, but I do believe they are the way to that “massive, sweeping, radical redistribution of power” which could renew our failing democracy!

October 2012

Written evidence submitted by Unlock Democracy

About Unlock Democracy

1. Unlock Democracy is the UK’s leading campaign for democracy, rights and freedoms. A grassroots movement, we are owned and run by our members. In particular, we campaign for fair, open and honest elections, stronger Parliament and accountable government, and a written constitution. We want to bring power closer to the people and create a culture of informed political interest and responsibility.

Executive Summary

2. Unlock Democracy strongly supports the creation of a constitutional convention for the UK. Constitutional reform has taken place in a piecemeal fashion in the UK. Particular grievances have been addressed—from the introduction of the universal franchise to devolution to Scotland, Wales and Northern Ireland—but there has never been a UK wide debate about how we should be governed. Unlock Democracy believes this is long overdue.
3. We believe that it is essential that this process involves wide-scale public discussion, debate and participation, reaching far beyond the members of the convention. In particular it is essential that any public engagement process includes:
   - Choice in both the means of involvement and in the timing;
   - a two way flow of information; and
   - explains and represents the process as well as the subject matter.

4. Unlock Democracy recognises that there are different models for organising a convention and that there are a number of different constitutional issues on which a convention could be held. Whilst we support a convention process that would lead to the creation for a written constitution for the UK we believe the most pressing matter that should be considered by a constitutional convention is the impact of devolution on the UK.

**Grounds and Basis for Establishing a Convention**

**Is there a case for establishing a constitutional convention for the UK?**

5. Yes. Unlock Democracy and in particular its predecessor organisation Charter 88 has campaigned consistently for a constitutional convention for the UK. In part this is because we believe that our fundamental political, civil and human rights should be enshrined in a written constitution. However this is not just about abstract principle—there are particular reasons why it is important for the UK at this particular juncture to hold a constitutional convention.

6. The period since 1997 has seen a rapid period of constitutional change and has made the need for a constitutional convention even more urgent. There has been radical change, but with no overall sense of the kind of country that these reforms were designed to help build. Each reform seems to have been enacted in isolation without a real idea of how it would impact on the others. So, for example, we have had:
   - devolution to Scotland, Wales, Northern Ireland and London whilst the England questions have remained dangerously unanswered. The result has been a destabilising sense of unfairness in England;
   - a welcome Human Rights Act which the Government insists does not impact on the sovereignty of Parliament, but has yet to capture the public imagination and which few see as having relevance to them;
   - a European Union, which with the Charter of Fundamental Rights has continued the process of constitutionalising itself, the need for Britain to be clear about its self-definition is all the greater;
   - a system of local government that lacks any constitutional rights or status and in many ways is limited to being local administration rather than government;
   - the introduction of elements of American style direct democracy, such as directly elected mayors and Police and Crime Commissioners but without the corresponding accountability mechanisms;
   - the increased use of referendums for constitutional issues but in an adhoc manner whereby the government of the day determines what should and should not be put to the public vote; and
   - top-down reform which has helped to foster growing voter disenchantment and cynicism with politics in a period of unprecedented constitutional change.

7. The Scottish Government’s proposal for a referendum on independence has meant that a debate is already taking place in Scotland but it is taking place in a vacuum. Under the last Government it became fashionable to talk about British values and yet we have no shared understanding or document to outline what these values are. Although independence is a question for the people of Scotland there are broader debates that we need to have as the people of the UK. A constitutional convention would be one way of starting that discussion.

*If there were to be a constitutional convention, on what basis should it be established? What would be its legal status, or could it proceed on a more informal footing?*

8. Although it is possible to run effective informal constitutional conventions—as demonstrated by the Scottish Constitutional Convention mobilised by civic society, this is not the model we would recommend for a UK constitutional convention. Unlock Democracy believes that any constitutional convention should have direct public involvement. We believe that for the citizens to possess a constitution they need to have built it themselves. When the new South Africa wanted to write a constitution following the end of apartheid it embarked on a wide-scale process of public discussion, debate and participation. This is what we want for the UK.

9. One of the key factors in making public involvement in constitution making successful is that the process must be genuinely independent of government, and have a clear outcome. This means that it must have a clear legal status. Public engagement succeeds when there are defined stages to the process and it’s known from the outset what will happen to the findings. This could be going straight to a referendum or reporting to Parliament before being put to a referendum but the process itself has to be independent of government. A good model of this is the recent constitutional convention in Iceland which was established by Parliament and reported to
Parliament but the members of the convention were directly elected members of the public. The wider public was heavily engaged, primarily through the internet and once the draft has been considered by Parliament, it will be put to a referendum in October 2012.

10. In contrast the Irish constitutional convention has been heavily criticised for the lack of clarity about its process and parameters. Although it was initially billed as exploring comprehensive constitutional reform a number of issues have been taken away from the convention—either put straight to a referendum or returned to Parliament to debate and decide. For example the proposed amendment on Oireachtas inquiries was rushed to a referendum last November before the convention was even established, and was rejected by the people.

While the most significant constitutional change proposed by the Government—the abolition of the Seanad—will not be considered at all. Although it has been expected to report back in 12 months the Government has only confirmed that it will be at some stage within the lifetime of this Government. This does not bode well for a convention that is only just being established.

What would be the best way of involving the public in the convention?

11. Unlock Democracy believes that it is essential for the public to be directly involved in the process. There are a number of ways that this could be achieved, for example through citizens assemblies, citizens juries or broader engagement techniques such as those used in Northern Ireland’s Bill of Rights process. Whichever approach is used the process has to be deliberative, open, representative, and independent of government and political parties.

12. Deliberative techniques such as citizens’ juries have been used at all levels of governance to involve citizens in evaluating service delivery or to develop priorities for an organisation. These mechanisms are effective because they allow participants to learn about the subject, quiz experts and develop an informed opinion rather than simply capturing an immediate view in an opinion poll or referendum. They recognise that different views and interests have to be balanced in society, and also enable people to change their minds.

13. One of the criticisms made of involving citizens in complex or controversial topics is that they won’t understand the subject, or will make reactionary judgments based on populist headlines. The evidence on mechanisms such as citizens’ juries, panels and assemblies suggests that this isn’t so. The experience of the British Columbia Citizens’ Assembly on Electoral Reform shows that citizens are able to work through complex policy issues. We have also found when running community panels to assess views on Europe that listening to other views and debating the issues influences participants’ opinions even when they don’t feel their views have changed.

14. The openness of the process, selection of participants and availability of opportunities for people to contribute, are key factors in whether the public buys into the process. One of the limitations of deliberative mechanisms is that to be effective they have to involve a relatively small number of people. If groups are too large people become passive audience members rather than engaged participants. Citizens’ juries typically involve 10–12 people and while citizens’ assemblies such as those held in British Columbia and the Netherlands can involve hundreds, this would still be a tiny percentage of the UK population. If this process is going to be genuinely national, individuals must believe that they could have been selected to take part and that the participants represent them.

15. This is partly about ensuring the selection process takes account of the UK’s regional, gender and ethnic diversity. But it’s also about creating a relationship between the participants and the public; a key factor in the British Columbia experience was that the members of the Citizens’ Assembly felt that they were participating on behalf of all Province citizens. This helped create high levels of commitment among Assembly members. Public meetings can assist, as the public can debate the issues facing the participants and quiz them on their experiences of being part of the process. In British Columbia they also published materials that were given to participants on the Assembly website and videoed the evidence session so that anyone could follow exactly the same process as the participants and then submit their own views. While many people would be content to not be involved, it is crucial that those who would, can.

16. The Northern Ireland Bill of Rights Commission used a slightly different approach to engage citizens in the debate. Rather than having an event, such as a citizens assembly, as a focal point of the public engagement process they used “cascading”, “piggy backing” and entertainment, to stimulate debate. Cascading involved training just over 500 facilitators to go out into the community and talk about the Bill of Rights process, while piggy backing involves using existing community organisations and networks to publicise the process for you. They also used entertainment—videos and drama workshops to highlight the process and explore the issues. This was a very innovative process and certainly succeeded in involving people in the process. However it is important to recognise that the Northern Ireland has a much smaller population that the UK as whole. If we were to replicate this process and scale it up for a UK Bill of Rights there would need to be approx 15,000 facilitators for the cascading element alone.

17. The Icelandic constitutional convention combined the more deliberative aspects of the convention with widespread public engagement over the internet. Although this opens up a number of possibilities for public engagement and is considerably cheaper, Unlock Democracy believes that it is essential that there are also “real world” opportunities for participation so that those without access to the internet are not excluded.
What should be the composition of the constitutional convention?

18. There are broadly speaking three different models for constitutional conventions, those involving elected politicians, constitutional experts and the public, as well as hybrid models. None is perfect and each poses its own challenges.

19. Unlock Democracy believes that the constitutional convention should have direct citizen involvement but that there should be defined roles for other groups including parliamentarians, civil society and constitutional experts. Inevitably it will not be possible for all interested parties to be a member of the convention—it would become too unwieldy and any attempt at deliberation would be lost. The process will have to be designed to allow and indeed encourage specific groups as well as the wider public to submit evidence and take part in the convention even where they cannot be voting members.

20. In terms of hybrid models of conventions such as we are proposing there are a number of examples of how the different groups have been balanced within the convention process. The Australian Republican Convention was made up of equal numbers of the directly elected members of the public and politicians and did not have formal representation for civil society. The Scottish Constitutional Convention was made up entirely of political parties and civil society and did not have direct public involvement but also had associate members to ensure the widest possible representation. The Irish constitutional convention will be two thirds randomly selected members of the public and one third elected politicians. Somewhat controversially there is no formal role for experts in the Irish process. In any model you are attempting to balance the different interests whilst ensuring that the convention does not become so large as to be unworkable.

21. Unlock Democracy believes that the constitutional convention should be made up of no more than 200 members—it could be smaller depending on the subject being considered. We believe that public involvement in the convention process is key and that two thirds of the places should be reserved for members of the public chosen randomly from the electoral register on the basis of the regional constituencies used for the European Parliament. At least 40% of the places should be reserved for men and 40% reserved for women to ensure that there is gender balance.

22. The third of places reserved for politicians should be allocated on a national basis with the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly being free to decide how to appoint members within the parameters that they have to reflect the party balance within the Assembly or Parliament. England should be represented by elected politicians on the basis of the share of the vote received at the last general election. It would be up to the parties themselves to determine whether MPs, councillors MEPs or Mayors should join the convention. We would however also want to see a specific stage of the convention aimed at engaging with local government.

23. Unlock Democracy believes that it is important that civil society—trade unions, businesses, voluntary organisations and religious groups, play a role in the convention but we do not think that this necessarily needs to be as voting members. Rather we think they should be made associate members of the convention so that they can participate in proceedings but not vote.

24. We envisage the experts would be involved in the convention in both as formal advisers to the convention and also in contributing to the learning phase of the convention’s work.

Would there be a means of providing specific representation for England or the English regions, alongside the other components of the UK and the UK as a whole?

25. Unlock Democracy believes that it is essential that within any constitutional convention process there is a means of having debates about the governance of England as well as the governance of the UK as a whole. England is the one constituent nation of the UK that has not yet had any formal debate about its governance and this is creating a sense of grievance that has the potential to destabilise the UK. While Scotland, Wales and Northern Ireland have all debated and held referendums on devolution and have mechanisms for exploring additional powers they may wish to see devolved; there has been no equivalent debate in England.

26. The UK is one of the most centralised industrialised nations and this problem is particularly acute in England. While different governments have attempted to impose top down solutions—from directly elected regional government to directly elected mayors—these options have generally been rejected by the electorate.

27. The people of England must have the same basic rights as those in Scotland, Wales and Northern Ireland to determine how they are governed. However how this process should be managed is challenging—not least because the processes in other constituent nations have already taken place and it is highly likely that the decisions taken about English governance would impact on the rest of the UK. It would not be practicable for delegates from England to take on an entire body of work that could be a separate convention in its own right and to fully participate in the main convention. However what they can and must do is agree what the constitutional process for England should be and ensure that the issues regarding England’s governance are not overlooked in the convention process.
Would the members of convention be mandated and, if so, by whom and to do what?

28. Unlock Democracy does not believe that members of the convention should be mandated—particularly not if the process is deliberative—the participants must be free to explore ideas and change their minds having heard the evidence. However we do think that they have a responsibility to report back to and involve the wider public in the process. There are a number of different ways that this can be done.

29. There are three key elements to successful involvement of the general public:

— Choice in both the means of involvement and in the timing.
— Creating a two way flow of information.
— Explaining and representing the process as well as the subject matter.

Choice

30. It is perhaps rather obvious to say that there need to be a range of opportunities for people to get involved with the process; but different mechanisms will attract different groups of people. Having a range of involvement opportunities also ensures that any obstacles to participation, such as time and accessibility issues, are minimised.

31. Exactly which tools are used depends on the resources invested in the process. Texting can be used for generating lists of priorities or values but this requires a large infrastructure. Tools such as wikis and web discussion forums can pick up on specific issues or questions that they may be interested in rather than a formal consultation which can be quite intimidating. Equally some people will attend public meetings or submit written responses that won’t engage in web based activities.

32. Having said this, choice in the means of involvement is not enough. There also needs to be flexibility in the timings for participation. This increases the opportunities to participate, reduces the risk of people finding out about the process only to discover that the deadline has passed, and reassures people that the process is inclusive. Different stages of participation can also be a useful hook with the media to generate interest and awareness of the process. With the Citizens’ Assembly process this was done by having different forms of engagement for the different stages of the process. During the learning stage people were encouraged to engage with the resources given to participants and submit their own comments; while during the public hearings phase people were able to attend the public meetings or submit written responses.

33. How the public are involved in the process also depends on how long it will last—usually the public involvement is run in parallel with the deliberative exercise and explicitly feeding into it at certain points. Each stage of the Citizens Assembly lasted a number of months. If the convention was to convene for a year then this model can be adopted. One way of doing this is over a shorter time period is to pose a series of questions and consult on each individually for a short period. This makes it easy for people to “drop in” to the process and also makes participation easier—individuals can just focus on the issues that have particular relevance or importance to them.

Two way process

34. One of the important elements of any public engagement exercise is that the participants understand what is happening to their contribution. Ideally they should have the opportunity to feed into different stages of the deliberative exercise, effectively creating a dialogue.

35. Part of the public’s mistrust of consultation exercises is a feeling that the decision has in reality already been taken, that the Government has to be seen to ask the public but that their involvement will have no effect. One way to counteract this is to involve the public in the very early stages of debate, for example in discussing any learning materials that participants are given and in setting the broad principles of debate not just the detailed policy questions that may emerge later in the process.

Representing the process

36. With deliberative processes it is important to not just involve people in the subject that is being explored, but also to give them an understanding of the process. There are very few opportunities in society today for people to just deliberate an issue; the emphasis tends to be on instant consumerist responses, so it can be quite an alien concept. If the public are to buy in to the idea of a constitutional convention and to feel that it represents them they need to understand what it is and how it works. By far the best way of doing this is using the members of the convention. In the Citizen’s Assembly model, the public hearings phase was used to represent the process. At each public meeting at least one of the people from the Citizens Assembly was from the local area and was able to talk about their experience of the process as well as the issues that they were deliberating on. This was an important element of the wider public feeling that ‘it could have been them’ that the process was genuinely involving and empowering ordinary people. In Iceland they chose to achieve this by electing the members of the convention, this has the advantage that people get to choose who represents them but also runs the risk that some groups in society are less likely to put themselves forward for election.
What should be included in the terms of reference for the constitutional convention? For example, should the convention be tasked with proposing a new constitutional structure for the UK, or establishing an agreement between the different components of the UK on ways of proceeding in their relations with each other and with the UK Government and UK Parliament?

37. In most countries, as in the current Irish and Icelandic examples, constitutional conventions review an existing constitution and propose specific changes. This is obviously not possible in the UK where we have an uncodified constitution and little shared understanding of what makes up our constitution.

38. Ultimately Unlock Democracy would like to see a constitutional convention tasked with proposing a new constitutional settlement for the UK. However this is a significant task and is not the only model of convention that could be adopted. It would be perfectly possible to have a convention which explored specific aspects of our constitutional settlement. For example we have in the past proposed that a constitutional convention could examine how our rights and freedom should be protected and whether the UK should have a Bill of Rights.

39. Unlock Democracy believes that the most pressing issue that should be considered by a constitutional convention is the impact of devolution on the UK and the future governance of England. We are aware that even this more limited task is a substantive one.

How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting? Would all the participants in the convention have equal status? Are there any other procedural issues that should be considered at this stage?

40. Unlock Democracy envisages the convention proceeding on the basis of consensus although if the convention were to explore the future of the UK we think it would be necessary that the proposals had at least the support of the majority of each national group. It would be for the convention itself to determine its own working practices.

How would proposals made by the convention be taken forwards? For instance, would they require endorsement by the different Assemblies and Parliaments of the UK, or by one or more referendums?

41. Unlock Democracy believes that the convention should be created by the UK Parliament and that it should report back to that body. Parliament would have the opportunity to debate and amend the proposals but they would have to be put to a UK wide referendum to be implemented. We would also support there being a mechanism whereby the public can petition for a referendum on the constitutional convention’s proposals if Parliament has chosen not to do so.

June 2012

Written evidence submitted by Democratic Audit

1. Democratic Audit is an independent research organisation, based at the University of Liverpool. We are grant funded by the Joseph Rowntree Charitable Trust to conduct research into the quality of democracy in the UK and have now completed our fourth full audit of UK democracy. The previous three audits, which assess the democratic performance of the UK using a set of generic “search questions”, were published in 1996, 1999 and 2002.

2. We welcome the Committee’s inquiry into a possible constitutional convention for the UK. In this submission, we argue that there is a strong case for a UK constitutional convention. It could address a series of uncertainties and instabilities that have developed in the UK constitution, often connected to devolution, though not exclusively so. Our submission emphasises the importance of an inclusive process, involving directly elected members and possibly members of the public chosen at random. Particular attention should be given to the status of England within any constitutional convention. We propose a series of detailed issues that a convention might address. However, it might be that the terms of reference of a convention should be kept open ended, with the body itself establishing its more detailed programme.

Grounds and Basis for Establishing a Convention

Is there a case for establishing a constitutional convention for the UK?

3. We believe that there is a case for establishing a UK constitutional convention. It rests in the existence of a series of areas of tension and uncertainty in present UK constitutional arrangements. They include the position of the UK in the European Union, the status of human rights and the constitutional role of the courts. In the following submission, however, we focus on issues associated with devolution, the different nations and regions of the UK and their relationship with the centre.

4. Within this category of tensions one of the most important is the continued piecemeal extension of devolution and its absence from England (excluding arguably Greater London). Evidence exists of rising
resentment within England about this disparity, although there remains no clear view on how it should be dealt with. Recent referendums on directly elected mayors for the largest English cities yielded “no” votes in every case except Bristol. One potential (though only partial) solution to this problem was thereby closed off. The idea of directly elected regional assemblies covering the whole of England was abandoned in 2004 following a defeat for such a proposal for the North East region in a referendum held there.

5. Another important issue helping create a case for a UK constitutional convention is the rise of Scottish secessionism combined with the confusion surrounding the means by which a decision about its future position within the UK might be made. Furthermore, the advent of devolution has meant that the unitary model for the UK, in so far as it was ever applicable, is becoming increasingly strained. Various other associated features of the UK constitution are surrounded by doubts, such as the viability of the doctrine of parliamentary sovereignty. A constitutional convention might provide a means by which the different components of the UK could consider these issues collectively and seek to reach agreements that might clarify matters appropriately.

If there were to be a constitutional convention, on what basis should it be established? What would be its legal status, or could it proceed on a more informal footing?

6. It would seem appropriate for the prospective parties to a constitutional convention to begin on the basis not of a full Act of Parliament, but possibly a resolution from the UK Parliament of some kind. Through this means, Parliament could act as a convener for a UK constitutional convention, but permit the body it established a degree of latitude that could well assist its effectiveness.

7. The parliamentary resolution could provide a broad remit, with the parties to it agreeing the precise details and the means by which they might proceed. Their agreement might then be published in a document which was political rather than legal in nature.

8. The extent to which the work of the convention needed to introduce a more formal legal dimension to its work would depend in part on the terms of reference it devised for itself and the particular outcomes it intended to produce.

9. For instance, if it were intended simply to develop a set of conventions governing the interaction between the different components of the UK, then legal enactments might not be required. But it may be that a firmer legal status would be deemed necessary. For instance, the agreement that might emerge from a Convention could necessitate legal changes if it were to be implemented.

What lessons could be learned from previous constitutional conventions, in other countries?

10. A variety of possible lessons can be drawn from previous international experience. One is the unpredictability of such exercises. This point is supported by perhaps the most famous constitutional convention of all, leading to the US federal constitution, held in Philadelphia in 1787. The terms of reference were apparently narrow, suggesting that the purpose of the convention was merely to consider improvement to the existing loose confederal system, rather than—as ultimately it did—introduce an entirely new federal constitution. Moreover, broader political and practical circumstances may not have seemed conducive to such an outcome. However, a plan was produced that eventually gained the necessary approval from the states involved.

11. The various attempts made to introduce a new constitutional settlement to Canada over a number of decades are instructive in that they demonstrate the problem that can arise if the consent cannot be secured from one of the components of the country concerned. The National Assembly of Quebec voted against the Constitution Act 1982. Subsequent attempts to meet the concerns of Quebec through the Meech Lake Accord of 1987 then alienated other parts of Canada. Other objections to Meech Lake raise another important issue that arises from a consideration of previous constitutional conventions. Some criticised Meech Lake as an elite level agreement between the Canadian federal Prime Minister and his provincial counterparts.

12. More recent constitutional conventions have suggested means of avoiding these kind of problems of democratic legitimacy. The South African Constitution agreed by the Constitutional Assembly in 1996 was produced following an extensive and innovative public consultation programme conducted over a period of nearly two years, designed to develop the widest possible consensus.

13. An even more direct method of incorporating the wider public exists, through selecting members of the public by lot (“sortition”) to comprise a constitutional convention. The most well-known example of this practice was the British Columbia Citizens’ Assembly on Electoral Reform which sat in 2004.

14. We also note that, though it might not be classed as part of foreign experience, the Scottish Constitutional Convention set up in 1988 attained a degree of legitimacy for its proposal for Scottish devolution through wide participation from multiple parties and civil society groups. The Conservative Party and the Scottish National Party did not, however, formally take part.

15. A more general observation can be made on a basis of international observations about who takes part in constitutional conventions. They can involve one or more of the following groups:

— Individuals, both party politicians and non-party politicians, directly elected to the convention for the purpose of constitutional deliberation.
— Appointed experts.
— Individuals drawn from governments and/or parliaments within the state (this method is often used for federal constitutional conventions).
— Members of the public (eg: chosen by lot).

**Composition**

**What should be the composition of the constitutional convention?**

16. Direct election for a proportion of the constitutional convention might well be considered. The precedent of the Australian convention in 1998, which involved direct election of half the delegates in 1997, may be useful. While turnout was relatively high (47%) in Australia even without being a combined election, it may be wise in the UK context to run any convention election alongside another poll (European or General elections being the all-UK options).

17. An electoral system for a constitutional convention is governed by different criteria from general elections, as recognised for instance in the Northern Ireland Forum election of 1996. Their purpose is to ensure “voice” rather than power, and therefore a highly proportional system is appropriate. List PR and STV are the only systems that would be appropriate. Direct election can also ensure that the different nations and regions of the UK are represented. Government policy points towards direct election for various specific posts, including police commissioners, without being concerned about the costs of additional elections and likely low turnout, and to create a constitutional convention with legitimacy and a chance of attracting public interest seems to require direct election.

18. As with Australia, a directly elected component of 50% seems appropriate. However, the other half of the Australian convention consisted of political appointees, which ended up detracting from the legitimacy of the result. It is reasonable that the UK Government, opposition, devolved governments and assemblies and local authorities should have representation, but the exercise would also benefit from the input of experts and the general public. The latter could be introduced by sortition (either truly random or semi-random as with the British Columbia Citizens’ Assembly). In British Columbia expert involvement was at the level of the secretariat to the Assembly and as witnesses rather than full participants, but there may be grounds for bringing some academics and experts into a UK convention.

**What would be the best way of involving the public in the convention?**

19. Public involvement is vital to making a constitutional convention a meaningful exercise. Overseas and historical examples, as outlined above, offer several possibilities and we would urge that radical options should be considered, such as the direct election method suggested above.

20. Having a direct election would in itself encourage public interest.

21. The danger of leaving public involvement and comment for traditional methods, essential as they are (such as on-line surveys and questionnaires, public meetings and so on) is that they might merely involve a small group of people who are already interested in constitutional issues.

**Would there be a means of providing specific representation for England or the English regions, alongside the other components of the UK and the UK as a whole?**

22. Yes. This is an essential aspect for a UK constitutional convention. England has a distinctive, and anomalous, constitutional position and it is vital that the interests of England as a whole are represented in the discussion. England is also extremely centralised and there needs to be specific representation also for each region. This can be provided through direct election and through local government appointees but there is also room for creative thinking on how this can be done.

23. There may well be a case for a discussion within England about its constitutional arrangements prior to a UK convention. This could take the form of a pre-convention among the English representatives to the UK convention. Scotland, Northern Ireland and to a lesser extent Wales have had extensive formal discussions: in the context of referendums in 1979, 1997 and forthcoming in Scotland, 1979, 1997 and 2011 in Wales, and 1998 in Northern Ireland; large-scale parliamentary discussions around constitutional legislation in several long periods since the 1970s; and formal and informal constitutional conventions in Northern Ireland and Scotland. England has not yet had a formal opportunity to establish the questions, both internal (in the relationship between centre, region and locality) and in its relationships with the other parts of the UK and UK political institutions.

**Would the members of the convention be mandated and, if so, by whom and to do what?**

24. The convention must be obliged to produce a report, which in turn has a commitment from the Government (expressed at the time of the resolution or Act establishing the convention) that its report will either form the basis for a reform bill to be put to Parliament or a proposal for a referendum. The convention should strive for a maximal consensus, although unanimity cannot be expected.
25. A convention will be to some extent confederal, with different delegates representing different interests and points of view. However, it should be encouraged to act as a coherent deliberative entity of its own and develop its own agenda, and for this reason mandates, reporting back to other institutions and other limitations on deliberation should be discouraged.

**REMIT AND WORKING METHODS**

What should be included in the terms of reference for the constitutional convention? For example, should the convention be tasked with proposing a new constitutional structure for the UK, or establishing an agreement between the different components of the UK on ways of proceeding in their relations with each other and with the UK Government and UK Parliament?

26. While the precise terms of reference would be a matter for the participants in the convention, a possible general wording could be “to consider matters pertaining to relations between the nations and regions of the UK and make proposals”. Within this broad area, we believe that there would be significant value in addressing the following issues:

- Arrangements governing the extension of devolution to existing devolved areas; and the establishment of new arrangements for devolution.
- Arrangements governing the possible secession of components of the UK.
- The institutional representation of England and/or its regions within the UK constitution.
- Arrangements for the involvement of different components of the UK in major constitutional decisions—such as those affecting provision for human rights (eg: under the Human Rights Act) and the position of the UK within the EU.
- The involvement of devolved institutions in other important policy areas, such as policy within the EU.
- The relationship between the UK Parliament and devolved institutions.
- The possible need for a formal UK constitutional document, possibly taking precedence over regular legislation produced by other institutions including the UK Parliament.
- Arrangements for the distribution of funding between the different components of the UK.
- Arrangements for the handling of legislation in the UK Parliament that do not apply equally throughout the UK.
- The sustainability of a unified legal system for England and Wales given the existence of a separate legislature in Wales.
- The sustainability of a unified Civil Service for the UK (aside from Northern Ireland) given the advent of devolution.

Are there any legal/constitutional issues requiring particular attention, such as the need to conform to the terms of the Belfast—or Good Friday—Agreement 1998?

27. Any UK constitutional convention would have to operate within the limits of UK commitments under international law. In the case of the Belfast Agreement the requirements to which it would have to adhere would include the commitment to respect the self-determination of the population of Northern Ireland with regard to which state they were part of. Indeed, the stipulation regarding a referendum prior to exit from the UK could provide a model for other components of the UK (though joining with the Republic of Ireland would presumably not be an option for parts of the UK other than Northern Ireland). A UK constitutional convention would also need to take into account that the UK is bound by the Belfast Agreement to the domestic incorporation of the European Convention on Human Rights, as enacted by the Human Rights Act 1998.

28. A further legal/constitutional issue to be considered would be the status of the treaties of Union, particularly that between England and Scotland of 1706, as enacted by the English and Scottish Parliaments. This Treaty is drafted in such a way as to suggest that it is intended to exist in perpetuity. The UK Parliament has subsequently passed legislation altering the terms of this agreement. However, if the convention wished to consider the introduction of measures that might entail a major abrogation of existing contents of the Treaty of Union 1706, then it would need at least to take into account the legal grey area into which it was entering.

29. This particular concern leads on the more general issue of the doctrine of parliamentary sovereignty. If the convention were considering the extent to which devolution is and could be entrenched, it will inevitably become engaged in the conventional position (in England at least) that the UK Parliament cannot bind itself, and therefore is able to overturn legislation establishing devolution unilaterally and as easily as it could any other legislation. It does not even seem at present that devolution legislation is immune to implied repeal—that is legislation that does not expressly overturn it, but does so implicitly—as the European Communities Act 1972 and the Human Rights Act 1998 seemingly are.

30. The doctrine of parliamentary sovereignty is not universally accepted as intellectually coherent or practically viable. When the UK is considered as a multinational state, it is necessary to note that some hold it was never part of Scottish legal traditions.
31. However, any attempt explicitly to make the amendment of repeal of devolution legislation—or any other legislation of the UK Parliament—amendable only subject to specific heightened procedures such as referendums or supermajorities, would need to be preceded by a thorough consideration of the issues involved.

How should the convention proceed? For instance, on the basis of consensus, unanimity, qualified majority voting, or simple majority voting? Would all the participants in the convention have equal status? Are there any other procedural issues that should be considered at this stage?

32. We believe that ideally a UK constitutional convention would proceed on a basis of unanimity, particularly if the basic units represented were England, Northern Ireland, Scotland and Wales (whether by appointees, citizens chosen by lot, elected members, or whatever method was arrived at).

33. If the basic number of units was larger, for instance encompassing a number of English regions or other groupings, then it might be necessary to use majority voting—or perhaps qualified majority voting.

34. According votes to representatives of particular areas according to the size of population they represented might be a problem if one unit was far larger than the others—for instance if England was a single unit in its own right. If one participant was able to outvote all the others combined, the assembly might seem pointless one-sided to other participants. However, resentment might be generated within England were it not afforded representation proportionate to its population size.

35. It could be that the decision should be left to England (perhaps following a brief internal constitutional convention of its own) whether to participate in a convention as an “under-represented” single unit, or as a series of regions of some kind with representation more commensurate to their population size.

How would proposals made by the convention be taken forwards? For instance, would they require endorsement by the different Assemblies and Parliaments of the UK, or by one or more referendums?

36. It would probably be best for the convention to decide precisely how its proposals might be taken forwards, since the methods used would be very much determined by the nature of the proposals that were produced. If proposals involved relations between legislatures and executives at the UK and devolved levels, then it might simply be appropriate for those executives and legislatures to ratify the agreements in accordance with their own procedures. If an Act of Parliament was needed, it could also be processed in the usual way.

37. However, if substantial changes to the constitutional structure of the UK were required, then some kind of referendum process could well be involved. Such changes might include:

— Major constitutional legislation being passed, for instance stipulating new mechanisms governing the extension of and limitations upon devolution.

— Other significant constitutional change such as agreements between executives and legislatures on funding redistribution.

— Even more fundamental constitutional change, such as the introduction of a new legal system for Wales, substantial alteration of matters provided for by the Treaty of Union 1706, or measures legally to entrench devolution and make its alteration subject to special amendment procedures, which might conflict with conventional understandings of the doctrine of parliamentary sovereignty.

38. If referendums were held consideration would need to be given as to whether a supermajority was required at the overall UK level, and whether a majority would be required in each of the components of the UK (however defined for the purposes of England). Furthermore, an issue to be taken into account would be whether arrangements could be proceeded with if one component rejected a proposal while the others approved it.

June 2012

Written evidence submitted by the Rt Hon Carwyn Jones AM, First Minister of Wales

Introduction

1. I welcome the opportunity to submit evidence to the Committee on this important inquiry.

2. As Members will know, the last fifteen years has been a period of immense constitutional change. In addition to devolution, we have seen major reforms in such areas as the protection of Human Rights, and in the promotion of governmental transparency through Freedom of Information legislation. Nothing I say today is intended to detract from the enormous significance of those reforms. However, I believe that the challenges immediately ahead are at least as great as those that have been addressed thus far, and it is in that context that I have raised the issue of a constitutional convention.

3. What are those challenges? Fundamentally, they are about the territorial constitution: how are the different territories (I deliberately use neutral language here) of the UK to be governed, and how are their governments and legislatures to relate to each other within the UK?
4. I can offer a broad vision, but, it will need a constitutional convention to flesh out the detail. What is that broad vision? It is of a Kingdom which is politically diverse, looser, and combines several centres of democratic accountability.

5. Taking those elements in turn, it will be "politically diverse", because we have moved away from the early years of devolution when—and here I leave Northern Ireland aside, as politically sui generis—Labour governments operated at UK, Scotland and Wales levels simultaneously, and any issues of contention could be smoothed over on a relatively informal basis. Now, and as may be the case in the future, the position is very different, and greater attention needs to be focused on more formal mechanisms of inter-governmental machinery, such as the Joint Ministerial Committee, to manage these sometimes complex relationships. And that will be so whether or not Scotland moves to independence.

6. The Kingdom will also be "looser", in my view, by which I mean that the process of devolution in each part of the UK will continue. The Prime Minister has already said that, in the event that the Scots vote No in their independence referendum, the powers of the Scottish Parliament can be re-examined, and by implication expanded further. In Wales, the UK Government has appointed a Commission, under the chairmanship of Paul Silk, a former Clerk to the National Assembly, to review the devolution settlement and make recommendations as to the respective responsibilities of Westminster and Cardiff Bay as legislatures for Wales.

7. It would be surprising if that Commission recommended no change, and it will be pressed by some interests to recommend a new devolution settlement for Wales, one closer in form, and perhaps substance, to that which the Scots have enjoyed since 1998. Be that as it may, the Welsh Government has recently completed a consultation exercise on whether a separate Welsh legal jurisdiction, analogous perhaps to that in Northern Ireland, should be established, and we will be analysing the responses to that over the summer.

8. Finally, the Kingdom will "combine several centres of democratic accountability". Why is it important to make this apparently obvious point? Some of the early difficulties with devolution appear to me to have originated in a somewhat reductivist interpretation in Whitehall of the meaning of devolution itself. On that interpretation, devolution provided (and continues to provide) machinery for the local adjustment or amelioration of "national" policy, which is of course determined by the UK Government. Thus it is about the better governance of the devolved territories, which must ultimately give way to the wider "national interest", as determined by Whitehall. We see this particularly in certain Whitehall Departments’ approach to how the UK’s line is presented in European Councils.

9. But for me, devolution is not about how each of Wales, Scotland and Northern Ireland are separately governed. Rather it is about how the UK is governed, not by one but by four administrations, and which are not in an hierarchical relationship one to another. And the consequence of that is the administrations of all four territories, including the UK Government in respect of England, have their separate responsibilities and accountabilities, which must be recognised and respected by all the other partners, as part of the joint enterprise of the governance of the UK.

10. So, a Kingdom which is politically diverse, looser, and combines several centres of democratic accountability; that is my broad vision of where we should be going. How do we get there? That takes me to the need for a Constitutional Convention, and why we need to set this up now.

A CONVENTION OR A COMMISSION: AND WHY NOW?

11. The driving force for me is the developing constitutional debate in Scotland. Those of us who are committed to the UK cannot pretend that, if Scotland goes, the remaining truncated Union could simply carry on as before. In reality, a great deal would have changed and the long-term consequences might be profound. So, rather than simply allow events in Scotland to unfold, and to react passively to whatever happens when it happens, I believe that political and civil society across the UK should be talking now about what kind of UK we want to see.

12. So I have proposed the establishment of a Convention on the Future of the United Kingdom, primarily tasked with examining the full context of relationships between the Devolved Administrations and the UK Government, bearing in mind what I just described as the joint enterprise of the governance of the UK.

13. A number of questions then arise. First, why a Convention, rather than a Royal Commission? Secondly, who would participate? And third, why now?

14. I offer three reasons for a Convention, in preference to a Royal Commission. First, I think there is force in the criticism that the constitutional reform agenda hitherto has been too much a matter for discussion among the political classes narrowly conceived, and with too little wider public engagement. While politicians act for and on behalf of the people we represent, we must always be reminded that our debates on these matters affect the most fundamental interests of our citizens, and their voices need to be heard too. A Royal Commission, constituted of the “great and good” and relying on traditional methods of taking evidence, does not seem to me to suit the spirit of the times, which is characterised by a perhaps understandable distrust of established institutions and establishment figures. We need to broaden out the debate.

15. This is not a revolutionary proposition, it has been done before. The success of Scottish devolution from its outset is surely linked to the work done over several years in the 1990s by the Scottish Constitutional
Convention, which managed to build a consensus both on the case for devolution and how it should work. We need to replicate that approach.

16. My second reason is linked to the first. I have said that I would like the Convention to be primarily tasked with an examination of the relationships between the various administrations within the UK. If we think for a moment about how the various devolution settlements have developed, the policy conversations have tended to take place in a series of bilateral exchanges between the UK Government and the relevant devolved administration, to some degree without reference to how devolution is developing in other parts of the UK.

17. Perhaps that is inherent to the nature of devolution, as compared say to a state built on federal principles. If you are creating a federal constitution, it would be natural that representatives of all the states should come together and agree amongst themselves what limited range of powers should be conferred “upwards” on the federal authority; so all states would participate in that discussion. Under devolution, however, power is handed “downwards” from the centre; and there need be no assumption that the extent and scope of power devolved from the centre to one territory should necessarily be the same as that afforded to another. So it is that we have ended up with what I have called the UK’s “asymmetric quasi-federalism”, where the powers of the various devolved institutions differ one from another.

18. That may have sufficed in the past, but I do not think we can proceed like that in the future. We need to go beyond bilateralism as a technique of constitutional development, and engage a wider set of parties around the table. Take the Scottish case. If the Scots decide to stay within the UK, we know that there will be adjustments, by which I mean more powers, for the Scottish Parliament. The candidates for the new settlement include the so-called “devo max” and “devo plus”, either of which would represent a radically different position for Scotland within the Kingdom. Could that simply be a matter for discussion and agreement between the Scots and the UK Government, or should the other members of the UK club be involved as the terms of membership of another of them are renegotiated?

19. I believe that all parts of the UK should be involved in that discussion, and I think, from what Lord Wallace of Tankerness said in the House of Lords during the passage of the Scotland Bill, that the UK Government agrees with me. That will require something like a Constitutional Convention, if there is to be a meaningful engagement.

20. My third reason for favouring a Convention over a Royal Commission is illustrated by the recent emergence of proposals for House of Lords reform. I find it totally inexplicable that these should have been developed entirely without regard to the UK’s territorial constitution. In other countries, the US Senate being the most obvious example, the upper House of a legislature contains within it representation from all parts of the state, with representation not rigidly tied to electorate data but the House itself serving as a unifying institution within the state. I do think that a territorial dimension to the membership of the House of Lords could be a way of ensuring a strong voice for each of the four countries at the UK level, without diminishing England’s voice (as the Commons membership would continue to reflect population shares).

21. In the same way, it is surely very curious, at a time when the prospect of Scottish independence represents an existential challenge to the UK, that a separate Commission is set up to examine the so-called West Lothian Question. The Question is about what future role MPs from Scottish constituencies should play with respect to exclusively English legislation. Here I think we can usefully turn to the Alternative Report on House of Lords reform, which was published by a group of peers and MPs who felt unable to support the Report produced by Lord Richard’s Committee. Paragraph 5.40 of that Report provides a helpful, albeit non-exhaustive, list of the sorts of representatives who might be involved. In addition to representation from both Houses of Parliament, there should be representation from the devolved Parliament/Assemblies; political party representatives; representatives of local government; and representatives of business, people at work, the third sector, and faith groups, respectively, together with specialist academic constitutional and political experts. While no doubt there would be arguments about exactly who should represent each relevant interest, that sort of approach seems broadly to be along the right lines.

22. So, I argue for the appointment of just such a Convention. Who should participate in its work? Here I think we can usefully turn to the Alternative Report on House of Lords reform, which was published by a group of peers and MPs who felt unable to support the Report produced by Lord Richard’s Committee. Paragraph 5.40 of that Report provides a helpful, albeit non-exhaustive, list of the sorts of representatives who might be involved. In addition to representation from both Houses of Parliament, there should be representation from the devolved Parliament/Assemblies; political party representatives; representatives of local government; and representatives of business, people at work, the third sector, and faith groups, respectively, together with specialist academic constitutional and political experts. While no doubt there would be arguments about exactly who should represent each relevant interest, that sort of approach seems broadly to be along the right lines.

23. One major advantage of establishing a Convention with this sort of membership would be to enable a more specifically English contribution to the debate. The discussions in recent years on constitutional matters within the UK have been primarily, and perhaps disproportionately, about the governance of Scotland, Wales and Northern Ireland. The English voice has yet properly to be heard. It is not for me to say what arguments about the governance of England should be advanced, but I can certainly regret the lack of an English contribution thus far, and urge that we find a way to rectify that. A Convention with the sort of membership I have described could provide the mechanism to achieve that.

24. Then we come to the question of when the Convention should begin its work. My answer to that is as soon as practically possible. The reason for this goes back to my concern about the future constitutional position of Scotland within the United Kingdom. As I said, I am anxious that those who are committed to the
UK should be proactive in developing a vision for the UK in which Scotland can see its rightful place, without our waiting for the outcome of the referendum to be known.

25. Unfortunately, the Prime Minister does not share that view. While he is open to a comprehensive conversation about the kind of Union we want to see, he considers that that should take place only after the Scottish referendum debate has come to a conclusion. He believes that we need first to focus on winning the case for the Union in Scotland.

26. I do not agree. Unless an attractive alternative for the UK’s constitutional future, based on partnership between the different parts of the UK, and developed by the sort of broad-based Convention I have described, is developed ahead of the referendum, I fear it may be lost. I cannot overstate how much I would regret that. But if a Constitutional Convention can be appointed soon, I believe there is still time for the necessary work to be done.

CONCLUSION

27. So, in summary, I believe that we need a Constitutional Convention to be appointed, and we need it to begin its work as soon as practically possible. Its focus should be the full context of relationships between all of the Devolved Administrations and the UK Government, on the basis of a shared responsibility for the governance of the UK. And I can assure you that the Welsh contribution to that debate will be positive and constructive.

28. I hope that the Committee finds this evidence of interest, and I look forward to meeting you on 12 July to discuss these matters further.

July 2012

Written evidence submitted by Andrew RT Davies AM, Leader of the Opposition & Welsh Conservative Assembly Group

1. Thank you for inviting me to contribute to the current work of the Political and Constitutional Reform Select Committee.

2. I note that your inquiry into whether there ought to be a constitutional convention in the United Kingdom aims to explore the following issues:
   — Is there a case for establishing a constitutional convention for the UK?
   — The composition of the convention.
   — The remit and working methods of the convention.

3. I am pleased to contribute as Leader of the Welsh Conservative Group in the National Assembly. With your permission, I shall confine my remarks to the first topic.

4. The National Assembly is now an established feature of the Welsh political landscape, and enjoys growing support, particularly amongst young people. The Assembly is an important, accessible and democratic forum for the people of Wales.

5. The Welsh Conservative Group in the National Assembly believes that whilst the premise of devolution has now been anchored—bringing political representation closer to the people and allowing Wales to pursue policies more closely aligned with her economic and social needs—the promise of devolution has yet to be realised. More than a decade on from the onset of devolution, Wales faces continued challenges in raising the educational achievements and economic prosperity of its people. The rate of unemployment is higher in Wales than in any other UK nation and higher than the British average (ONS, 20 June 2012). Two in five young people entering secondary school have reading skills below their age group (Estyn, 31 January 2012). Almost a third of children growing up in Wales currently live at risk after housing costs from poverty (Department for Work and Pensions, 14 June 2012).

6. Devolution therefore enters a critical phase. Concerted action is required to turn the Welsh economy around, reduce Wales’ dependence on the public sector and allow for the provision of equitable and modern public services.

7. How would a constitutional convention for the United Kingdom sit amidst this constitutional, economic and social milieu? I argue that Wales’ voice in the Union will be stronger when it has a record to be proud of in economic development, health and educational outcomes. I believe that a constitutional convention risks distracting from the real issues affecting the people of Wales, and from much-needed and long-overdue improvements to their material and social welfare in particular.

8. In the debate over further powers for the Assembly, it was argued by many that primary law-making responsibilities would give the Welsh Government the “tools to do the job” (BBC News, 6 November 2009). More than a year on from the introduction of primary law-making in the 20 fields for which the Assembly holds competence, however, just one government bill has passed through the National Assembly—on local
government byelaws. The Welsh Government has presented only three full bills to the Assembly. In the same period, the Scottish Government has put 11 bills before the Holyrood Parliament.

9. The Welsh Government’s legislative priorities are also modest. Respected and independent commentator Sir Emyr Jones Parry, said their legislative programme was “not a natural fit for the problems Wales confronts” (BBC News, 22 September 2011). As the people of Wales look for government support and intervention on key issues that affect them in their daily lives, the Welsh Government has become side-tracked with concerns ranging from a separate legal jurisdiction for Wales and cycle lanes to allotments and local government byelaws.

10. A constitutional convention for the United Kingdom would follow the work of the Richard Commission, All Wales Convention, Holtham Commission and Silk Commission in reviewing the way that devolution works for Wales. Each of these commissions has conducted—or is to conduct—a thorough audit of the Assembly’s fiscal and constitutional competencies, and to recommend how the current settlement can be improved. Lord Richard has since led a committee inquiry into the future of the House of Lords (Western Mail, 23 April 2012); Sir Emyr Jones Parry is to review, under Sir William McKay, the west Lothian question (Western Mail, 17 January 2012). Each of these commissions will have a further impact on the way that Wales is governed.

11. The Silk Commission is to report on the devolution of fiscal powers to the National Assembly for Wales in the autumn of this year, and present its review into the powers of the Assembly by the spring of 2014 (Wales Office, 8 March 2012). The Commission on the Consequences of Devolution for the House of Commons—or West Lothian Commission—is expected to report “in the course of the next Parliamentary session” (Written Ministerial Statement, Deputy Prime Minister, 17 January 2012).

12. With a referendum on Scottish independence due in 2014 (Scottish Government, correct as at 9 July 2012), continuing debate over reform of the House of Lords, the possibility of the transfer of enhanced fiscal powers to the Northern Ireland Executive (HM Treasury, March 2011), the possibility of a future referendum over Britain’s relationship with the European Union, and continued discussion—outwith Silk—of the Barnett formula and the way that Wales is funded, the potential for constitutional distraction in Wales arising from the convening of a constitutional convention should not be seen as insignificant.

13. Support for the Assembly is growing (All Wales Convention, November 2009), but turnout remains too low in Assembly election. With 40% of a 41% turnout, the executive in Wales counts with the support of fewer than one in six eligible voters. The media in Wales suffers from a lack of plurality and balance. Civil society in Wales is catching up with that of the more established polities in England and Scotland, but remains in its infancy. I am strongly of the view that more people will engage with the Welsh political process once the Welsh Government has helped to deliver tangible improvements to the life chances of those it represents. I understand the arguments for a constitutional convention, in particular the need for a debate in the round which draws all of these themes—fiscal, constitutional, economic and social—together into a singular thread, and which does so in the run up to, and not the shadows of, the referendum in Scotland. However, I believe that voters in Wales would appreciate the attention of their elected representatives more profitably engaged in delivering the kind of economic and social improvements to which they aspire. I cannot therefore support the call for a constitutional convention at this juncture.

July 2012

Ruth Davidson MSP, Leader of the Scottish Conservatives

1. Thank you for inviting me to contribute to the work of the Political and Constitutional Reform Select Committee and I can confirm I will be happy to provide oral evidence to the Committee at its planned session in Edinburgh.

2. The UK has experienced a great deal of constitutional change in the last 15 years, not least the establishment of a Scottish Parliament and Assemblies in Wales and Northern Ireland.

3. There has been further devolution beyond that envisaged at the establishment of the Parliament and Assemblies—notably the Scotland Act 2012 arising from recommendations of the Calman Commission and the 2011 referendum on the direct law-making powers of the National Assembly for Wales and the on-going Silk Commission.

4. It should be noted that the significant additional powers encompassed in the Scotland Act are being transferred over a period of several years and it will not be possible to properly assess their impact before their implementation.

5. It should be further noted that a referendum on Scotland’s membership of the United Kingdom is also likely to take place by October 2014 (at the time of writing, no date has been agreed).

6. I believe that any convention or commission must look at the whole of the UK, rather than the distribution of powers between one territory’s decision-making body and the UK Government, as has been the template in the past.

7. All governing structures should be examined for their efficacy and relationship with others. This should include the House of Lords and local authority powers. There is an argument that the centralising tendencies of
modern governments have reduced the responsibilities and local decision making of Scotland’s local authorities. Devolution should be about more than transferring certain powers from one parliament to another.

8. The timing and structure of this convention or commission should take account of the referendum on Scottish independence.

9. The Scottish Rate of Income Tax powers are scheduled for introduction in April 2016. This is one of the most significant transfers of power from the UK Government to another decision making body in any part of the UK. While a convention or commission may wish to start its work before this date, it should consider the impact of this transfer as part of its work, particularly if it is a power under consideration for employment by other devolved nations.

10. On a general point, the Calman Commission looked specifically at areas where power could be devolved without impacting upon other nations and regions of the UK. There are many powers which could be devolved to the Scottish Parliament or Welsh or Northern Irish Assemblies which could impact upon other nations and regions of the UK and set one area in competition with others. I think the successes of devolution have been anchored in stability, with few serious disputes, and those areas of contention which have existed being resolved through political responses rather than recourse to legal ones. It is therefore important that any convention or commission assesses the impact of any proposed changes on the whole of the UK as well as its individual constituent parts during the course of its work.

11. For me, the starting point of any convention or commission is to establish the essence of the UK—which essential characteristics define the unitary state and all discussions should flow from there. That established, discussions should move to areas which can be sensibly devolved without harming national unity or political stability and with due regard to our shared history and institutions, and whether such devolution is either desired or would be beneficial.

12. I look forward to meeting with the Committee on 4 October to discuss these issues.

September 2012

Written evidence submitted by Sir Merrick Cockell, Chairman, Local Government Association

1. During my evidence session to your Committee on 6 September I undertook to provide a comparison of tax revenue raised locally in Sweden, Denmark and the United Kingdom.

2. There are a number of ways of doing these sums and the different ways of doing them tell us different things about the comparison between local government in different countries.

3. The usual comparison figures are those published by the Council of European Municipalities and Regions (CEMR) and Dexia Credit Local,1 which provides direct comparisons of sub national public sector revenue, expenditure and GDP.

4. As a share of GDP, UK sub national government raise 14%, compared with 37.4% of GDP in Denmark and 25.6% in Sweden. As a share of total public revenue, the figures are 34.7%, 67.1% and 48.6% respectively. These figures show that one factor in the comparison is the overall size of the public sector, which is much bigger as a share of GDP in Denmark than in Sweden or the UK (which are about comparable on that score); if the comparison were extended to include spending as well as revenue, it would be apparent that the difference between Sweden is affected by the fact that Sweden has a balanced budget and the UK has a large deficit.

5. As a share of their overall revenue, sub national government entities in Denmark and Sweden raise 34.3% and 61.6% of their revenue respectively through local taxes whereas in the United Kingdom the figure is much lower at 12.7%. These figures assume that councils are responsible for the same services in each country, however. In particular, they assume that local government is fully responsible for the police, fire and schools services; they also include the Scottish, Welsh and Northern Irish Governments under the definition of “sub-national government”, and of course those governments have no taxing powers at all: this significantly distorts the CEMR figures. We do not, unfortunately, have the resource to disaggregate them to remove this distortion.

6. In England, of course, schools are funded by the ring-fenced Dedicated Schools Grant, and from this Autumn the police will be the responsibility of directly elected police commissioners. The recent LGA report Funding outlook for councils from 2010–11 to 2019–20: Preliminary modelling used a narrower definition of council spending which excluded the police and schools for that reason (as well as the, smaller, fire budget, for different reasons).

7. Using this narrower definition, English local government raises 42% of the cost of services locally. This is expected to rise to 65% from 2013–14 with the partial re-localisation of business rates. Over the period to 2020 it could rise as high as over 80%. This reflects the change in the funding system and the predicted fall in central grant to local government as the result of the Government’s planned cuts.

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8. As I highlighted during my evidence, the United Kingdom’s future constitutional arrangements should aspire to deliver a more mature partnership between the centre and localities. Any Constitutional Convention ought to involve local government in a way that reflects that aspiration. One way of doing this could be to increase the amount of business rates retained from 50% gradually over a period, by for example, raising the percentage retained by 5% every two years. This would provide local government with access to a more buoyant local tax base.

September 2012

Written evidence submitted by Professor James Mitchell

1. Professor James Mitchell is Head of the School of Government and Public Policy, University of Strathclyde. He recently held a British Academy grant researching the work of the Scottish Constitutional Convention and is writing a book on the subject.

SUMMARY

(i) Formal written constitutions differ in length and range of matters covered. Determining what should be included in the remit of any Constitutional Convention will be highly contentious.

(ii) Constitutional deliberation may focus on specific matters though spill over effects mean that deliberation will inevitably result in focusing on other matters to the fore.

(iii) Open, participatory deliberation is a worthwhile ideal but much discussion will necessarily take place in closed sessions or through bilateral agreements.

(iv) Legitimacy lies at the heart of the success of any Convention but a representative Convention may achieve high levels of legitimation but create tensions in relations with Parliament at Westminster.

(i) GROUNDS AND BASIS FOR ESTABLISHING A CONVENTION

2. The proposal to establish a Constitutional Convention, or some other forum for constitutional deliberation, rests on an assumption that there is a need for reform or at least a review of constitutional arrangements. This in turn rests on an assumption that there is agreement on what is meant by constitutional arrangements. Current advocates of a Constitutional Convention appear to share a view on the need for reform or review without necessarily agreeing on what aspect or aspects of the constitution should be the subject of such deliberation.

3. There are many aspects of the UK’s constitution that are currently the subject of controversy. Recently adopted or revised constitutions in other states have included matters not found in earlier constitutions. It is now more common, for example, for electoral systems to be included in formal written constitutions than in the past. Central banks are also now given protected independence in a significant minority of the world’s written constitutions.

4. In essence, there is a tendency for more recent constitutions, especially those adopted after more open deliberation, to be much lengthier and to include a wider range of matters than older constitutions. There has been a shift from elite-level constitution-making conducted in private (the US Constitutional Convention being the most researched example but also including constitution-making in post-colonial states) to more open process aspiring to greater democratic participation. A primary question either prior to or at the outset of deliberations would have to be: what would be included/excluded in constitutional deliberation by a constitutional convention?

5. Two broad distinctions can be made in response to this question:

(i) Constitutional Convention as a forum for codifying/writing the constitution.

(ii) Constitutional Convention as a forum for addressing specific constitutional issues.

6. The first would be an opportunity to either write a new constitution or to codify and/or amend existing practice. This would involve a radical departure in UK constitutionalism which was characterised as having a “political constitution”,2 a “customary constitution”,3 and an “evolved state”.4 The more traditional approach in the UK to constitutional reform has been evolutionary, piecemeal and lacking in clear codes of practice. This has given rise to charges that incremental change has occurred with unintended consequences or without care to known likely consequences. It has also been suggested that the absence of a “programme” of reform has led to incoherence.

7. A Constitutional Convention that attempted to codify or write a new constitution would be engaged in a formidable task, confronting many highly controversial issues requiring considerable democratic legitimacy, time and resources. It is difficult to detect any demand for such an exercise from the public at large or key institutions such as the political parties. It is difficult to identify the source of any mandate for such an exercise.

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8. It is worth noting some of the different mechanisms, often in combination, used to review and reform the constitution:

(a) Parliament: Formal changes in constitutional rules often require primary legislation. The Labour Government’s package of constitutional measures, as listed by some scholars, included a wide range of matters, some requiring legislation, some not.5

(b) Parliamentary committees: Parliamentary committees have considered constitutional matters at various points in time and in different forms including committees consisting of members drawn from both Houses eg the Joint Committee on House of Lords Reform.

(c) Royal Commissions: The Kilbrandon Commission on the Constitution (1969–73) was an example of pre-legislative deliberation. Kilbrandon had a narrower focus than its name suggested. Its origins lay in the Wilson Government’s response to the rise of the SNP. A Cabinet Committee under Richard Crossman had initially proposed establishing a Royal Commission on Scottish Government while Jim Callaghan proposed a Royal Commission to consider the “whole issue of unitary Government and federalism, including the arrangements with Northern Ireland”.6 The Royal Commission reported to Parliament.

(d) Ad Hoc Commissions of Enquiry: The McKay Commission on the consequences of devolution for the House of Commons. This Commission consists of experts who will produce a report and to report to the Government (as opposed to Parliament).

(e) Standing Committees/Commission reports: The Electoral Commission was established following the fifth report of the Committee on Standards in Public Life (an independent advisory non-departmental public body).

(f) Extra-parliamentary bodies: Think tanks and others have deliberated on constitutional reform but these have operated as non-authoritative deliberations. The most notable example was the Scottish Constitutional Convention which met after 1989.

Constitutional Convention models

9. There are a number of models of Constitutional Conventions. The US (Philadelphia) Constitutional Convention is perhaps the most famous but its relevance to the UK today may be limited for a number of reasons:

— it established a constitution for a new state and hence did not need to tackle issues of codification of existing practice;

— the issues to be addressed were more limited in the eighteenth century than today—hence the relatively short document (cf many constitutions written more recently); and

— and it was not troubled by the complex issues of democratic legitimacy that would have to be confronted today.

10. The European (Giscard) Convention was established by the European Council in December 2001 completing its deliberations in July 2003. The European Convention’s legitimacy was based on its establishment by the European Council but the Convention’s conclusions required ratification. This proved too difficult. It operated as an elite-level body and ultimately lacked legitimacy.

11. The Scottish Constitutional Convention (SCC) is often referred to in debates in the UK. The SCC was founded on a “Claim of Right” which proved less certain than its founders hoped.7 While participants signed up to the Claim, it was a political rather than justiciable claim to “sovereignty of the Scottish people”. The SCC was an important non-authoritative body for cross- and non-party deliberation on aspects of devolution. There was a conscious effort to ensure that in form and in substantive conclusions it would be an open,

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5 Vernon Bogdanor, “Our New Constitution”, Law Quarterly Review, vol.120, 2004, lists the following as constitutional changes: the constitutional independence of the Bank of England; Referendums for Scottish and Welsh devolution (under the Referendum (Scotland and Wales) Act, 1997; Scottish Parliament (under Scotland Act, 1998); Welsh assembly (under Government of Wales Act, 1998); Referendum on Belfast Agreement (under Northern Ireland Act, 1998); Northern Ireland Assembly (under Northern Ireland Act, 1998); Referendum on directly elected mayor and strategic authority for London (under the Greater London Authority (Referendum) Act, 1998); Introduction of “proportional representation” for elections to Scottish Parliament; Welsh assembly; Northern Ireland Assembly and London strategic authority (under various aforementioned Acts); “proportional representation” for elections to the European Parliament (under the European Parliamentary Elections Act, 1999); Requirement that local authorities abandon committee system and adopt a cabinet system, city manager or directly elected mayor—last requiring approval in a referendum with provision for 5 per cent of registered electors to require a referendum on elected mayor (under the Local Government Act, 2000); European Convention on Human Rights enacted (under the Human Rights Act 1998); Removal of all but 92 hereditary peers from the House of Lords (under the House of Lords Act, 1999); Freedom of information (under the Freedom of Information Act, 2000); Registration of political parties, the control of political donations and national campaign expenditure and establishment of the Electoral Commission (under the Political Parties, Elections and Referendums Act, 2000); Abolition of office of Lord Chancellor, removal of Law Lords from House of Lords, and establishment of a new Supreme Court.


7 We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of Government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount. (Scottish Constitutional Convention 1989: 1)
participatory form of decision-making. The Convention highlights both the strengths and limitations of open, participatory constitutionalism.

12. The SCC’s deliberations focused mainly on issues of representation in the proposed Scottish parliament. It did not address the UK-dimensions of devolution—intergovernmental relations, the future role of a Scottish (Scotland) Office or implications for the House of Commons of devolution. Participants took the view that these were outside its remit. While it deliberated on the powers, functions and financing of devolution, these debates were much shallower than those on representation. This reflected the principal motivation behind the establishment of the Convention and, indeed, devolution: a perceived lack of Scottish representation in the system of UK government. However, even on matters of representation, the SCC was limited in its scope as a deliberative body. Arguably some of the most important debates on the electoral system were conducted within the parties, rather than the SCC. A complaint found in SCC documents was that the two main parties saw the Convention as essentially a bilateral affair. The Labour Party’s debate on the electoral system was more significant than any debate within the Convention. Having agreed in principle to support the MMP electoral system, the most contentious issue was the size of the Parliament. This was important as it would determine its degree of proportionality: Labour favoured 112 Members while the Liberal Democrats wanted 145. The decision to opt for 129, splitting the difference, was made in private by the leaders of Labour and Liberal Democrat parties. This highlights a limitation of an open deliberative forum. Some negotiations need to be conducted in private. The open forum may offer an important forum in which issues and proposals are raised but ultimately some of the most contentious matters will be made elsewhere. This is likely to be the case in any constitutional deliberation.

(ii) Remit

13. There may be a temptation to focus on only one aspect of the constitution, such as relations between the component nations. The danger with this is similar to one of the problems that has arisen with regard to devolution. Constitutional change can have unanticipated consequences or anticipated consequences that are simply ignored. The SCC and establishment of devolution may have addressed a problem of legitimacy in Scotland, articulated in terms of a “democratic deficit”, “no Scottish mandate” and “popular sovereignty” amongst the opposition parties in the 1980s and 1990s. However, as a consequence of focusing on devolution to Scotland and Wales and failing to address the wider implications, the problem of legitimacy has simply been displaced rather than resolved. Solving one legitimacy problem in Scotland and Wales has created another: the “West Lothian Question”. This is now the subject of enquiry by the MacKay Commission on the consequences of devolution for the House of Commons. This Commission has a clear focus, tackles a set of issues that are both technical and politically contentious and might have proved difficult to resolve in an open deliberative forum such as a Constitutional Convention. Leaving aside the unfinished business of devolution, debates on the relations between the component parts of the UK state of unions often spill over into debates on other aspects of the constitution.

14. Debates on devolution have two linked dimensions: how devolved government operates and how the devolved government is represented at the centre. In bi-cameral systems, the components of the state find representation in one legislative chamber. It is notable that debates on devolution and Lords reform are rarely linked in the UK. One attraction of a Convention with a wide remit would be to allow for consideration of spill over implications.

(iii) Composition and Legitimacy

15. The key to the composition of any Convention is legitimacy. By legitimacy, we mean not only legality but also perceptions of fairness and consent. Parliament at Westminster might legally establish a Convention but unless it is deemed to be constituted fairly and therefore win consent, its deliberations and conclusions will lack legitimacy and likely to be unstable. An elected Convention would have more legitimacy than one that was appointed though a democratic claim to legitimacy might create problems in its relationship with Westminster. This might be exacerbated if the Convention was elected by a more proportional system than simple plurality as it might claim greater popular legitimacy than Parliament. This raises the important matter of the relationship between Parliament and any Convention, however constituted. Parliament is unlikely to cede constitutional authority to any other body.

16. There are winners and losers in any constitutional settlement. This has also has implications for the composition of a Convention. It is always easy to secure the support of winners in any settlement but losers’ consent is important. This may require compromises to be reached which may be best achieved outside the formal Convention. Given current constitutional arrangements with devolved governments in three components

8 At its 1990 Scottish conference, Labour ruled out FPTP as a method for electing the Scottish Parliament and adopted a set of criteria pointing towards a Mixed Member Proportional system.
9 An example of this frustration was a letter to non-party members of the Convention in which the secretary to the Convention complained about the “major political parties” holding a press conference “ostensibly speaking on behalf of the Convention, whilst other major interests and organisations in the Convention are not supposed to do so”.
of the UK, there will be a need to accommodate a territorial dimension in membership. In other words, a Convention that was based solely on population would lose legitimacy in Scotland, Wales and Northern Ireland.

On the other hand, a Convention that gave equal representation to the components of the UK state of unions would have little legitimacy in England. Agreeing the composition of the Convention would require compromises of the sort that might be the very subject of its deliberations. Indeed, it might prove as easy to agree on a new constitutional settlement for the UK as on how to constitute any Convention.

October 2012

Written evidence submitted by Dr Robin Wilson

1. One way of approaching this issue which occurs to me and which the Committee might find helpful in framing questions is to recall the notion of “Home Rule all Round” which, as you will be aware, had some currency in media and political circles a century ago (and, arguably, could have prevented the partition of Ireland, as Ulster Protestants would not have then feared isolation and would certainly not have been able to mobilise a successful anticonstitutional revolt against a measure which did not treat Ireland differently).

2. In a sense, devolution to Scotland, Wales and Northern Ireland after the 1997 accession to power of “New” Labour was a muddling-through kind of Home Rule all Round, which, among other things, left out of the equation the key issue of the governance of England—hence the failed push for regional assemblies in England (however valuable these would remain for a range of reasons), the persistence of the West Lothian Question and the impossibility of securing House of Lords reform (since the only solution of adding electoral legitimacy without competing with the Commons is to mirror the Bundestag/Bundesrat relationship in some way).

3. It’s been said (in 1066 and All That) that “every time the English think they have solved the Irish question the Irish change the question” but I think this shows that there is a distinct Irish perspective on the conundrum of UK constitutional reform which may be helpfully oblique. The logic of my argument would be that there is indeed a need for a UK constitutional convention, with English representation regionalised so that its influence would not be like that of an undivided Prussia in a German context. On Northern Ireland this could provide the win-win of finally resolving the home rule crisis were it, on the one hand, to offer security for many NI Catholics that their region is formally recognised as part of the UK polity while, on the other, responding to the aspiration of many NI Catholics that no official restrictions should be placed on collaboration across the island of Ireland as a whole.

4. This federal (in the UK) and confederal (in an Irish context) proposition takes us on of course to how a UK constitutional convention would deal with NI in substance. But this thinking ahead is essential to avoid two highly undesirable outcomes: to exclude NI as separate from proceedings (which would anger many Protestants) or to think of it entirely in its UK but not Irish context (which would ensure the uninterest of most Catholics).

5. None of this, in my view, can be properly thought through, however, in a these-islands framework alone. The failure to understand the European concept of multi-level governance has bedevilled debates from the start, with the constant pitting of “national sovereignty” against “Brussels” in much debate in London and the English press. In NI, Scotland (hence the plurality of support for “devo max” there, rather than the either/or sovereignty choice) and Wales there is a better understanding that it is entirely proper to be governed at different levels in different contexts, from the local to the regional/small national to the state to the EU. England emerges in this wider context as remarkable for its centralisation and lack of a regional democratic tier but the absence of this consideration from the debate on a north-eastern assembly meant the latter could be (mis-)represented as an unnecessary bureaucratic interposition. The inherent complexity of this multi-dimensional governance is a further argument for the need to write down formally and in one document just what the arrangements are—particularly for intergovernmental relations, as Alan Trench has long argued. Otherwise there is a real danger of the de facto Balkanisation of the UK, where different groups of its citizens come to occupy hermetically sealed political spheres, by default rather than by design and with sub-optimal outcomes all round.

October 2012

Written evidence submitted by Nigel Smith, Director, Voxscot

1. Following my evidence to the Committee in Edinburgh, I wish to suggest these areas for further research though I suspect you may already be onto them.

2. More than 100 new democracies have been created in the last 35 years—currently about 20 constitutions a year are created or amended each year often using conventions. The majority of these are created in difficult circumstances and thus of limited relevance to the UK. But the particular point that might be of interest to you is that most of them, out of necessity, sought enhanced engagement with the electorate. They have been well documented by an organisation called Interpeace.
3. Since the Philadelphia Convention, the US States have held 230 state constitutional conventions. The 27 held in the last 45 years have been well documented giving a good account how they came into being, the modus operandi and results. And of course being America there is a proper record of the legal basis of the convention.

4. The convention on the EU Constitution is also well recorded. In this convention, direct representation from the national parliaments provided a third of the delegates though they, in the words of one of them, “felt like tourists” observing a process rather than participating in it. It might be worth asking Gisela Stewart and David Heathcoat-Amory who were the UK delegates, to give evidence applying their experience to the UK.

5. Finally there is still more experience in the rest of the developed world including the rest of Europe and Switzerland that hasn’t yet been cited to you.

6. If in 2014 independence is only narrowly defeated, the UK Government may be very glad to seize upon your template as a way forward for Britain.

October 2012

Written evidence submitted by the Cabinet Office

INTRODUCTION

1. The Government welcomes the Political and Constitutional Reform Committee’s inquiry into whether there is a need for a constitutional convention for the United Kingdom. The Government recognises the need for political and constitutional reform to restore people’s faith in the political system and has set out a wide ranging programme of work that covers much of the UK’s constitutional framework. The Government is also clear that this important reform programme must not detract from its central task of growing the economy and tackling the deficit, which is at the heart of government business.

2. The Government believes that constitutional conventions are most effective when their scope is clearly defined and manageable and where the public are engaged with the subject.

3. The UK has a wide ranging and unique constitutional framework. International evidence demonstrates that there is a long historical precedent for conventions as one means of achieving constitutional change. Conventions have tended to consider on an individual basis relatively narrow questions, such as the size and shape of specific political institutions, their relationships with each other and the people, the protection of freedoms and the granting of civil rights. Most recently, the alternative report of members of the Joint Committee on the Government’s draft House of Lords Reform Bill put forward the case for a convention focusing solely on House of Lords reform. There are very few examples in a mature democracy of conventions with an all-encompassing constitutional remit.

4. Examples from other countries also seem to suggest that constitutional conventions work best when they are bottom-up and driven by the public rather than politicians. This principle was followed in citizens’ assemblies in Canada and the Netherlands, which have considered issues such as electoral reform before putting their findings to a referendum. There is no current evidence in the UK of a strong public appetite for a wide-ranging convention, although this should be kept under review. Without public involvement and interest such a convention would lack moral authority and democratic significance.

5. The Committee’s call for evidence raises some specific issues about the relationships between the Government and the devolved administrations, and the wider context of constitutional reform in the United Kingdom. Given the breadth of work the Government is doing or that is already ongoing in these areas, this submission considers each of these issues in turn. However, the Government is not proposing to comment in detail on the composition and working methods of any constitutional convention because these would have to be decided if a case were to be made on the need for a constitutional convention.

DEVOLOUTION

6. One of the core aims of the Coalition Government is decentralisation of power in line with its belief that there are benefits in making decisions at local level. This is consistent with the Government’s commitment to devolution, reflected in the Coalition agreement.

7. The Government believes that devolution gives people choice and provides for decisions to be made at the level which is most appropriate. It achieves a balance which enables local issues to be dealt with locally, while also retaining the benefits of being part of a strong and successful United Kingdom. This is illustrated by major reforms of the police and fire service in Scotland, to create an independent Scottish Police Authority, and a single Scottish Fire and Rescue Service. They replace the two unitary police and fire authorities, six joint police boards and joint fire and rescue boards and two national police organisations which currently operate within Scotland. Measures have also been introduced to improve the speed and effectiveness of the court system in Scotland and public health measures include the early introduction of a ban on smoking in public places and restrictions on the sale of tobacco and alcohol. In Wales, the Welsh Language Commissioner has been established and a minimum price on single-use carrier bags. Public health measures have included the
early introduction of a ban on smoking in public places. These examples show why the devolution settlements work, and why they are an integral part of the way the UK is governed, having become embedded and established since the late 1990s and enjoying popular support in Scotland, Wales and Northern Ireland.

8. There are many shared benefits of the devolution settlements; however devolution in the UK is asymmetric in nature. This is because there are different circumstances within the UK to be accounted for. There has long been variation in the level of demand for devolution. For example, in the late 1990s in Scotland there was a clear desire for local powers, whereas in North East England in 2004, the principle was rejected in a referendum on an elected assembly. In addition, there are unique constitutional circumstances in each nation—in Scotland a different legal system and in Northern Ireland a peace agreement. Accordingly, each devolution settlement was planned differently, with different powers being devolved. The devolution settlements continue to evolve and current processes demonstrate the different circumstances in each nation. The profoundly different historic roots and the unique circumstances of each nation within the UK therefore factor heavily in any consideration of devolution as a whole.

Origins and current shape of the devolution settlements

9. There is a rich history of campaigns, commissions and conventions that led to the devolution settlement in Scotland, based on the level of demand for local powers over the years, particularly gaining momentum from the 1970s to the 1990s. The Scottish Constitutional Convention, which consisted of representatives of civic Scotland and some of the political parties in Scotland, carried-out a long-running exploration of Scotland’s place in the UK, leading to its 1995 report which was a significant milestone in the development of devolution arrangements.

10. The Scotland Act 1998 created a Scottish Parliament with powers to make primary and secondary legislation, which had been approved in a referendum in Scotland in 1997. The Commission on Scottish Devolution, (also known as the Calman Commission) was set up in 2007 to independently review the constitutional settlement for Scotland after a decade of devolution. The Commission’s recommendations, published in 2009, formed the basis for the Scotland Act 2012, which represents the greatest devolution of fiscal powers in 300 years.

11. In Wales, the National Assembly for Wales was established in 1999 following a White Paper, A Voice for Wales, and subsequent referendum in 1997, and the Government of Wales Act 1998. The Assembly had powers to make secondary legislation. A further White Paper in 2005, Better Governance for Wales, led to the Government of Wales Act 2006, which furthered devolution by providing a formal separation between the Assembly and the Welsh Government and enhanced legislative powers for the Assembly. This separation was implemented formally following the 2007 Assembly elections. The 2006 Act also provided the means for a referendum to be held on whether the Assembly should assume primary law-making powers in all twenty policy areas devolved to Wales. A referendum took place on 3 March 2011, and resulted in the Assembly assuming powers in those twenty areas the following May.

12. Northern Ireland had a devolved system of government at the point of its establishment in the 1920s. Following its collapse and the imposition of direct rule in 1972, successive UK governments pursued the re-establishment of devolved institutions in Northern Ireland—this time on a power-sharing basis, along with arrangements to reflect the “Irish dimension” and guarantees that Northern Ireland’s constitutional status, within the UK or a united Ireland, would be determined by the majority wish—as the only arrangement that could command sufficient consensus across the community to yield stability. The eventual settlement embodied in the Belfast (Good Friday) Agreement includes, besides power-sharing devolution, provisions on constitutional status and a range of politically significant cross border institutions. The result of this was the Northern Ireland Act 1998 and the establishment of the Northern Ireland Assembly.

13. The Committee asked whether any specific legal or constitutional issues should be considered. The specific historical circumstances of the settlement, arising out of the peace process, make the situation in Northern Ireland different from Scotland or Wales. The Northern Ireland settlement was arrived at by a process involving consent from both main parts of the community, and the Irish as well as the British Government; and it was endorsed by referendums in Northern Ireland and the Republic of Ireland. Any process, which revised the structures established by the Belfast Agreement, without involving the same players and thresholds of support would undermine the legitimacy and hence the stability of the settlement. Moreover, the system is now stable after many years of uncertainty. The emphasis should be on inducing it to deliver, and to address the social division that underlay the conflict, rather than to revert to further argument over institutional change.

Recent and ongoing developments

14. There are important ongoing developments in respect of the devolution settlements reflecting the Government’s commitment to devolve powers to the most appropriate level within a strong United Kingdom.

15. The original devolution Acts allow for adjustments and evolutionary changes in the settlements. In Northern Ireland, policing and justice powers were restored in 2010, for the first time since 1972, and provision is made in the Northern Ireland Act 1998 for reserved matters to be transferred, providing that there is cross-community support in the Assembly for doing so. In Scotland, aspects of railways policy and control over Renewable Obligation Certificate banding have been devolved to the Scottish Government. The Acts
themselves contain a flexible toolkit of order-making powers which have allowed for adjustments to be made to make each of the Settlements work better.\textsuperscript{12} At the same time, many orders demonstrate close co-operation and a shared desire between the Government and the devolved administrations to make devolution work and deliver benefits to Scotland, Wales and Northern Ireland.\textsuperscript{13}

16. There are circumstances when the devolved administrations are content for legislation in devolved areas to be made by the UK Parliament. The UK Parliament will not usually legislate in relation to devolved matters without the consent of devolved legislature. Legislative consent motions provide a mechanism for allowing the devolved legislatures to consent to legislation in devolved areas that are being considered in the UK Parliament. The Legislative Consent Motion is a mechanism to coordinate between devolved legislatures and the UK Parliament, and is an important way of ensuring consistency across the whole of the UK where the UK Government and devolved administrations consider this to be a benefit. This was illustrated by the 2009 Child Poverty Bill which provided for active participation in the UK Government Child Poverty initiative and the 2009 Bribery Bill which provided for uniformity across the UK, to provide a more effective and workable legislative framework than would be possible if separate legislation were introduced.

17. As mentioned at paragraph 9, the Scotland Act 2012 represents a significant update to the devolution settlement in Scotland. The Scotland Act 2012 contains a range of finance and non-finance provisions aimed at strengthening Scotland within the UK. In bringing about the largest ever devolution of financial powers to Scotland since the creation of the UK, the Act will deliver real financial accountability to the Scottish Parliament. The Scottish and UK Governments are working together to ensure the smooth implementation of the Act, with most of the non-finance provisions already commenced. The full effects of this strengthening of the devolution settlement in Scotland will continue to be felt over the coming years as the Act is implemented in full, with a new Scottish rate of income tax to be in place from April 2016.

18. The UK Government established the McKay Commission in January 2012 to explore how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales. The Commission is in the process of collecting a wide ranging and comprehensive set of evidence and opinions from across the UK. It is expected to report on its findings early in 2013.

19. The Silk Commission was set up in October 2011 to review the present financial and constitutional arrangements in Wales. Part I is looking at the case for the devolution of fiscal powers to improve the financial accountability of the National Assembly for Wales and the Welsh Government, and is due to report on this aspect of its work in the late autumn. In 2013 the Commission will turn its attention to the second part of its remit, and will review the powers of the National Assembly for Wales in the light of experience and recommend modifications to the present constitutional arrangements. This is a substantive process and piece of analysis and the Commission will report its findings by spring 2014.

20. The Government is also conducting a public consultation on minor adjustments to institutions in Northern Ireland, including the length of the Northern Ireland Assembly term. A consultation response will be published early in 2013.

21. The debate about the constitutional future of Scotland is a priority for the Government. The UK Government is extremely pleased that we have been able to work with the Scottish Government to reach an agreement that will facilitate a legal and fair referendum that is capable of commanding the confidence of both sides of the debate and which will enable people in Scotland to have their say. Now we can get on to the real debate about Scotland’s future and whether Scotland should remain part of the United Kingdom. The UK Government firmly believes that Scotland is stronger as part of the UK and the UK is stronger with Scotland within it. As the Secretary of State for Scotland announced on 20 June 2012, the UK Government will undertake a programme of work to inform and support the debate in advance of the referendum. This programme of work will produce detailed evidence and analysis to assess the benefits of Scotland remaining part of the UK to both Scotland and the rest of the UK.

22. Each of the major pro-UK political parties in Scotland is establishing where they stand on devolving further powers to the Scottish Parliament. There is currently no consensus in Scotland on this issue. Moreover, further Scottish devolution has implications for the rest of the UK. A means for reaching consensus in Scotland and with other parts of the UK regarding the devolved settlements will be required. However, the Government is clear that it is for the Scottish people to decide first whether or not Scotland is to remain within the United Kingdom, because a vote for independence will bring to an end the devolution process in Scotland.

23. Devolution is a dynamic process to which the UK Government is and will continue to be committed. However, given the current wealth of considered work underway, the Government believes that current reforms

\textsuperscript{12} Orders made under sections 30, 63, 93 and 104 of the 1998 Scotland Act have been used to allow transfers of power, agency arrangements and cross-border provision to be made to the mutual benefit of both Scottish and UK administrations. In addition, orders made under sections 22 and 24 of the Government of Wales Act 1998 and Section 58 of the Government of Wales Act 2006 have been used to allow transfers of functions to the National Assembly for Wales and to Welsh Ministers.

\textsuperscript{13} Such as the need to have a section 104 Order to ensure that Scottish Parliament legislation cannot be undermined by action in other parts of the UK. Orders were also made in 2007 and 2010 under Section 109 of the Government of Wales Act 2006 to clarify further the devolution settlement in Wales. The recent Scotland Act section 93 Order, allowed the UK Government to purchase on behalf of Scottish Ministers a stockpile of flu vaccines ahead of the winter flu season, taking advantage of the economies of scale and increased buying power that being part of the UK brings.
and debates about the future shape of devolution should be allowed to progress, before looking at how to develop matters further. For this reason, the Government believes it would be premature to establish at this time a constitutional convention to look at the future of the devolution settlements across the UK.

WIDER POLITICAL AND CONSTITUTIONAL REFORM

24. The Coalition’s Programme for Government recognised a crisis of confidence in the country’s political institutions, and set out a programme of measures to address it. The commitments on political and constitutional reform aim to devolve power to the most appropriate level, and to engage the public more directly in politics. They include introducing fixed-term parliaments, pursuing reform of political party funding, and setting up a commission to explore the introduction of a Bill of Rights. The Government also legislated for people to have their say on the voting system for the House of Commons.

25. The Government is carrying out wider work on political and constitutional reform, for example on provisions in the laws on succession which could be discriminatory and do not reflect the values we hold today as a society. The Government is working with all of the other countries of which Her Majesty is also Head of State to put in place succession laws which are fit for the 21st century—ending male primogeniture, allowing the heir to the throne to marry a Roman Catholic, and repealing the Royal Marriages Act.

26. The Government is also committed to seeking agreement on the reform of party funding, including limiting donations and taking big money out of politics. Discussions between the main political parties at Westminster are currently taking place and the Government hopes consensus will be reached swiftly.

27. Some of those measures in the Programme for Government are in place but effects will take time to be felt, while others are still work in progress. The Government also notes that its work, and that of the Committee, will be taken forward in a context when the public is most directly concerned about economic growth. It will be important to look to measure their effectiveness, and ask what else can be done to strengthen democracy across the United Kingdom. In response to the Committee’s questions, the Government believes that such processes work best when they are bottom-up and driven by the public rather than politicians. The Committee’s inquiry can help to gather evidence and influence the debate.

CONCLUSION

28. In summary therefore, the Government believes that a constitutional convention to consider in the round the devolved settlements would be premature at a time of two ongoing commissions on the subject and a debate about Scotland’s future within the United Kingdom. More generally, the Government is engaged in a number of reforms to increase public confidence in the political system. Whilst the Committee’s inquiry will contribute to this process of public engagement, it is important to recognise that public concern and Government policy is focussed on tackling the economic challenges as a top priority, and it might therefore be difficult to justify a convention that looked at the whole of the UK constitution at the present moment.

October 2012

Supplementary written evidence submitted by Professor Gerald Holtham, former Chair of the Independent Commission on Funding and Finance for Wales

1. Question posed: Assuming income tax continues to be collected centrally, would it be feasible to assign part of the income tax for England to local councils in England?

2. This itself raises a key question: Would this be an assignment on the basis of some distribution criteria, such as poverty or “need” or would it be assigning some of the income tax collected in each locality to that locality? These are radically different propositions and raise different issues.

3. Assigning income tax on the basis of need following an Act of Parliament would not change resources that local authorities receive from the centre but would give a new statutory basis for local government finance. There does not seem a lot of point in that unless it somehow buffered local government from central decisions to change or cap the resources available to them. If 66% of income tax receipts were to be distributed among local authorities according to an Act of Parliament, that would have two effects. It would ensure resources available to local government were indeed protected from imposed changes from central government but it would also expose local authorities to cyclical fluctuations in income tax receipts. The fluctuations might be sufficiently serious as to necessitate some stabilization fund. Alternatively the 66% could be applied to some moving average of income tax receipts to damp fluctuations.

4. To be honest it seems unlikely that any UK government would voluntarily relinquish so much to local authorities as to give them a statutory claim on a large proportion of income tax and therefore an appreciable part of total tax receipts. However, I cannot see why it could not be done in principle. There are distribution formulae at present for local government revenue support, which would presumably form the basis for allocation of hypothecated income tax. However it would be necessary to determine satisfactorily how controlled the formula and by what means it could be adapted over time to changing circumstances. It would

14 www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf Chapter 24
make sense to put those matters on a statutory basis at the same time as hypothecating part of income tax to local authorities.

5. Note that while this system would protect the resources available to local government it would not ipso facto prevent central government from adding to local government responsibilities, without providing additional resources.

6. The second possibility would be to allow each local authority to retain a proportion of the income tax collected in their locality. That raises entirely different issues. Firstly I do not suppose HMRC breaks down income tax receipts by locality so some expense would be involved in doing that or even estimating the take from each locality. Secondly since most income tax receipts come from PAYE you have to decide whether it is the location of the workplace or place of residence that is important.

7. If those difficulties could be overcome without excessive expense, you should note that this suggestion reduces the government’s ability to equalise revenue among localities on the basis of need. Wealthier areas would get a bigger boost to revenue than poorer areas and it would be necessary to decide how to handle that. If the government took note of the tax capacity of different areas in terms both of income tax and council tax before deciding on the size of a revenue support grant, it isn’t clear anything would be achieved. Councils that got more money from assigned income tax would see it disappear in a smaller revenue support grant. If on the other hand the government excluded the income tax from its consideration of revenue support, that would increase inequality among localities for no obvious gain.

8. Of course, if councils were then able to alter the rate of income tax they levied, without any further change in revenue support grant, there would be a point—that would be tax devolution rather than mere revenue assignment. However, that raises other issues. HMRC would find it burdensome and expensive to levy different rates of tax in different localities. The problem is less for higher income people who have to make a tax return anyway but dealing with PAYE could be difficult. If we really want to consider a local income tax, it would probably be as well to consider the possibility of councils arranging their own collection aligned to council tax collection.

9. To make a local income tax tolerable, central government could cut income tax by a few pennies and reduce revenue support grants by the amount of the lost revenue. Councils could then levy their own local income tax. If they just levied the same number of pennies that the centre had cut, taxpayers would be in the same position as before. But councils would be a bit worse off by the amount of the extra administrative costs involved in collecting the local income tax. They may therefore decide to increase the tax so tax-payers bore the burden of extra costs. The advantage would be that councils would then have an additional revenue base over which they had some discretion.

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