

# **Barnett and the West Lothian Question: no nearer to solutions than when the Devolution Programme started**

Iain McLean  
Nuffield College, Oxford OX1 1nf, UK  
[iain.mclean@nuf.ox.ac.uk](mailto:iain.mclean@nuf.ox.ac.uk)

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### Abstract

As political devolution to Scotland, Wales, and (intermittently) Northern Ireland gathered speed after the UK General Election of 1997, commentators quickly identified:

- (a) the block funding arrangements for the devolved administrations (DAs);
- and
- (b) representation and voting power in the House of Commons for MPs from each of the four territories of the UK

as particularly difficult problems. In shorthand, these are the Barnett Formula and the West Lothian Question (WLQ) respectively. They were identified in the ESRC and Leverhulme Trust devolution programmes as key issues'.

The fact that the Barnett Formula is neither efficient nor equitable is even more widely accepted than it was before the two programmes started, thanks to the work they commissioned; at least two alternative bases for formula funding have been proposed, but there is no sign of movement in the UK government.

Scotland now has representation proportionate to population in the House of Commons. Wales remains over-represented. Various (mostly Conservative) politicians continue to toy with the idea of 'English votes on English laws' (i.e., that MPs from the DAs would not be allowed to vote in the Commons on English matters which are devolved in the DAs). The 'West Lothian Question' asks why MPs from the DAs should have the right to intervene in matters such as education and health in England, when no MPs (from any part of the UK) can vote on education or health in the DAs. It has been unsolved since 1886. In the Parliaments of 1997 and 2001, with large majorities for the ruling party, it proved decisive only four times, but it will predictably cause more trouble in the 2005 and future Parliaments.

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## **Barnett and the West Lothian Question: no nearer to solutions?**

‘I know all about Mr Dalyell’, said Bertie, wiping the chocolate residue from his lips. ‘He asked a famous question.... May I ask him, Mummy?...’

Irene smiled. ‘Of course you may ask him, Bertie. Go and ask him what’s the answer to his famous question’.

Bertie immediately rose to his feet and approached the other table, where he stood on his toes and whispered something into the ear of the slightly surprised politician. There then ensued a brief conversation, during which Bertie nodded his head in understanding.

‘Well?’ pressed Irene when Bertie returned. ‘Who was it?’

‘It was Mr Dalyell after all’, said Bertie. ‘And he told me the answer’.

‘And?’ said Irene.

Bertie looked at his mother. She was always forcing him to do things. She made him learn Italian. She made him play the saxophone. Now she was forcing him to give her the answer to the West Lothian Question. He would have to punish her again.

‘I’m not going to tell you’, he said simply. ‘Mind your own business’.  
(McCall Smith 2005, pp. 180-3).

### ***Introduction: the ESRC and Leverhulme Programmes***

As political devolution to Scotland, Wales, and (intermittently) Northern Ireland gathered speed after the United Kingdom General Election of 1997, commentators quickly identified:

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- (b) representation and voting power in the House of Commons for MPs from each of the four territories of the UK

as particularly difficult problems. In shorthand, these are the Barnett Formula and the West Lothian Question (WLQ) respectively.

In 1999-2000, responding to an earlier report about the research opportunities and issues thrown up by devolution in the UK, the UK public body that funds social science research, the Economic & Social Research Council (ESRC), inaugurated a research programme on Devolution and Constitutional Change in the UK. The programme commissioned 35 research projects. It is due to conclude in March 2006.

In its first call for proposals, the ESRC highlighted, among other things, both funding and representation as issues for research:

Major constitutional changes to the UK provide a timely and unrepeatable opportunity for political analysis and economic and social research. If research on them is not done now, it can never be done later. The creation of a new Scottish Parliament and Assemblies in Wales and Northern Ireland will have far reaching political, economic, social and geographical effects... The

existence of these bodies [the Devolved Administrations & Mayor of London] ... are likely to lead to demands for greater transparency of inter-regional fiscal and financial flows of public spending and tax revenue....

How (if at all) will the House of Commons adapt to its role as the elected chamber for England? What impact will devolution have on territorial identity and the UK: will it strengthen the UK or encourage further fragmentation? ... Are there territorial implications for the reformed House of Lords? If so, how should it be elected and with what powers? ...

Intergovernmental fiscal transfers are likely to become more transparent and more contentious as a result of devolution. What is the best way for the central authority to provide regional finance? What role is there for intergovernmental transfers to provide insurance against region-specific economic shocks? (Source: [http://www.devolution.ac.uk/Round1\\_spec2.htm](http://www.devolution.ac.uk/Round1_spec2.htm)).

Some of the projects commissioned did indeed bear on these questions, as shown by the list at [http://www.devolution.ac.uk/Research\\_Projects2.htm](http://www.devolution.ac.uk/Research_Projects2.htm). In particular, Robert Hazell and colleagues examined questions of representation and of devolution at the centre, while David Heald and colleagues examined questions of territorial finance (see respectively [http://www.devolution.ac.uk/Hazell1\\_2.htm](http://www.devolution.ac.uk/Hazell1_2.htm); <http://www.devolution.ac.uk/Mitchell2.htm>; and <http://www.devolution.ac.uk/Heald%202.htm>).

One of the UK's leading charitable funders of social science research, the Leverhulme Trust, had similar ideas. Starting the process of programme specification later than the ESRC, but in the field earlier, it ran a 'Nations and Regions' programme between 1999 and 2004. This programme had two centres, viz., the Constitution Unit at University College, London, and the Institute of Governance, Edinburgh University. Summaries of their research findings are at <http://www.ucl.ac.uk/constitution-unit/research/devolution/title-page.html> and <http://www.institute-of-governance.org/forum/Leverhulme/TOC.html> respectively. This programme also commissioned research on representation (by Hazell et al; and by McLean and McMillan); the impact of devolution on Westminster (Russell, Gay, and Lodge) and finance (Bell et al). All of their findings are on the UCL devolution website.

There is thus no shortage of recent academic work on devolution representation and finance in the United Kingdom. The next sections of this paper describe the state of play on each, beginning with Barnett.

### ***Why Barnett was invented***

Scotland has enjoyed higher public spending per head than England since about 1900. For that there has been one big reason, and it is not the one that people think. People think that Scotland gets more because it is colder, poorer, and has more difficult geography than England. All of these things are true (although 100 years ago and now, it was not much poorer than England). But the reason for higher spending is that *Scotland poses a credible threat to the United Kingdom*. In the 1880s, when formula funding started, it was named the *Goschen proportion* after the Chancellor of the Exchequer in Lord Salisbury's Unionist government. The big problem then was

Ireland, not Scotland. To try (vainly in the end) to keep Ireland in the Union, the Unionists threw money at it. This was called *Killing Home Rule by kindness*. Not many people in Scotland wanted to secede, and almost none of them were violent. But governments decided to placate them too, starting with the crofters of Skye, who got the Crofters' Commission (1886 and still with us) to settle their land grievances and prevent them festering as they had in Ireland (McLean and McMillan 2005, pp. 117-18).

The Goschen proportion was just 11:80. For every £80 assigned to England & Wales on programmes it covered, Scotland would get £11, to be spent by the already-devolved Scottish administration under the Secretary (of State) for Scotland. Scotland dropped below 11/80 of the population of England & Wales by 1901, and has continued to drop further below. By the time that the ghost of Goschen finally vanished in the 1970s, public spending per head in Scotland was about 20% above that in England (and substantially higher than in Wales, which was as poor and almost as sparsely populated as Scotland, although it has fewer midges). The Secretary of State could protect the Goschen proportion because he had a credible threat at his back. He could tell the Cabinet that unless they protected Scotland's spending share the Nationalists would start winning elections, and where would the United Kingdom be then? All Secretaries of State have done this, but the supreme practitioners have been Tom Johnston (Lab., in the Churchill wartime coalition 1941-5), Willie Ross (Lab., 1964-70 and 1974-6), Ian Lang (Cons., 1990-5) and Michael Forsyth (Cons., 1995-7). It is easier for Conservatives, because theirs after all is the Conservative *and Unionist* Party. Although public spending in England was squeezed during the Thatcher administrations, the gap with Scotland stayed as wide as ever.

In summer 1974, Prime Minister Harold Wilson overruled Willie Ross and Labour's Scottish executive, and announced that the party favoured devolution. This was to head off the expected SNP triumph in the polls. In fact, the electoral system did for them more effectively than Wilson. In October 1974, the SNP got 30% of the vote to the Conservatives 24%, but only 11 seats to the Conservatives' 16. Labour retained the majority of Scottish seats on a minority vote. Nevertheless it had been a very close shave. On 35% of the vote, the SNP would have swept the board, won more than half the seats in Scotland, and started to negotiate independence. Therefore, Labour prepared its flagship devolution plans. The Treasury started to prepare for life after devolution, and conducted (some would say bullied the Scottish and Welsh Offices into) a Needs Assessment. This assessment, not published until 1979, gave the following numbers for the relative needs and the actual spending, in the four countries of the UK, for the services that the Scotland and Wales Acts would have devolved (Table 1).

Table 1. HM Treasury 'Needs Assessment', 1979 (data for 1976-7).

	England	Scotland	Wales	Northern Ireland
Relative needs assessment	100	116	109	131
Actual spending levels 1976-7	100	122	106	135

Source: HM Treasury *Needs Assessment – Report* (1979), esp. para 6.5.

Treasury papers released to me under a Freedom of Information request in March 2005 include the service-by-service assessments that led to these summary numbers. Hints in the published document already suggested that there was a fight between the Treasury and the territorial departments. The FoI release confirms this. The Scots fought for a health formula which would record Scotland's 'needs' as being higher than the Treasury was prepared to concede. The matter was fought to a draw, when Mrs Thatcher drew stumps by winning the 1979 General Election.

By 1979, devolution was dead. An English backlash caused a Government defeat which killed the original flagship bill in 1977. Separate bills for Scotland and Wales were then enacted, but the rebels added sections requiring a referendum on the plans, with a 'Yes' vote not to be confirmed unless at least 40% of the electorate voted Yes. In Wales, the referendum led to a crashing No; in Scotland to a faint Yes, far below the 40% threshold. The Government fell on a Conservative-SNP confidence vote, and the reign of Mrs Thatcher began. In the letter accompanying its FoI release, the Treasury states that it has conducted no studies of relative need since 1979, although it is believed that at least the Northern Ireland Civil Service and possibly the other DAs have been updating data on relative needs.

However, the Treasury's other preparative step has lasted. This was the Barnett Formula, so named (by David Heald in 1980) after Joel Barnett, the Chief Secretary to the Treasury from 1974 to 1979 (although recent research in the National Archives by James Mitchell has shown that Treasury officials were already implementing it under the 1970-74 Conservative administration, before Barnett). Barnett's officials designed the Formula as a temporary expedient to reduce Scotland's relative spending advantage until a needs-based formula could be introduced. Lord Barnett, as he now is, told a Commons Select Committee that he expected 'his' formula would not last more than 'a year or even twenty minutes' (Treasury Committee 1997, p. 1). It has not only lasted, but was embedded into the 1997 devolution settlement. The White Papers outlining the Labour government's plans for Scotland and Wales announced that the Barnett arrangements for funding their spending blocks would continue. Although not announced, this policy also applied to Northern Ireland. However, the Formula is not statutory. It is not in the Scotland or Wales Acts, and it could be revoked unilaterally by a future UK government. Lord Barnett used to be proud of the fame his formula had brought him, but he now dislikes its unfairness so much that he would like to remove his name from it.

### ***How it works***

The Barnett Formula is not about needs. It is just based on relative population. It leaves unchanged the baseline block grant from year to year. It merely stipulates that for every £ of *extra* spending in England each year, Scotland (and Wales, and Northern Ireland) will get an increase in their block grant proportionate to their relative populations. Originally the proportions were set arbitrarily at 85:10:5 for England, Scotland, and Wales. So, for every 85p of extra spending in England, Scotland would get 10p added to its block grant, and Wales 5p. These population proportions were too generous to Scotland (and too mean to Wales) until altered by

that hammer of the Scots Michael Portillo, as Chief Secretary to the Treasury in 1992, to the correct population proportions. Now they are rebased after every Spending Review for the next two or three years. So they track Scotland's (declining) share of the British population, but with a time-lag that works in Scotland's favour.

Without calculating the required differential equation system (for which see Bell and Christie 2001), the property of this formula is that in the long run it will converge until spending per head is the same in all four countries of the UK. In the long run, the original 1979 baseline, under which each country got more per head than England, becomes swamped by the successive increments added every year, until spending per head is imperceptibly different from identical in all four countries.

The long run has been longer than anyone anticipated in 1978. Up to 1999 there was no perceptible convergence, even though the Barnett Formula supposedly operated throughout. Elsewhere (McLean and McMillan 2003a; McLean 2005a) we have given some technical reasons for this, but the main one is political. For all but the last two years of that period, the Conservatives were in office. As the pre-eminently unionist party, they so feared a nationalist threat to the continuation of the United Kingdom that whenever Barnett threatened to produce embarrassing results they bypassed it and found a way to supply off-Barnett goodies to Scotland. The change of government in 1997 caused no immediate change because of Chancellor Brown's hair-shirted decision not to increase the Conservatives' planned spending totals. If there is no increase in England, there is nothing for Barnett to bite on.

So Barnett began to bite only when the Labour Government started to increase public spending in England. This grew most in the Spending Review of 2000 and 2002, and less but still substantially in the Spending Review 2004. The three Territories (as the Treasury calls them) are getting their population share of the extra largesse. But, as a proportion of the baseline that they were getting before, the extra is less than in England. Barnett convergence (in Scotland known as the 'Barnett squeeze') is in progress.

### ***The Barnett Formula: neither efficient nor equitable***

Barnett is unsustainable in the long run. It is neither efficient nor equitable; it gives perverse incentives to the DAs; their block grant is a function of a number they cannot control; in turn, their decisions have consequences for UK macroeconomic management which the UK government cannot fully control. These claims are more fully documented elsewhere<sup>1</sup>. But, briefly:

- *The Barnett Formula is not efficient...* because it gives no incentives to the DAs to seek economic (or more narrowly tax) efficiency. All three DAs manage public expenditure. None of them manages public revenue except in a small way (Council Tax; business rates; domestic rates in Northern Ireland). So in none of the DAs do the decision makers face a budget constraint. A rational politician would rather spend more than less (because a marginal

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<sup>1</sup> Especially McLean, *Fiscal Crisis*; I. McLean and A. McMillan, 'The distribution of public expenditure across the UK regions', *Fiscal Studies* 24 (2003), pp. 45-71; D. Bell and A. Christie, 'Finance – The Barnett Formula: nobody's child?' in A. Trench (ed.), *The State of the Nations 2001: the second year of devolution in the United Kingdom* (Thorverton: Imprint Academic), pp. 135-51.

pound of public spending, financed out of somebody else's taxes, should always improve her chances of re-election) up to the point where Barnett sets a hard constraint or where the marginal effect of extra taxation *in that territory* outweighs the marginal benefit from the spending. The largest DA (Scotland) contains less than 10% of the UK's population. Therefore, extra public expenditure in Scotland would have to cost around ten times the benefit it brings before the Scottish people would rationally rebel against it.

- *...nor equitable.* Public spending per head, across the twelve standard regions of the UK, ought to be inversely related to GDP per head. Instead, there is no statistical relationship at all between the two. There are three upward outliers from the general trend. They are Scotland, Northern Ireland and London. We have argued elsewhere<sup>2</sup> that their higher relative expenditure per head derives not from greater need but from the more credible threat to the Union of the United Kingdom that they pose, compared to the other nine standard regions.
- *it gives perverse incentives to the DAs.* The incentive to spend what Australians call a 'ten-cent dollar' (five-cent dollars in Wales; three-cent dollars in Northern Ireland) has already been mentioned. The DAs have no incentive to broaden their tax bases because they do not see the proceeds; and they have an incentive to switch their block grants from capital spending (which brings benefits after the next election) to current spending (which brings benefits before the next election).
- *their block grant is a function of a number they cannot control* because it depends on spending in England on each devolved service. Spending in England is tightly controlled by the Treasury's biennial Spending Reviews, to which the DAs have no input except over their own blocks.
- *but their decisions have consequences for UK macroeconomic management* notably because of the temptation just mentioned for the DAs to switch money from capital programmes to current spending. This could interfere with the UK government's fiscal rules (currently labelled the Golden Rule and the Sustainable Investment Rule, which are likely to be followed by a UK government of any political complexion).

On the surface, there has been little movement over the Barnett Formula, and the one movement that occurred tended to preserve it, as explained below. But the academic consensus that it was unsustainable was shared, publicly or privately, by civil servants in all three DAs and at the centre. The first green shoots of post-Barnett thought started to appear. The Fraser of Allander Institute commissioned a paper on fiscal federalism which turned that from a fine phrase into a careful proposal for the first time. In other work, I have proposed that the Barnett mechanism should be scrapped and replaced by a non-partisan Grants Commission modelled on Australia, which would allocate block grant either to the four nations of the UK or to its twelve standard regions.<sup>3</sup> I have argued for a dual constitutional mechanism – requiring a unanimity rule among the twelve regions with an 'inverse GDP' default. Bell and Christie have made a similar proposal, but where I recommend 'inverse GDP' as the default apportionment mechanism, they recommend 'social security spending'.

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<sup>2</sup> McLean, *Fiscal Crisis*; McLean and McMillan, *State of the Union*.

<sup>3</sup> R. MacDonald and P. Hallwood, 'The Economic Case for Fiscal Federalism in Scotland' (Glasgow: Fraser of Allander Institute 2004); McLean, *Fiscal Crisis* chs 8, 9, 11.

The rationale behind the unanimity rule comes from the political science of credible threats. The various parts of the United Kingdom have differentially credible threats against the UK Government. Northern Ireland offers the ever-present threat of violence. Scotland offers the threat of secession, which (for Conservatives) might imperil the UK's seat in the Security Council and (for Labour governments) might imperil Labour's chances of gaining a plurality of seats in the House of Commons. London offers in particular the threat that the public services used by the editors of the *Daily Mail* and *Sun* could deteriorate sharply if the government does not throw money at them. The other eight English regions, and Wales, have fewer and less credible threats. Welsh secession is unlikely because Plaid Cymru is more a cultural than a political party, with its stronghold only among the 20% of Welsh voters who speak Welsh. English regions can – and the Northern Region did in 1977 – pose a credible threat when the parliamentary majority for Labour is on a knife-edge, but not otherwise. The only voting rule that gives each voter an equally credible threat is the unanimity rule – that a proposed apportionment of expenditure to the regions is accepted only if every region assents to it.

But a unanimity rule on its own would lead to deadlock, as the current situation of the European Union suffices to show. So there must be a default, to which the assignment of funds for the next time period reverts if the parties fail to agree. I argue that this default should be 'inverse to GDP'. In other words, if the regions and nations fail to agree, the increment in each of their public expenditure budgets should be in inverse proportion to their GDP per head. In such a default, poor regions like Wales, Northern Ireland, and the North-East of England would get an above average increment per head; average regions like Scotland and the West Midlands would get an average increment; and rich regions like London and the South-east would get a below-average increment.

Bell and Christie prefer a 'social security spending' default (although they do not propose the two-stage procedure just outlined). Their rationale is similar to mine. Social security is not a devolved programme. Rates and criteria for benefit are set nationally and are nationally uniform (maybe they should not be, but that is another story). They argue that social security spending per head is an acceptable surrogate for a region's need and demand for devolved programme expenditure per head. Although I think that their proposal would be subject to both gaming and endogeneity, it is in the same spirit as mine.

Since the ESRC and Leverhulme Programmes started, I have seen no defence of Barnett from these charges, except defences based on the naked self-interest of the current beneficiaries. Yet there is no political or mass electoral groundswell to change it. In particular, Deputy Prime Minister Prescott's hopes that the North-East would be an anti-Barnett vanguard were dashed by the 4 to 1 defeat of the proposal for an elected regional assembly there in November 2004. Why should this be so? I return to this in the Conclusion.

### ***“What those with short memories call the West Lothian Question”***



... is the acid description given by the Northern Irish constitutional lawyer Brigid Hadfield to the current dilemmas of representation from the four territories of the UK at Westminster. What we now call the WLQ was thoroughly familiar to Mr Gladstone, and he tried unsuccessfully to solve it in his Government of Ireland Bills (popularly known as 'Home Rule bills') of 1886 and 1893.

The West Lothian Question, properly so called, is one of several problems which arise when the Commons majority from one part of the UK differs from the Commons majority in the UK as a whole. So described, it may arise with or without devolution, and only secession of the rebel territory/ies puts it to rest entirely. However, what I shall call the 'true' WLQ, which is insoluble under asymmetric devolution, is often confused with what I call the 'pseudo' WLQ, to which asymmetric devolution may indeed be a solution.

The story starts with Parnell's pivotal party. The union of Great Britain and Ireland, by the Act of Union 1800, had never been legitimate among the Catholic majority of the Irish population. Catholic emancipation, which was part of the deal persuading the Irish Parliament to vote itself out of existence, was vetoed by the temporarily sane George III on the grounds that it conflicted with his Coronation oath to protect the true Protestant religion. When Catholic emancipation did come, in 1829, it was too late to restore the legitimacy of Union in Ireland.

However, the illegitimacy of union in Ireland could not be proclaimed in the Commons until enough of the Irish had got the vote to proclaim it. That began to happen after the Second Reform Act of 1867, which widened the borough franchise, but its full effect came with the Third Reform Act of 1884, which widened the rural franchise, where most of the Catholic Irish lived. Their hard-driving leader Charles Stewart Parnell formed a cohesive bloc of over 80 MPs, who monopolised the representation of southern Ireland and in some Parliaments, including that of 1885-6, even held a majority of seats in the nine counties of historic Ulster.

The Irish Party was not interested in power in the UK for its own sake, but only as a means to the end of securing devolution ('Home Rule') in Ireland. It held the balance of power in the House of Commons in four Parliaments – those of 1885, 1892, January 1910, and December 1910. In each of these Parliaments it could, and did, force Home Rule on to the policy agenda, although almost all Liberals (except Gladstone) were indifferent and almost all Conservatives violently hostile to it.

If Ireland were to get Home Rule, how was it to be represented in the House of Commons? Mr Gladstone's first (1886) solution was to deny it representation altogether. That could give knee-jerk satisfaction to many interests in Britain (Irish people then being regarded roughly as asylum seekers are now). But it was taxation without representation. The idea fell with the 1886 bill and was not revived. His second (1893) idea was the 'in and out' solution. Irish MPs in the Commons would be able to vote on 'imperial' questions but not on British domestic questions. Gladstone saw the two intractable problems with this before the bill had completed its passage through the Commons and withdrew the 'in and out' solution. The two problems were:

- that it would be impossible for the Speaker to certify uncontroversially what was an 'imperial' and what was a domestic question;

- that if the Commons majority on an imperial question was of a different partisan complexion to the majority on a domestic question, the Government (however it was made up) would be unable to carry the Commons on one class of bill.

Both of these problems are with us yet in principle. In all three parliaments since devolution, Labour has had a majority of seats in each of England, Wales, and Scotland, though not Northern Ireland. However, backbench revolts and free votes can instantiate the WLQ; and Labour will presumably not have a Commons majority in each country of Great Britain for ever. Between them, they rule out the ‘in and out’ solution (now relabelled ‘English votes on English laws’) from serious consideration, and yet politicians with a weak knowledge of history persist in reviving it.

Not until the Government of Ireland Act 1920 did legislators come up with a viable solution, or ‘solution’, to the WLQ. This was to restrict Northern Ireland – the only part of Ireland that actually operated the 1920 Act – to about 2/3 of its population entitlement to seats at Westminster. From the General Election of 1922 to that of 1979, Northern Ireland had 12 territorial seats, when its population entitlement would have been about 18. As part of the pork-barrel bargaining by the Callaghan government in its desperate and unavailing attempt to avoid defeat on a confidence motion in 1979, it offered to raise Northern Ireland’s seats at Westminster to its population proportion of 18, which it now has. Although the deal smelt of pork, the justification given was reasonable, viz., that the reduction to 12 seats was a trade-off for devolution to the Northern Ireland Parliament at Stormont. When that was prorogued in 1972, the under-representation of Northern Ireland at Westminster became anomalous.

However, before we can accept this ‘Stormont’ solution to the WLQ, we have to confront three problems:

- The Callaghan argument is reversible but has not been reversed;
- Wales is actually *over*-represented in the Commons; Scotland was over-represented for 100 years and has now got proportional representation. Neither has anything like the 2/3 representation offered to NI during the Stormont era;
- Most fundamentally (and as pointed out by Sir William Harcourt in 1889: McLean and McMillan 2005, p. 209), the housemaid’s baby is still a baby even if it is only a little one.

When Northern Ireland was promised restored devolution in 1973, in 1985, and successfully (for a while) in 1998, nobody proposed that its representation at Westminster should be cut again. Presumably the credible threat of mayhem prevented that demand from even being made, let alone conceded. Wales and Scotland have had substantial overrepresentation since at least 1945, which was embedded by the parliamentary boundary rules introduced in 1944. This was a successful piece of pork chasing by Welsh and Scottish politicians, which forced on the Boundary Commissions a statutory seat minimum for both countries (McLean 1995). As their relative populations declined (currently the absolute population of Scotland is declining), they became progressively more and more overrepresented in the Commons. The overrepresentation of Scotland was reduced to proportional representation by the Scotland Act 1998, in recognition of the creation of the Scottish Parliament. This reduction in Scottish representation took effect for the General

Election of 2005. But it was reduction *to* proportionality, not below it; the rapid relative decline of the Scottish population means that Scotland will soon be over-represented again; and, anomalously, there was no proposal to reduce Wales to proportional representation, let alone below it. If the Stormont solution to the WLQ were revived (which, *faute de mieux*, I think it should be), then NI should have about 12 seats in the Commons; Wales, about 25; and Scotland, about 40.

But we must listen to Sir William Harcourt:

when parties are pretty equally divided fifty Irish votes may be as decisive as 100 ... and when you have once conceded the objection to Irish interference you don't get rid of it any more than the young woman did of the baby by saying it's such a little one (WH to W.E. Gladstone 27.10.1889, quoted in McLean and McMillan 2005, p. 209).

The objection, then, is to 'MPs from not-X' being decisive in a Parliamentary vote that affects only X. This is the core of the WLQ. It was in this form that Tam Dalyell revived it in 1977:

[Under devolution] I could vote on

Betting, bookies and gaming in Blackburn, Lancashire, but not Blackburn, West Lothian...

Land use in Leicester, but not in Livingston New Town....

Shop hours in Swindon, but not in Stoneyburn....

Scottish and Welsh interference in purely English affairs would be strongly resented, particularly since the participation of these MPs could well be decisive in deciding whether such legislation was introduced or not. (Dalyell 1977, pp. 248-9).

Note that this Harcourt-Dalyell formulation describes what I call the 'true' WLQ, in which MPs from Not-X determine policy affecting *only* X (my emphasis), when the majority of MPs from X voted in a different way. For rhetorical reasons, and sometimes out of sheer confusion, it is sometimes mixed up with what I call the 'pseudo' WLQ, in which MPs from Not-X determine policy affecting X *and* Not-X, when the majority of MPs from X voted in a different way. Figure 1 illustrates this confusion.

[Figure 1 about here]

In the punch line of Figure 1, 'Tam Doowell' says that the WLQ is 'a machine of torture that twists its victims' franchise so HORRIBLY that a Labour majority in Scotland IS SUFFOCATED UNDER A TORY GOVERNMENT'. That is how many people felt in Scotland during the Conservative years 1979-97. But it is not what Tam Dalyell had said two years earlier. The Tam Doowell Question arises whenever one part of the country votes in a way systematically different from the majority of the country. Considering only (Northern) Ireland, Scotland, and Wales, the Tam Doowell Question has the following domain and range (Table 2):

Table 2

### The Tam Doowell Question

When did the non-English territories of the UK have a Commons party plurality differing from the UK governing party? Cases since 1868

Territory	Parliament elected in...	UK governing party	Local plurality party	Prob. of TDOQ
Ireland	1868-1918 (12 Parliaments)	Liberal or Conservative	Irish Nationalist	1.00
Northern Ireland	1923, 1929, 1945, 1950, 1964, 1966	Labour	Unionist	0.43
Northern Ireland	F1974- (9 Parliaments)	Labour or Conservative	Unionist	1.00
Wales	1874, 1886, 1895, 1900, 1918	Conservative	Liberal	0.42
Wales	1922, 1924, 1931, 1935, 1951, 1955, 1959, 1970, 1979, 1983, 1987, 1992	Conservative (+coalition partners)	Liberal, then Labour	0.52
Scotland	1874, 1886, 1895	Conservative	Liberal	0.25
Scotland	1922, 1959, 1970, 1979, 1983, 1987, 1992	Conservative	Labour	0.30

Source: data in Craig 1989; author's calculations.

The Tam Doowell Question is measured over Parliaments (whereas the Tam Dalyell Question can only be measured over individual votes in each Parliament). In Table 2, the incidence of the Tam Doowell Question is measured for each of the three non-English territories of the UK since mass elections began in 1868. The departure of southern Ireland, creation of Northern Ireland, and rise of Labour all mean that the series must be split between the General Elections of 1918 and 1922. The Northern Ireland series is also split between 1970 and 1974, when the Ulster Unionists moved out of their former coalition with the Conservatives.

Column 3 of Table 2 lists the party that formed the UK government (sometimes with allies). Column 4 lists the party that won the plurality of seats in the territory. Column 5 measures the probability of the Tam Doowell Question for each parliament. The denominator is the total number of Parliaments in the period. The numerator is the number of Parliaments where the local plurality party differed from the party forming the UK government.

If the UK were a homogeneous country, the expected values in Column 5 would cluster around 0.4. This is because a party which has won a General Election has got more seats than any other. Therefore, more often than not, it has got more seats than

any other in each territory of a homogeneous country. Therefore the expected value of the probability of the Tam Doowell Question should be below 0.5.

Table 2 shows that Scotland is the only territory of which it is true. As goes the nation, so goes Scotland on average since 1868. In a long historical perspective, the Thatcher years in Scotland were an anomaly. It is actually the territory that groans the least under the Tam Doowell Question. It has had a partisan complexion differing from the UK Government's much less often than have Wales, Ireland, or Northern Ireland. The Tam Doowell Question also arises in parts of England at every General Election, so it is arguably not a devolution question at all.

Nevertheless, when the partisan complexion of part of the UK is *utterly* different to that of the rest, devolution or separation are the only viable solutions. That was the situation in Ireland from the moment that something resembling adult male suffrage arrived there. Possibly, if Mr Gladstone had solved the (true) WLQ and if the Unionists had not been so stubborn, even fanatical, between 1886 and 1921, Ireland could have become a devolved part of the United Kingdom. But Unionist intransigence meant that the separation of most of Ireland was inevitable by 1921, as was the riven and sulphurous community politics of Northern Ireland.

This qualification does not apply to Scotland or to Wales. If the Scots or the Welsh felt that they were groaning intolerably under the Tam Doowell Question, they always had the option of electing their nationalist party with a plurality or majority of seats, and forcing devolution or secession by that route. The Scots came closest to doing this in October 1974; the Welsh have never come close.

How often has the true WLQ, the Tam Dalyell Question, arisen since 1868? Recall that the true WLQ arises only when

- (1) MPs from Not-X determine policy affecting *only* X, **and**
- (2) the plurality of MPs from X voted against the policy that was chosen.

Ireland before 1918 is an interesting case, where collection of systematic data is beyond the scope of this paper. There were numerous Irish Bills and Acts, and so condition (1) for the true WLQ was met. Sometimes condition (2) was met as well, as with Coercion Acts and other public order measures. But several of the most important Irish Acts – e.g., the disestablishment of the Church of Ireland in 1869, and the Land Acts of 1870, 1881, and 1903 – were enacted to assuage Irish grievances, therefore they fail condition (2) for the true WLQ.

Was Great Britain before 1918 under the tyranny of the Irish Party? Only in fevered Unionist imaginations. The case can only have arisen in the Parliaments of 1885, 1892, and twice in 1910, when the Irish Party held the balance. I am not aware of any systematic research on the number of *Great Britain only* Acts carried on Irish votes, or of defeated *GB only* proposals that would have been carried but for the Irish Party. There may have been none at all; or, more likely, there were some but the evidence has not been systematically collected. Unionist imaginations were mostly fevered by the spectre of Home Rule. But whatever that was, it was not a GB-only matter. Therefore, it is not a case of the true WLQ.

Because of the devolution of domestic policy to Northern Ireland, there were no true WLQs affecting Ulster policy between 1920 and 1972. There were also no examples of the converse case, where the Ulster Unionist MPs alone made the difference between victory and defeat on a GB-only question. Harold Wilson suspected there might be in the Parliaments of 1964 and 1966, but as it happened there were none. There may just possibly have been some in the early years of the 1951 Parliament, when the Ulster Unionists were part of the Conservative & Unionist bloc. (In 1953, a by-election gain meant that the Conservatives had a Commons majority even without the Ulster Unionists). But if there were, nobody has ever taken note of them (McLean, McMillan and Leech 2005).

In Northern Ireland since direct rule, the true WLQ has been endemic. The whole point of direct rule is that it is rule by the party that governs the United Kingdom, not the party that (would) govern Northern Ireland (if a devolved assembly existed). Northern Irish Unionists have probably been the principal victims of the WLQ since 1972. The converse case – where any of the Ulster parties determined the outcome of a **GB-only** question – has again not arisen since 1972.

To determine the incidence of the true WLQ within Great Britain, it is useful to start with Wales-only, England-only, and Scotland-only questions.

Prior to devolution, very few Wales-only questions came to Parliament, but there is one outstanding exception. At every election in Wales from 1868 to 1910 inclusive, the majority of MPs elected from Wales wished to disestablish the Anglican Church in Wales. This was blocked by the UK Commons majority under every Conservative government, and by the unelected House of Lords under every Liberal government. (Bell 1969) Welsh disestablishment was finally enacted in 1914 under the provisions of the Parliament Act 1911, having been rejected twice by the Lords (with the Church of England bishops voting en bloc against it). Because of the outbreak of World War I, it was suspended along with Irish Home Rule, and brought into force only in 1920.

The only England-only question before devolution that is certainly an instance of the WLQ is the defeat of the Church of England Prayer Book on two occasions in 1927 and 1928. On one of those occasions, the sometime Secretary for Scotland Willie Adamson told the future Secretary of State for Scotland Tom Johnston that he ‘couldna look my forefolks in the face, if I didna vote the nicht’ (quoted in McLean 1999, p. 99). Accordingly, a number of Calvinist Scottish MPs voted against the Prayer Book, which would have affected only England, on the grounds that it was popish. Together with their Ulster co-religionists, they made the difference between victory and defeat.

Church politics may crosscut left-right politics, therefore the first place to look for true WLQs affecting Scotland before devolution would be on Scottish Church bills. However, bruised by the disestablishment controversies of 1843 and 1885-1904 (Peterson forthcoming), English politicians mostly kept out of Scottish church affairs, except when it was necessary to clear up an unholy mess left by the courts. By Acts of 1921 and 1925, the Church of Scotland was effectively set free from Parliamentary control, to the great relief of both sides.

There were some examples of Scotland-only true WLQs under the Conservatives between 1979 and 1997. One was the imposition of the Poll Tax on Scotland in 1986, a year ahead of the rest of Great Britain. For that year, Scotland suffered from a true WLQ. After that, the rest of Britain came into line, so that Poll Tax in Scotland became a case of the Tam Doowell Question, not the Tam Dalyell Question.

Now that devolution has come to Scotland and Wales, there can, by construction, be no WLQs affecting them, because no MPs, from any part of the UK, can determine matters that only affect them. As and when Northern Ireland regains an elected assembly, this will come true there as well. Does all this mean that the true WLQ can be consigned to the distant past and the Ulster Unionists (which some people might regard as two versions of the same thing)?

No, because the advent of devolution greatly increases the number of England-only cases in the denominator. Before 1997, very few England-only issues came before Parliament. Now, many do<sup>4</sup>. Therefore, even if the inherent probability of a true WLQ hitting England remains low, the number of cases – the incidence – can be expected to increase. When a government has a large majority, as in the Parliaments of 1997 and 2001, the incidence would be zero if there were neither backbench revolts nor free votes. But there are both.

The WLQs affecting England since 1997 are summarised in Table 3.

Table 3. ‘West Lothian Votes’ under Blair

Date	Bill	Breakdown of vote for all UK MPs For – Against Government	Breakdown of vote for English MPs only For – Against Government
08-07-03	Health and Social Care Bill (Division 280)	286 – 251	217 – 218
19-11-03	Health and Social Care Bill (Division 381)	302 – 285	234 – 251
27-01-04	Higher Education Bill (Division 38)	316 – 311	246 – 261
31-03-04	Higher Education Bill (Division 123)	316 – 288	244 – 246

Source: Lodge 2004, Table 4.

<sup>4</sup> This remains true even though, *formally*, there is little England-only legislation; most, for drafting reasons, is England and Wales; including the Act establishing the Greater London Authority! Most bills, even if substantially England-only, have clauses with GB-wide territorial reach: for instance the Higher Education Bill contained Scottish provisions. The settlement in Wales complicates things since in the absence of legislative powers of its own the National Assembly depends on Westminster bills.

These four divisions concerned two contentious bills subject to Labour backbench revolts. The first bill provided for NHS foundation hospitals in England; the second, for English students to pay so-called 'top-up' fees to English universities. Both were enacted against the votes of a majority of MPs from English constituencies.

Another issue which might have given rise to a true WLQ but did not, because the majority in favour was large, was the Hunting Act 2004, banning fox hunting with dogs in England, which went through the Commons twice because it was rejected in the Lords. It was finally passed under Parliament Act procedures.

At the 2005 General Election, Labour was returned with a much reduced majority. Therefore a smaller backbench revolt than before is needed to trigger a WLQ vote in England. It is predictable that, as most parliaments give the winning party a smaller seat margin than did those of 1997 and 2001, WLQ anomalies will become endemic in England unless there is constitutional change to deal with it.

The only constitutional change so far on the table is 'English votes on English laws', proposed by then-Conservative leader William Hague before the 2001 election (but not pursued much in that campaign) and revived in 2004 by Peter Duncan, the Conservative Scottish spokesman (and sole Scottish Conservative MP in the 2001-5 Parliament)<sup>5</sup>. But 'English votes on English laws' immediately comes up against both of the two objections that led Mr Gladstone to withdraw the 'in and out solution' during the passage of the Government of Ireland Bill 1893 through the Commons (see above). The two objections are fatal; therefore the Conservatives (and everybody else) must go back to the drawing board.

Another possibility now excluded is for eight new elected English regional assemblies, one for each standard region that does not already have an elected government. This would have divided the UK into 12 regions of comparable size (apart from the two small outliers Northern Ireland and Wales). However, that option disappeared with the defeat of it in the North-east region in 2004.

Proportional representation to the Commons (or true bicameralism, with the Commons remaining elected by first-past-the-post and a reformed upper chamber by PR) would soften but not eliminate the WLQ. It would reduce (but not eliminate) the prior condition for WLQs: of systematically different partisan complexions of the Commons delegations from the three countries of Great Britain. No foreseeable development (except Northern Irish independence or integration of NI with the Republic) would soften it as regards Northern Ireland.

By elimination, the viable solutions to the WLQ are

- the further reduction of representation for Scotland, Wales, and Northern Ireland (?? and London), discussed above; and
- serious reconstruction of Parliament and Government, so as to distinguish their roles as the Parliament and Government of the UK and as Parliament and Government of England. At a minimum, this would involve the appointment of a First Minister and executive for

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<sup>5</sup> News release, 'Conservatives answer "West Lothian Question"' at [http://www.conservatives.com/tile.do?def=news.story.page&obj\\_id=92576](http://www.conservatives.com/tile.do?def=news.story.page&obj_id=92576), March 2004. Conservative leader Michael Howard repeated the policy during the 2005 General Election campaign.



England, and a recognition that, in the hard case when the UK parliamentary majority differed from the English parliamentary majority, the First Minister and his/her administration would be from a different party to the UK Prime Minister and government.

This is a very heavy implication of asymmetrical devolution. But it is an implication that governments cannot escape.

## **Conclusion**

Barnett and the WLQ are the two great leftovers of the devolution settlement. All scholarly work on them, including work sponsored by the ESRC Devolution Programme, has confirmed that Barnett is unsustainable and that the WLQ remains a serious threat to the good governance of England.

The news on Barnett is better than on the WLQ. Scholars and policymakers have gone beyond the easy demonstration that Barnett is unsustainable to the more difficult discussion of what might replace it. I have sketched out a possible regime in my *Fiscal Crisis of the United Kingdom* (McLean 2005) and others are exploring the issue, including a senior Scottish Executive civil servant currently on secondment to Glasgow University. The problem is less a lack of scholarly research than a lack of political will to tackle such a difficult issue. However, at the latest, the normal processes of political competition should induce all (or most) parties to produce their alternative to Barnett in time for the General Election of 2009.

Research on the WLQ and alternatives is still at a more primitive stage. Not all of it yet accepts the vital distinction between what I have labelled the 'true' and the 'pseudo' WLQs. Institutional solutions are few. Some people continue to deny that there is much of an issue. The Edward Caird Professor of Politics at Glasgow University has said that the WLQ 'is not really a question. After a bit Tam just keeps asking it again' (W. L. Miller, [exact source needed]). And survey data show that the mass public in England are not unduly worried by it, whereas the mass public in Scotland thinks that 'English votes on English laws' would be fair.

But Tam has kept asking it because it is not just a rhetorical question but a real one. To see how serious it could be, study the history of the United Kingdom between 1886 and 1921. I do not for a moment expect that it will lead the UK back to the brink of civil war as in 1914. For one thing I do not expect that the Leader of HM Loyal Opposition will fund paramilitary gunrunning (as Bonar Law probably did in 1914), nor will the Director of Operations of the British Army tell the paramilitaries where troops are about to be deployed against them (as Sir Henry Wilson did in 1914), nor that the monarch will contemplate dismissing a government with a majority in the Commons (as George V contemplated in 1913). But the stakes are potentially high. Ignoring the WLQ would be perilous.

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Figure 1.

Confusion at the House of the Binns

Source, *Weekend Scotsman* 14.04.79

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