

DEVOLUTION IN SCOTLAND AND WALES: THE GAP BETWEEN PUBLIC EXPECTATIONS AND CONSTITUTIONAL REALITY

Alan Trench*

(This paper first appeared as a chapter entitled 'Devolution in Scotland and Wales: Muddled thinking and unintended results' in P. Facey, B. Rigby and A. Runswick (eds.) Unlocking Democracy: 20 years of Charter 88 (London: Politicos, 2008). Although the title has changed, the text remains the same.)

Devolution was not central to the main thrust of Charter 88 when it was set up in 1988. Indeed, reading the original charter now it has a very centralist, or Westminster-focussed, feel. Although one of its demands was to 'guarantee an equitable distribution of power between the nations of the United Kingdom and between local, regional and central government', it was (and is) far from clear what that means. In hindsight, this approach is quite comprehensible – Charter 88, like many constitutional reformers, saw a different approach to territorial politics and relationships within the UK as part of the overall constitutional resettlement that was needed in the face of the centralisation and concentration of power which had taken place under the Thatcher governments. Its main focus, though, was on London institutions and the work of Charter 88 developed largely separately from what was happening in Scotland (notably the Scottish Constitutional Convention, which first met in 1989) and Wales.

Among the major shifts in political opinion in the 1980s was the conversion of many Scottish and Welsh Labour politicians to embrace devolution, when they had been neutral or hostile before – one of many changes wrought by the experience of the extended period of Tory rule. This was accompanied by a shift in the Scottish National Party (SNP) toward a 'gradualist' position and away from seeking immediate outright independence, with devolution regarded as a helpful step along that path. The Liberal Democrats had long supported home rule in various forms too, so the result was that by 1997 there was a strong consensus of support for devolution from among the non-Conservative parties.

Any overall assessment of constitutional reform over the last 20 years would conclude that devolution for Scotland and Wales (and Northern Ireland too) is one of the most significant areas where the Labour government has delivered constitutional change.¹ In principle, devolution should have extended to England too – whether by elected regional government or some other change. But that did not materialise, and what we are left with is acutely asymmetrical. Despite the consensus that had formed behind devolution during the 1990s, devolution for Scotland and Wales has to be regarded as first and foremost a Labour project – and its strengths and weaknesses derive from how Labour conceived it and made it work. I shall argue that the confused understanding within Labour of what it was doing then has had serious consequences. I shall also suggest that if devolution is to deliver its promise, of enabling Scotland and Wales to have self-government within the United Kingdom (which is what people there appear to want), considerable

* Research fellow, School of Law, University of Edinburgh; honorary senior research fellow, The Constitution Unit, University College London.

¹ This chapter is concerned only with Scotland and Wales, not Northern Ireland, where devolution is only part of the institutional arrangements put in place as a result of the 1998 Good Friday Agreement and has had an interrupted history since 1998. Both the causes and development of devolution in Northern Ireland are significantly different from those in Great Britain.

changes in the institutional structure of devolution are needed, and needed urgently. These changes have been avoided up to now, and seem very radical, but in truth they are not. They are simply the minimum needed to achieve what devolution was meant to accomplish, for the UK as a whole as well as for Scotland or Wales on their own.

Does devolution achieve what it was meant to? Four conceptions, and the reality

Devolution had a remarkably smooth ride when it came to be put into place in the late 1990s. Labour had a huge Parliamentary majority, considerable public support and an extended honeymoon both in public opinion and from the mass media (and consequently high expectations). It also had a good deal of goodwill from the civil service, because it was offering them new things to do from a government with political energy – both of which had been lacking under the last years of the Major government. But there were also tight limits on how much the new government could spend, thanks to its acceptance of Conservative spending plans. This meant that devolution became one of the main visible activities of government as a whole in its first few months in office – and the momentum it acquired meant that the underlying flaws in what was being proposed were never identified or resolved. Nor had they been picked up during the previous months and years, when the political struggles to secure devolution had focussed on establishing an adequate sphere of devolved autonomy (in Scotland), and building support within the Labour Party and between Labour and the other opposition parties (in Wales). That meant that wider questions about the proposed changes for the working of the UK as a whole, or even bilateral relations between UK and devolved institutions, were never considered. By the time devolution became a matter for the UK Government machine, the only issues that they could engage with were technical. These were resolved (and generally rather well); but the underlying conceptual difficulties were not.

Chief among these was what devolution was meant to do, and how it was intended to work on a UK-wide basis. With hindsight, one can discern four distinct purposes. These were seldom all discussed at the same time – no-one ever said ‘this is what devolution was meant to achieve’, not least because these purposes appealed to very different audiences and were not entirely consistent with each other. The first two were public and official, and can be seen in official documents like the devolution white papers.² The others were formulated and discussed more privately, but clearly were factors for politicians in inducing them to support devolution.

First, devolution would create a *distinct democratic voice for Scotland and Wales*, through the new parliament and assembly. This would, in principle, redress the ‘democratic deficit’ that had arisen under Conservative rule, but which had vanished as most Scottish and Welsh MPs were now part of the governing majority at Westminster. It would also bring government closer to voters, in a way that could be connected to other aspects of new Labour’s ‘modernising’ agenda.

The second purpose was about the practice of government, by providing for *local control of public policy*. This took two forms. For economic matters, there was a limited conferral of powers for economic development, but within a single UK-wide economy. Macro-economic policy (interest rates, taxation, currency decisions) and micro-economic ones (business

² Scottish Office, *Scotland’s Parliament* Cm 3658 (London: The Stationery Office, 1997); Welsh Office, *A Voice for Wales: The Government’s proposals for a Welsh Assembly* Cm 3718 (London: The Stationery Office, 1997).

regulation, the labour market and employment law) were reserved to Westminster, and so devolved powers amounted to an exhortation to try to do better than the UK as whole, not a licence to create a distinctive Scottish or Welsh economy. For welfare state functions, such as health, education or housing, this control was supposed to operate within a UK-wide welfare state, which would imply *the different administration of common (UK- or Britain-wide) policies*. So Scotland or Wales could run their National Health Service in a different way, with political accountability to their own legislatures and ministers, not Westminster or UK ministers – but there would still be a recognisable cross-UK NHS.

The third and fourth purposes were more nakedly political, and taken together their aim was to entrench Labour's political position – a strategy that could recruit support from other parties too, for different parts of it. The third gained support chiefly from the Liberal Democrats, and was to *undermine political nationalism*, by satisfying the demand for self-government. As George Robertson once brutally put it, the aim was to 'kill nationalism stone dead', and strengthen the Labour Party in Scotland and Wales at the expense of the SNP and Plaid Cymru. This would help Labour tactically, as well as in the larger goal of keeping Scotland in the Union as well (vital for Labour to be able to win UK elections, for which it needs substantial numbers of Scottish and Welsh seats).

The fourth goal embraced many supporters of nationalist parties as well as Labour and Liberal Democrats: to *create a bulwark against the return of a Conservative government*, so that a repetition of the situation of the 1980s and 1990s would not be possible. Devolved government would serve as a barrier to the imposition by Westminster of Conservative policies that did not attract support in Scotland or Wales, because the devolved institutions would have responsibility for many aspects of policy that mattered most on the day to day level.

The problem was that the institutional design of devolution did none of these things – and its main shortcoming was not how radical it was, but how timid. While devolution created elected legislatures for Scotland and Wales, and gave them a good deal of power, it did not give them exclusive powers. Devolution was not in any sense a form of federalism, with two distinct orders of government each having its own powers and being constitutionally and practically able to act independently of the other. Nor does it involve a system of delegated decision-making and limited authority, with Westminster setting a broad framework within which each part of the UK has authority to develop more detailed approaches. (That might have made sense in policy terms, but not politically – it would have been unacceptable to much of public opinion in Scotland or Wales, not least because it failed to create a bulwark against a future Conservative government.) Instead, Westminster remained formally and legally sovereign, and has continued to have a huge influence over politics across the whole UK. This is partly a result of England's size and importance, with 85 per cent of the UK's population and slightly more of its Gross Domestic Product. But it also reflects a degree of institutional overlap and interpenetration between devolved and non-devolved functions. Finance remains in the UK Government's hands, and although block grants give the devolved a great deal of spending autonomy, they also remained tied in to UK funding decisions and the UK public finance system. Then there are interactions between the social security system and devolved functions like health or education, where Scottish policies like long-term care for the elderly have already caused problems and plans for a local income tax to replace council tax would cause more (because of what that would mean for eligibility for council tax benefits). And in any case Westminster remains active as a legislature, for devolved as well as non-devolved functions: for all parts of the UK, thanks to the Sewel convention that provides for Westminster to legislate

for devolved matters provided the devolved legislature consents, and as the only legislature for Wales until May 2007 (and even since then it has been responsible for deciding, on a case-by-case basis, whether legislative powers should be conferred on the National Assembly). The system created by devolution was one of many overlaps and shared policies, where it was necessary for governments to get and to find ways of working with, or around, each other.

That was relatively easy (perhaps too easy) while Labour was still in office across Great Britain. Common Labour interests meant they found ways to resolve problems, and Labour politicians in one government were usually keen to avoid embarrassing their counterparts in another government if they possibly could. But that ceased to be the case in May 2007; worse yet, an SNP government in Scotland shares few of the common unionist goals that Labour shares with the Liberal Democrats and Conservatives, while Plaid Cymru's presence as junior partner in coalition with Labour means that many in Welsh Labour feel they have lost a good deal of power even while they remain in office.

But it is hard to see how devolution could succeed in attaining any of those four initial objectives. Giving Scotland and Wales a voice of their own was (and is) important. It was a way of acknowledging the distinctive nature of Scotland and Wales, to be sure, and that recognition in, and for, itself is valuable. But its value is abstract, not tangible, and it does not achieve the more immediate political goals that underlay devolution. Albert Hirschman has compellingly showed, in a wide range of contexts, the importance of 'voice' – the sense that one can express views, and have them taken into account by decision-makers. But voice is important more because of what it is linked to than in itself. Views given voice can breed loyalty, and cement a damaged relationship, if those giving voice feel they have been heard and the organisation has responded, or at least sought to respond. If their views are rejected, the outcome is likely to be 'exit'.³ In this context, the question is 'what ensures that the voice is heard?' For voice to breed loyalty would imply taking steps to ensure that the voice was heard at UK level, and had an influence there. As I shall argue later on, that appears to be what public opinion wants too. In practical terms, that would have meant ensuring links between the UK Government and the devolved administrations so that they could speak up for Scotland or Wales. Westminster's shortcomings in playing this role were already apparent. But the new inter-institutional relationships were only thought about late in the process of making devolution happen, and were limited and only lightly institutionalised when they emerged. Links, whether between governments or legislatures, remained informal and largely ad hoc or personal. In practice most of these institutional mechanisms quickly fell into disuse, with most functional formats of the Joint Ministerial Committee ceasing to meet after 2001 (the 'Europe' format is the main exception), and no meetings of the plenary form of the JMC from October 2002 – despite a formal requirement for it to meet annually. The Scottish Parliament and National Assembly for Wales may be voices for Scotland and Wales – but only in those nations, not on a broader UK stage, and without acting on that broader stage as well they cannot have the political impact they were meant to.

That is not the only way devolution has not worked as intended. Unsurprisingly, the devolved institutions have used their policy-making powers to develop distinctive approaches to policy. So far, these remain largely variations on a UK-wide theme, but the variations are growing and the theme becoming more indistinct. We do not have 'common services differently administered', but different services that resemble each other less and less. The scope of devolved powers, the

3 A.O. Hirschman *Exit, Voice and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge, Mass; Harvard University Press 1970).

political restraints that stop the UK Government using its powers to constrain them, and a permissive financial environment have led Scott Greer to dub this arrangement a ‘fragile divergence machine’.⁴ In the area of health services, Greer has found that even by 2003 there were in effect four different health services across the UK, each making policy in very different ways that were starting to have appreciable effects on how health services work on the ground as well. Those differences have become more dramatic as time has gone by: long-term care for the elderly in Scotland, and grants to cover a large part of fees for Welsh-resident students going to university in Wales, are just two examples. (Ironically, the extent to which services do resemble each other also means it is easy for citizens to see the differences between them and draw adverse comparisons, for example about different treatments available on the NHS depending on where one happens to live. That makes the political implications of differentiation even harder to manage.)

The constraints on divergence are important, however. They are partly financial (important as growth in public spending has slowed), partly legal and administrative (there are powers to block some devolved action, not just for exceeding devolved powers but for being contrary to various, mainly security-related, UK-wide interests), partly party-political. The overall impact, however, is that social and domestic policies vary, in ways that only make sense to those with a detailed knowledge of the constitutional and administrative framework of devolution. That is fine for academics and civil servants, but to the general public, journalists and indeed politicians outside government the reasons why some areas of government activity are devolved and others are not is not clear. The explanations are convoluted and technical, not rooted in general principles. A general consequence has been the haphazard fragmentation of a sense of UK-wide social citizenship, without any adequate replacement by Scottish, Welsh or English social citizenships instead.⁵

Despite all this, devolution fails to act as a bulwark for the welfare state in Scotland or Wales against a possible Conservative government in London. The limitations on the powers of the devolved governments and legislatures mean that there are many things that they might want to do but cannot, or cannot on their own – they need co-operation from the UK Government and Parliament if they are actually to be able to shape policy.⁶ The dependence of Scotland and Wales on the UK level is simply too great. Finance is particularly important here. As changes to the block grants for Scotland or Wales are determined by changes in spending on ‘comparable functions’ for England, significant changes in English public spending feed through to Scotland and Wales. This is pretty benign when spending grows (as it did in the early 2000s), but less so if growth in spending stalls let alone if it is cut. And if the balance of spending in England were to change significantly – if private funding came to assume a greater role in health or education, for example – the size of the devolved block grants would be affected.⁷ The devolved governments would have to face hard choices: either largely to follow the English policy, however much they

4 For a brief discussion, see S. Greer *Four Way Bet: How devolution has led to four different models for the NHS* (London: The Constitution Unit, 2004); for a longer one, S. Greer *Territorial Politics and Health Policy: The United Kingdom in comparative perspective* (Manchester: Manchester University Press, 2004).

5 This is discussed at greater length in S. Greer (ed) *Devolution and Social Citizenship in the United Kingdom* (Bristol: Policy Press, 2008 forthcoming).

6 This is explored in detail in A. Trench (ed) *Devolution and Power in the United Kingdom* (Manchester: Manchester University Press, 2007), particularly chapters 3 and 8.

⁷ An area where this is already happening is higher education, thanks to the increased resources flowing to universities in England, Wales and Northern Ireland but not Scotland. This is due to the UK Government’s policy of deferred variable fees – a flow that may increase considerably if, or when, the fees cap is raised.

might dislike it, or to make serious cuts elsewhere to protect social programmes. If London fails to co-operate with proposed changes in policy from Scotland or Wales, it can also seriously disrupt devolved policy-making when there is an interaction with non-devolved matters, most notably social security. The row in the spring of 2008 about council tax benefit in Scotland (and whether the funds that underpin the benefit would be available to the Scottish Government if the Scottish Parliament were to replace council tax with a local income tax) vividly illustrates the sorts of problems that can arise.

When it comes to the political aims of devolution – to keep nationalists out of power generally, and to limit the impact a Conservative UK Government might have – devolution similarly does not do what was expected. The goal of undermining support for nationalism was only achieved at the 2003 devolved elections, but Labour's poor showing in the 2007 elections would appear to be the first step in a more serious decline. In Wales, Labour has few ideas that are distinctive (as few there object to 'progressive universalism', the position it sought to embrace when Rhodri Morgan decided to put 'clear red water' between Welsh Labour and UK Labour). During 2009 it will also have to find a new leader, and new energy. In Scotland, there was no serious attempt to set out what Scottish Labour was for until November 2007, and what was proposed then by Wendy Alexander in her St Andrew's Day lecture was under-developed in both political and policy terms, and profoundly contentious within the party (whether within Scotland or at Westminster).⁸ Despite its flaws and her resignation, it still offers the clearest idea of what the progressive brand of unionism could look like, recognising Scottish distinctiveness within the UK. The party also faces the challenge of losing its electoral and institutional bases in local government, following the introduction of the single transferable vote for council elections – a change that will also have an impact on local party organisation too. Despite their long-standing support for devolution, the Liberal Democrats have not been able to take advantage of the opportunities it offers either, partly thanks to deliberate choices and partly thanks to some poor internal decision-making. One of the ironies is that the parties to have benefited from it most are the two nationalist parties, and the Conservatives. Both Plaid Cymru and the SNP struggled for a few years to make sense of how to operate in the new political environment, reflected in comparatively poor showings for both in the 2003 elections. This is not surprising; they had, after all, each achieved a major medium-term goal, and that called for a tactical if not strategic rethink which then needed to be communicated to the public. With time, problems in each set of devolution arrangements started to become apparent, and dissatisfaction with Labour grew. As the second-largest parties in the National Assembly and Scottish Parliament, it is not surprising that Plaid and the SNP were poised to become beneficiaries of Labour's decline when that happened.

What is surprising is that Labour appears to have been unaware that sooner or later it would lose an election, and the nationalist parties would be the most likely winners when that happened. With hindsight, this is a strategic blunder for Labour of staggering proportions. It failed to ensure that it could lose to a party that did not seek to undermine its fundamental interests. Instead, its only response (manifest in the 2007 election campaigns) was negative: to try to stigmatise the nationalist parties, especially in Scotland, as divisive and not committed to the best interests of people in Scotland or Wales – arguments which at best halted growth in public support for nationalist parties, but certainly did not reverse it.⁹ The upshot was that Labour lost office in

8 W. Alexander 'A New Agenda For Scotland'. Speech at University of Edinburgh, 30 November 2007. Available at <http://wendy.intraspin.com/2007/11/30/a-new-agenda-for-scotland/>

⁹ I have argued elsewhere that the re-definition of politics as 'Scottish' or 'Welsh' also structurally advantaged the nationalist parties, as those best able to stand up for Scotland or Wales. See A. Trench 'Scotland and Wales: The evolution of devolution' in R. Hazell (ed) *Constitutional Futures Revisited: Britain's constitution to 2020*

Scotland, and was forced into coalition in Wales, with the parties it least wished to see gain at its expense – and in doing so it lost authority, and to a significant degree control of events.

Underlying this is a major difference in perspective about devolution. One of the most quoted of sayings about devolution is that of Ron Davies, former Secretary of State for Wales, that ‘devolution was a process, not an event’. For Scotland as well as Wales, that has been true – devolution has been about developing institutions and patterns of self-government where none had existed for a very long time, and by its nature it has been evolutionary. But for UK institutions, it was the other way round, an event not a process. Devolution ‘happened’ in 1999, and by 2001 the UK Government and Parliament had stopped dealing with territorial issues on any but the most technical of levels. Warnings that further action was needed, and that Westminster and Whitehall needed to engage in this process of change, went unheeded.¹⁰

Because the purpose of devolution was not clear at the outset, and that design was not related to the institutional design, devolution has changed the UK state much less than anyone might have expected in late 1980s or early 1990s. It is one of the ironies of fate that the main victims of this, in both short and long term, are the Labour party. Devolution may be a Labour accomplishment, but its failure to be rooted in a broader strategic vision for the UK as a whole has meant that its delivery was incomplete and in some cases half-hearted. From a Labour point of view, it is a story of missed opportunities to entrench gains that had been made, or to confront difficult choices. And the consequence of that is that Labour is out of office in Scotland, on the back foot in Wales, and looking at serious loss of power-bases if, or when, the Conservatives regain office in London.

What the public want

The best public opinion data we have derive from academic surveys carried out for Scottish Social Attitudes and similar surveys for Wales, which have been carried out regularly since 1997. For both Scotland and Wales, these surveys show a strong preference for those nations having extensive self-government within the United Kingdom, preferences which have if anything become stronger since 1999 – and with only limited support, even in Scotland, for independence.

Table 1: Constitutional Preferences in Scotland, 1999-2007

<i>Scotland should ...</i>	<i>May 1997</i>	<i>Sept 1997</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>
be independent, separate from UK and EU or	28	37	28	30	27	30	26	32	35	30	23

(Basingstoke: Palgrave Macmillan, 2008 forthcoming).

¹⁰ Two notable Parliamentary examples are House of Commons Select Committee on Procedure 1998-99 Fourth Report *The Procedural Consequences of Devolution* HC 185 (London: The Stationery Office, 1999); House of Lords Select Committee on the Constitution, Session 2002–03 2nd Report, *Devolution: Inter-institutional Relations in the United Kingdom*, HL 28 (London: The Stationery Office, 2003).

separate from UK but part of EU											
remain part of UK with its own elected Parliament which has some taxation powers	44	32	50	47	54	44	48	40	38	47	55
remain part of the UK with its own elected Parliament which has no taxation powers	10	9	8	8	6	8	7	5	6	7	8
remain part of the UK without an elected parliament	18	17	10	12	9	12	13	17	14	9	10

The two independence options, one where Scotland remains within the European Union (EU), and one that it does not, were offered to respondents separately. The first row of the table shows the combined total choosing either option.

Source: Scottish Election Study 1997; Scottish Referendum Study 1997; Scottish Social Attitudes Survey 1999-2007; Data for 2007 are provisional. Published in *Scotland Devolution Monitoring Report, January 2008* (London: The Constitution Unit, 2008), p. 40, available at http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Scotland_Jan08.pdf

Table 2: Constitutional Preferences in Wales 1997-2007

<i>Constitutional Preference: Wales should</i>	<i>1997</i>	<i>1999</i>	<i>2001</i>	<i>2003</i>	<i>2006</i>	<i>2007</i>
Be independent, separate from UK and EU or separate from UK but part of EU	14.1	9.6	12.3	13.9	11.5	12.2
Remain part of the UK with its own elected Parliament which has some lawmaking and taxation powers	19.6	29.9	38.8	37.8	42.1	43.8
Remain part of the UK with its	26.8	35.3	25.5	27.1	25.0	27.5

own elected Assembly which has limited law making powers only						
Remain part of the UK without an elected Assembly	39.5	25.3	24.0	21.2	21.3	16.5

Source: Welsh Referendum Study 1997; Welsh Assembly Election Study 1999, Welsh Life and Times Surveys 2001, 2003 and 2006, Welsh Election Survey 2007; published in *Wales Devolution Monitoring Report, January 2008* (London: The Constitution Unit, 2008), p. 68, available at http://www.ucl.ac.uk/constitution-unit/research/devolution/MonReps/Wales_Jan08.pdf

Other survey evidence suggests that people in England are happy for Scotland and Wales to have devolution without seeking it for England.¹¹

But devolution has also, clearly, not gone far enough for people in Scotland or Wales. One way this is clearly shown is another set of questions from the same surveys, which seek to relate which level of government people think should be most powerful with which they think actually is. These results are shown below, and indicate a considerable disparity for both Scotland and Wales, of about 40 percentage points, between the government they think should be most important (the devolved one in each case) and the one they think is most important (the UK one in each case).

Table 3: Who ought to have most influence over the way Scotland is run? (%)

	2000	2001	2003	2004	2005	2006
Scottish Parliament/ Executive	72	74	66	67	67	64
UK Government	13	14	20	12	13	11
Local councils	10	8	9	17	15	19
European Union	1	1	1	1	1	1

Table 4: Who has most influence over the way Scotland is run? (%)

	2000	2001	2003	2004	2005	2006
Scottish Parliament/ Executive	13	15	17	19	23	24
UK Government	66	66	64	48	47	38
Local councils	10	9	7	19	15	18
European Union	4	7	5	6	8	11

Source: Scottish Social Attitudes surveys, 2000-2006, published in *Scotland Devolution Monitoring Report, January 2008* (London: The Constitution Unit, 2008), pp. 45-6.

Table 5: Who ought to have most influence over the way Wales is run? (%)

¹¹ See generally J. Curtice 'Public Opinion and the Future of Devolution', in Trench, A. (ed.), *The Dynamics of Devolution: The State of the Nations 2005* (Exeter: Imprint Academic, 2005), particularly table 6.12.

	2001	2003	2007
National Assembly for Wales	56.2	56.0	74.3
UK Government	26.3	29.1	17.7
Local councils	16.5	13.8	7.7
European Union	1.0	1.2	0.2

Table 6: Who has the most influence over the way Wales is run? (%)

	2001	2003	2007
National Assembly for Wales	17.0	22.4	35.6
UK Government	64.4	57.9	53.2
Local councils	15.5	15.0	5.4
European Union	3.2	4.7	5.9

Source: Wales Life & Times surveys 2001 and 2003 and Life in Wales survey 2007, published in *Wales Devolution Monitoring Report, January 2008* (London: The Constitution Unit, 2008), p. 69.

What we therefore now face is a situation where the original design of devolution did not do what it was intended to on a UK-wide basis, and fails to deliver what the people of Scotland and Wales have clearly said that they want as well. Such a situation cannot carry on indefinitely – the more so when the Scottish Government is keen to seek independence, and has conducted itself skilfully in advancing its objectives. People want more influence for the devolved bodies, not less, and for the Union to succeed the UK institutions need to respond to that by working out how to deliver that – and to do so within a UK-wide framework, not one that responds bilaterally to concerns from Scotland or Wales.

Instead, we now find ourselves in the midst of a sequence of fragmented constitutional reviews of limited scope. In Wales, the All Wales Convention chaired by Sir Emyr Jones Parry is to consider whether a referendum should be held to bring in the ‘primary legislative powers’ set out in Part 4 of the Government of Wales Act 2006, and what further steps might be needed if that were to happen. The One Wales coalition agreement between Labour and Plaid Cymru commits the Assembly Government to seeking a referendum by 2011 at the latest, however. In Scotland, the Scottish Government’s ‘National Conversation’ on constitutional options including independence has failed to develop much beyond a blog.¹² The Unionist parties have responded by setting up a Commission on Scottish Devolution chaired by Sir Kenneth Calman, under the aegis of both the Scottish Parliament and the UK Government. The Commission’s remit expressly excludes independence and its composition suggests it will be very hard for it to reach any sort of consensus.¹³ The Calman commission is expected to produce an interim report by November 2008 and a final one around May 2009. But only when that report is passed to the UK Government will a UK-wide view of the issues intrude, and only in Wales (where the All Wales Convention is seeking to engage with the public in a number of interesting ways) is there a serious and imaginative attempt to involve non-party interests in the process. And there is a timing issue too: if the UK Government starts to decide what it will do in the summer of 2009, when the Calman

¹² <http://www.scotland.gov.uk/Topics/a-national-conversation>

¹³ <http://www.commissiononscottishdevolution.org.uk/>

commission has reported, it will have no more than a year to decide what to do and act on it before the next UK general election. One has to question whether that can be done – so either the UK Government will have made its mind up before Calman reports, or the report is likely to be for an incoming (and quite possibly Conservative) government to deal with.

It is a sad comment on Labour's constitutional management that what should have been one of its crowning, if slow-developing, achievements, may have failed to deliver any of its expected political benefits. It is worse that this failure should also have put the Union (which it was meant to preserve) at risk, and with it Labour's ability to win Westminster elections.

A further irony is that tackling these problems would be unlikely to trigger much by way of hostility from England – or even promote demands for a similar response from England. The British Social Attitudes surveys have consistently found that people in England are happy devolution for Scotland and Wales but have little interest in it for themselves.¹⁴ While there is some (and slowly growing) desire for change (whether for regional government or an English parliament), that support remains limited and divided.

Table 7: English views on devolution for Scotland and Wales, 1999-2003

<i>Constitutional Preference: Scotland should</i>	<i>1997 %</i>	<i>1999 %</i>	<i>2000 %</i>	<i>2001 %</i>	<i>2003 %</i>
Be independent, separate from UK and EU or separate from UK but part of EU	14	24	20	19	17
Remain part of the UK with its own elected Parliament which has some lawmaking and taxation powers	38	44	44	53	51
Remain part of the UK with its own elected Parliament which has no taxation powers only	17	10	8	7	9
Remain part of the UK without an elected Assembly	23	13	17	11	13
<i>Constitutional Preference: Wales should</i>	<i>1997 %</i>	<i>1999 %</i>	<i>2000 %</i>	<i>2001 %</i>	<i>2003 %</i>
Be independent, separate from UK and EU or separate from UK but part of EU	13	20	17	17	16
Remain part of the UK with its own elected Parliament which has some lawmaking and taxation powers	37	34	35	39	37

¹⁴ See Curtice 'Public Opinion and the future of devolution' op cit, table 6.12, for data to 2003. For Scotland, 51 per cent of English respondents in 2003 favoured the status quo (Scotland remaining part of the UK)

Remain part of the UK with its own elected Assembly which has limited law making powers only	18	22	17	19	20
Remain part of the UK without an elected Assembly	25	15	20	14	15

Source: British Social Attitudes Surveys, 1999-2003, reported in Curtice 'Public Opinion and the Future of Devolution' op cit, table 6.12.

Table 8: Constitutional preferences for England, 1999-2006

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?

	1999	2003	2006
England should be governed as it is now, with laws made by the UK Parliament	62	55	54
Each region of England should have its own assembly that runs services like health	15	24	17
England as a whole should have its own new parliament with law-making powers	18	16	22

Note: data for some years (2000, 2001, 2002, 2004, 2005) omitted.

Source: British Social Attitudes surveys 1999-2006, abstracted from J. Curtice, *Where stands the Union now? Lessons from the 2007 Scottish Parliament election* (London: Institute for Public Policy Research, 2008), table 7.

What does that mean now?

This suggests that it is now urgent for supporters of the Union to think fast, and act intelligently, if a reformed union is to survive into the second decade of the twenty-first century. This applies whatever complexion of government is in London – but UK institutions in London need to understand how much, and how rapidly, the situation has changed and is changing in Scotland and Wales, and how little control London now has over events. This problem arises partly because the UK Government has stubbornly pursued a strategy that does not actually work. Simple confrontation with the SNP will not succeed, because the SNP is regarded in Scotland as a pretty popular and effective government – and even more important, it is the government that people there voted for in only May 2007.

So what should London now do, if it wishes to preserve the United Kingdom as a whole while delivering on the promise of devolution to improve accountability and democratic control of government across all parts of the UK? Sorting out the government of England is hard, not least

because it is hard to know what form of government the English really want that they do not have (although there are clear demands for more local control of government, which might provide a partial answer). But as far as relations between the UK institutions and Scotland and Wales are concerned, my suggestions are these:

- London – the UK Government and Parliament – needs to take the lead. Westminster and Whitehall need to do so carefully and thoughtfully, to be sensitive to the interests and concerns of all parts of the UK. They cannot be driven by considerations of party political advantage in doing this. The pursuit of party advantage, whether under the Conservatives between 1979 and 1997 or Labour since 1997, has led to where we are now.
- This means taking on a conscious and active role for the UK institutions in managing the territory of the UK as a whole, rather than trusting to inertia or luck. Taking on such an active role does not mean trying to assume central control of the UK – in fact it means the opposite, and that central institutions need to accept and embrace devolution as a means of recognising the national and territorial diversity of the UK, not trying to impose a uniformity that is not desired and which would prompt a huge counter-reaction. Devolution is an attempt at a half-way house to preserve the UK. The continued existence of the UK cannot be taken for granted, nor achieved by practising crude partisan politics.
- In doing this, UK institutions need to accept that there are many worse things than a peaceful break-up of the Union. The Union is simply not worth defending as an absolute good. Worse than a break-up would be to preserve a reluctant Union by use of institutional power. That would end up undermining the legitimacy of government in all parts of Great Britain. If the Union is not based on the consent of its members, freely given, it has lost not just its legitimacy but also its *raison d'être*. If it exists, it must be because its members are better off together than they are apart. A reform plan needs to be rooted in asking the question 'what is the Union for?', and finding sensible and convincing answers.
- Those answers need to relate to the institutions of the Union, and to be embodied in institutional form. So far, the position of both main parties has been to say the Union has to survive because the Union has to survive – which intellectually is nonsense. Accompanying this with rhetoric about 'British values' is little better, not least because there is nothing uniquely British about a belief in free speech, fair play or the rule of law. These are common to all meaningful democracies, including many that once were (but no longer are) governed from Westminster.
- Delivering this will call for an energetic programme of institutional reform. Such reforms have been ducked up to now. If they had been taken up, life would now be easier. Avoiding them because they are somewhat inconvenient (as has been the case up to now) is no longer an option if the Union is to survive. Such reforms will need to include:
 - Reconstructing the financial system, to ensure that the funding of the devolved governments is not dependent on spending in England, but is a separate stream of funding. Such a reform should also give meaningful (but not absolute) fiscal autonomy to the devolved governments, in a framework that also seeks to balance UK-wide interests of equity with devolved autonomy.
 - Reforming the division of powers, so that devolved and non-devolved functions do not get in each other's way. That will also necessitate extensive reorganisation in Whitehall and reform of Whitehall procedures, to ensure that departments and officials are conscious of what matters are devolved and where. It is the UK Government that has created a convoluted system, a confusing division of powers and an informal and uninstitutionalised way of making that work. It cannot

combine that with preserving the Union.

- Reforming procedures at Westminster, again to distinguish between devolved and non-devolved business. The introduction of proportional representation would be advisable too, it offers the best hope of minimising the impact of the ‘West Lothian Question’ in a Union parliament that must, by definition, represent all parts of the Union.