

William Gladstone might have the answer to the ‘West Lothian’ question

By Democratic Audit

*The West Lothian Question has been a constant thorn in the side of devolution efforts for over 100 years. The McKay Commission was tasked with finding a meaningful answer, and finally reported in March 2013. **Iain McLean**, in reviewing the report, argues policy-makers should revisit a proposal which was explicitly ruled out of the commission’s terms of reference and would see a reduction in the numbers – though not the powers – of MPs from devolved territories in the way that applied to Northern Ireland between 1922 and 1979.*

[The Commission on the Consequences of Devolution](#), also known as the McKay Commission, reported quietly in March 2013. Its remit had been to consider how the Commons should handle legislation that affects only part of the UK, now that domestic policy, to varying degrees, has been devolved to Scotland, Wales, and Northern Ireland. It was not, however, instructed not ‘to deal with matters of finance in the context of the devolution settlements or with the representation of the devolved areas at Westminster’. This is Hamlet without the prince: finance and representation are the big unsolved questions in UK devolution. But for news about Claudius, Laertes and Polonius, read on.

The Commission examines solutions to the ‘[West Lothian Question](#)’ (WLQ) other than cutting the numbers of MPs from Scotland, Wales and Northern Ireland. The WLQ, properly stated, relates to the powers of MPs (and in principle peers) not from a given part of the UK to alter legislation that affects *only* that part. In the past, it has severely affected Scotland, Wales and (Northern) Ireland. The Poll Tax was introduced in Scotland only by an Act which the majority of Scottish MPs opposed. Older examples include the blocking of Welsh church reform from 1868 to 1920, coercion Acts in nineteenth-century Ireland, and the Patronage Act (Scotland) 1711/12, violating the then recent Act of Union.

However the WLQ can now only affect England. WLQ misfires in England include the defeats of the Church of England Prayer Book in 1927–1928 and four votes on hospital and higher education funding in 2003–2004. In these votes on English bills, most English MPs opposed an outcome which carried only on Scottish and Welsh votes. A growing plurality of the people want to see English Votes on English Laws (EVOEL).

The Commission want that to become a constitutional convention. But how can it be implemented, as they wish, without ‘taking functions or powers away from MPs from outside England (or England-and-Wales)’ (para 146)? It cannot, because MPs from outside England have to surrender *something*. McKay rejects:

1. An English Parliament;
2. Regional assemblies for each English region;
3. Reduction in the numbers of MPs from Scotland, Wales and Northern Ireland;
4. Formal reduction in their powers;
5. A double-lock for English MPs.

Regional assemblies are dead after one was massively voted down in the [North-east in 2004](#). An English Parliament, for a territory including 85% of the population of the UK, would be so unbalanced that the federation would be unstable.

A double-lock provides that ‘legislation could only be passed if there is both a majority of MPs from England and a majority of the House of Commons as a whole in favour’. Since it is what the people of England (and the Conservative party) want, what could be wrong with that?

In past years, [William Gladstone](#) wrestled with all these issues. In 1886, he proposed excluding Irish Members from the Commons altogether after devolution, but that is taxation without representation. In 1893 he proposed an ‘in-and-out’ solution: both a double-lock (such that only non-Irish MPs voted on non-Irish business) and a clear statement of the territorial scope of each clause of each bill. But he rejected his own idea because ‘it passes the wit of man’ to define the territorial scope of a bill; and ‘because opinion touches responsibility’.

Where a government, such as his, has a majority in the UK but lacks one in England, then with a double-lock it loses any or all of its England-only business. Who then would be the government of England? Gladstone therefore chose McKay’s rejected option no. 3: a (modest) reduction in the number of Irish MPs. His caustic colleague [Sir William Harcourt](#) retorted that fifty Irish MPs may be as decisive as 100, and that ‘you don’t get rid of [Irish interference] any more than the young woman did of the baby by saying it’s such a little one’.

McKay proposes to beef up the territorial extent statements on each bill; and to improve the discussion of ‘Sewel motions’ received from the three devolved parliaments, permitting the UK parliament to legislate on their turf. Elsewhere, McKay proposes questions rather than answers, for example;

- How can ‘English Votes on English Laws’ apply to secondary legislation?
- Or to Commons consideration of Lords’ amendments to bills? (Good questions: and they give rise to another, how should the *Lords* handle England-only business?)

The central recommendation is that English (plus sometimes Welsh) MPs should have not a double-lock, but a double-count:

“the determining majority would be that in the overall vote, as has always been the case. But if a government was seen to have failed to attract the support of a majority of MPs from England (or England-and-Wales) for business affecting those interests, it would be likely to sustain severe political damage.

But this is a pretty soft constraint. When the parliamentary stakes are high enough, a determined government with tough whips would know that votes on a particular bill are subsumed in noise at election time. The 2003–2004 votes on foundation hospitals and tuition fees did not decide the 2005 election.

At the other extreme, a constraint as soft as McKay’s would not have prevented the 1914 civil war that would have broken out in protestant Ireland but for the First World War. Most parliaments then had Commons majorities for the parties prepared to enact Home Rule for Ireland. Their Unionist opponents held the majority of seats in England, except from 1906–1910. With the Liberal and Irish parties claiming to govern the UK and the Unionists claiming to ‘speak for England (and ‘Ulster’), the outcomes included the Curragh Mutiny and Larne gunrunning of spring 1914. The double-count is weak if the issues are non-salient (foundation hospitals and university funding), AND if they are existential, as from 1885 to 1918.

There is no easy answer to the West Lothian Question. What McKay shows is that Gladstone knew best, *albiet* inadvertently. Having rejected both ‘taxation without representation’ and ‘in-and-out’, he proposed a reduction in the numbers, but not the powers, of MPs from (Scotland, Wales and Northern) Ireland, which McKay rejected. Among other things, this solution deals with the problem of ‘Barnett consequentials’. In brief, expenditure in England in year 1 helps to determine the block grant to Scotland, Wales and Northern Ireland in year 2. The resultant changes in block grant from year to year are called Barnett consequentials. Their existence allows Scots and Welsh MPs to claim that England-only business is their business too. That speaks for them to be represented in Westminster, but not at their proportion of the population. Fewer of them would still be able to vote on UK business, Barnett consequentials included.

What about Harcourt's housemaid's baby? There is a mathematical answer. Fifty non-English MPs are less than half as likely to be decisive against a majority from England than are a hundred. The twelve Ulster Unionists who sat in the Commons from 1922 to 1974 never on their own made a decisive majority to overrule the English. (They contributed to the Prayer Book defeats, but only with the Scots and Welsh.) Reduction in numbers is the least worst solution to the WLQ. A smaller number of MPs relative to England might help McKay's conventions to stick and keep non-English MPs out of English business.

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Note: a longer version of this post can be seen at [Political Quarterly](#), and is available [here](#). This post represents the views of the author, and not of Democratic Audit or the LSE. Please read our [comments policy](#) before posting. The shortened URL for this post is: <http://buff.ly/1cDP4Bj>

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