THE UNTIED KINGDOM

The title I have chosen for this evening's lecture is not a misprint. Or at least it is not a misprint on this occasion. It was, however, a misprint in a proof copy of the final report of the Commission on Devolution in Wales, a Commission that I had the privilege to chair and about which I shall speak later. Fortunately, the misprint was spotted by one of the Commissioners and corrected before the report was published. I hope I am not betraying a confidence to say that my eagle-eyed colleague was Eurfyl ap Gwilym, the representative of Plaid Cymru on the Commission. I know that he was very tempted to remain silent.

What I plan to do this evening is to remind you first of all how the United Kingdom came to be tied up as a single parcel. Then I will talk about how the parcel has been, and continues to be, untied. In the course of this I will tell you in more detail about my work with the Commission on Devolution in Wales. Finally, I will speculate about the future.

So let us first canter through five centuries of history, beginning with all that Braveheart stuff of medieval fighting. In Wales, Edward I's fortresses in the North are power politics at its starkest, and most towns here have some association with Owain Glyndwr's patriotic resistance (or rebellion, if you prefer) of the 15th century. In Scotland, we saw last year the 700th anniversary of the famous Scots victory of Bannockburn, though less commemoration of the English victory of Flodden 200 years later. You can see in Carlisle the place that Jacobite highlanders were disembowelled less than 300 years ago. In Ireland, Cromwell is still a bogeyman.

What was done by force was legitimised by legal instruments. Between 1535 and 1542 the Laws in Wales Acts created one nation of England & Wales. In 1542 the Crown of Ireland Act, which had been preceded by a 1541 Act of the Irish Parliament, provided for a single King who would rule over the two nations of England & Wales and Ireland. In 1603 the English/Welsh, Irish and Scottish Crowns were united so that there were three nations with one King. Then 1707 saw the Act of Union with Scotland so that our islands consisted of two polities - Great Britain and Ireland, with one Crown and two Parliaments. Finally, in 1800 the Act of Union with Ireland created the

United Kingdom of Great Britain and Ireland, under one King and with the one Parliament at Westminster.

But the 1800 settlement was hardly stable. Irish nationalism fed off American and French nationalism and British attempts at repression were unsuccessful. There was terrorism in London in the 1880s. The Gladstone administrations sought a peaceful solution for Ireland, with the idea of "home rule all round" emerging. Other famous names thought in a way we may find surprising today. For example, in a paper of 1911, Winston Churchill proposed a federal constitution for the United Kingdom.

All these ideas were overtaken a hundred years ago by the concentration on fighting Germany and its allies, and then by the Easter Rising in Ireland in 1916. After the Irish Civil War came the Government of Ireland Act 1920 and the de facto division of Ireland. The United Kingdom of Great Britain and Ireland had lasted not much more than 100 years.

Ireland had joined the Union last, and the support for independence in Wales and Scotland burned on a much slower fuse. Plaid Cymru was founded in 1925, but its first MP was not elected until 1966 in the famous by-election in Carmarthen. The SNP was founded in 1928, and had its first MP in 1945, but Robert McIntyre served the people of Motherwell for just three months. In fact, polling evidence showed that there was less than 5% support for the SNP from 1935 to 1966.

Carmarthen in 1966 seemed to rejuvenate nationalism, with the SNP surging to 30% in 1974 election. As so often, London realised rather late in the day that it needed to do something and so was born the Royal Commission on the Constitution, the Kilbrandon Commission. It sat from 1969 to 1973 but could only arrive at majority recommendations.

Out of these came the Labour Government's devolution proposals of 1978, which were put to the people of Scotland and Wales in referendums held in 1979, after Margaret Thatcher had come to power. The Scots voted in favour of devolution (1.23m to1.15m), but a rebellion by Labour backbenchers had secured the insertion of a clause in the legislation providing that a simple majority was not enough but that, in addition to a majority, at least 40% of the total electorate needed to vote yes. In Scotland, only 33% did. So the

proposal failed. At the same time, Wales voted overwhelmingly against devolution.

Northern Ireland went down a very different path. From 1922 to 1972 it had its own Parliament – a legislature dominated by the Protestant majority and legislating largely in their interest. Violence was never far below the surface, but became uncontrollable from the late 1960s. Direct rule from London was imposed in 1972, a year in which just under 500 people were killed on the streets of Northern Ireland, 130 of them British soldiers.

In the UK Parliament, the Conservatives came to power in 1979 and held office until 1997. As far as Northern Ireland was concerned, the Conservative response concentrated on strong policing, with some attempts at political settlement. For Scotland and Wales, the period of Conservative government was a disaster for the party in both countries. It is a remarkable fact that, in 1979, the Conservative party had 22 out of the 71 Scottish parliamentary seats, and 11 out of the 36 Welsh seats. By 1997, they had no MPs in either Scotland or Wales.

The closure of the heavy industries – coal, steel and shipbuilding – on which Scotland and Wales had depended, led to great anger here and in Scotland. In Scotland, the introduction of the "Poll Tax" – a local, regressive tax not based on wealth – a year before it was introduced in England and Wales led to particular bitterness.

In 1997, Tony Blair's New Labour won 418 seats out of 650 in the House of Commons. The Conservatives won 165. Constitutional reform was an important part of the New Labour offer: human rights, House of Lords reform, freedom of information were parts of this, but also devolution.

Blair had inherited from his predecessor John Smith, a Scottish MP who died in office as Leader of the Opposition, a strong commitment to a Scottish Parliament. Civic Scotland had also taken part in what was known as the Scottish Constitutional Convention, a non-government body that had come forward in 1995 with well-thought through proposals for devolution in Scotland.

Blair had no personal commitment to Welsh devolution – there had historically been division in the Welsh Labour party about Welsh identity as opposed to unionism/internationalism, something that

persists to this day – but Blair was persuaded by his Secretary of State for Wales, Ron Davies – a man who, of course, later joined Plaid Cymru – to propose a weaker form of devolution for Wales than was to be offered to Scotland. There was also recognition of the need for change in Northern Ireland.

What has happened since 1997? In Scotland, the referendum on whether there should be a Scottish Parliament, and whether it should have tax-varying powers was won handsomely in that year, with 74% voting in favour of the Parliament and 64% voting in favour of tax varying powers on a 60% turnout. The Scotland Act 1998 duly followed, and the first elections in 1999 resulted in a Lab/LD coalition government. But by 2007 the SNP were so strengthened that they could form a minority government.

Alarm in the unionist parties led to the establishment in 2009 of the Commission on Scottish Devolution – the Calman Commission. The SNP refused to take part. The Calman Commission's principal recommendations were about fiscal powers and inter-institutional co-operation. It made few recommendations for changes in the balance of other powers between Edinburgh and London.

In 2011, the SNP formed a majority government – and did so under an electoral system that had been designed to result in coalitions. Parliament passed the largely unnoticed Scotland Act 2012 to implement Calman's recommendations, but all attention was directed to the independence referendum that the UK Government had no option but to concede to Scotland. The question was a simple one at London's insistence, and there was a rather complacent expectation that Scots would vote solidly in favour of the Union.

However, you will recall the movement in the opinion polls, culminating with the YouGov poll of 6 September that recorded a narrow majority in favour of independence. The pledge on more powers for Scotland followed in panic from the London party leaders, and the referendum then delivered a healthy majority for the Union – 55% to 45%, on a staggering 85% turnout. Since then, we have had a rapid succession of events: the report of the Smith Commission on new powers on 27 November, and their conversion into draft clauses for a new Scotland Bill on 24 January.

What was published then was called – wishfully, perhaps – *Scotland in the United Kingdom: an Enduring Future*. It is a promise of legislative action after the May General Election to, among other things, put the Scottish Parliament on a permanent basis, and give Scotland more control over elections, welfare, broadcasting, energy and transport. Some of these powers are extensive: for example, the Scottish railway system could be taken into public ownership or onshore fracking banned. Also proposed is the full devolution of income tax rates and bands to Scotland – something that may be unparalleled in world federal systems. Not everything that Smith dealt with is contained in the January paper, which explains frequently that more work will need to be done before the proposals enter into effect.

Developments in Northern Ireland over this period reflected the very different circumstances of the Province. In 1998 the Good Friday Agreement provided for a power-sharing Executive in Northern Ireland – "an enforced coalition". The proposals were confirmed by a 71% majority in a referendum. The first Assembly elections returned the more moderate Ulster Unionists and SDLP as largest parties. Things did not go to plan, and there were periodic suspensions of the Northern Ireland Assembly from 2000 until March 2007. However, following the 2006 St Andrews agreement, devolution was restored in 2007, with the DUP and Sinn Fein returned as largest parties and managing to work together with an unexpected degree of success, such that the transfer of policing and justice powers to Northern Ireland happened in 2010.

Let me now turn to Wales. Our 1997 referendum endorsed devolution by a whisker - 50.3% voted yes, on 50.1% turnout. The Government of Wales Act 1998 was then drafted in a hurry. The Welsh Office had given little thought to the detail of devolution before the 1997 election. Wales had had no Constitutional Convention. The 1978 Act was dusted down, but even as it made its progress through Parliament was radically re-written. Even so, the model chosen was ill-thought through and could not, and did not, survive long.

In 2004, the Commission on the Powers and Electoral Arrangements of the Assembly, chaired by Lord Richard, was established. New legislation followed in the Government of Wales Act 2006. This gave more legislative powers to Wales, but only when the new power was endorsed by Parliament through a cumbersome procedure known as

Legislative Competence Orders (ELCOs). It was a very grudging sort of legislative devolution in which Wales was treated like a ward of court in need of supervision by big brother in London.

The 2006 Act did contain a Part 4, with provisions for primary legislative powers, but that was expected to sit unused on the statute book for some time. It was more an outline of a possible future than anything, and was little scrutinised by Parliament. But when the electorate delivered in 2007 an Assembly where Labour needed to share power with Plaid Cymru, things again began to move. A new All Wales Convention reported on the need for primary powers in 2009. A referendum was proposed, held and won in 2011 and the paraphernalia of ELCOs was replaced by primary legislative powers.

I have run through this simply to illustrate how our constitutional path in Wales has lurched along, and has hardly followed a carefully planned piece of strategic thinking.

This is where the Commission that I chaired entered the scene. I have no idea, incidentally, why I was nominated to chair the Commission, and the request to do so came entirely out of the blue in the autumn of 2011. It happened on the day that there was a news story that a Commission was to be appointed to consider the West Lothian Question, and for a time I wrongly thought that that was what I was being asked to do. When I understood that part of my remit was to be tax policy, I said feebly that I didn't know very much about tax policy. I was assured that I would soon learn.

It is unlikely that there would have been a Commission at all if the UK General Election of 2010 had not delivered a coalition. The Conservative election manifesto in 2010 said little on constitutional matters in Wales though there was a reference to the UK's "unbalanced" constitutional settlement. I am pretty sure therefore that it was the Liberal Democrats with their federalist history who secured a commitment in the 2010 Coalition Agreement to what the Agreement described as "a Calman-like process for Wales".

The Commission's work was divided into two Parts. The first part was financial. Our terms of reference here were:

> *To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of*

> *powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom's fiscal objectives and are likely to have a wide degree of support*

We published our report on Part 1 in November 2012. We established that Wales was unique in the world in having legislative and spending powers but no tax and borrowing powers. We felt that this anomaly should end.

While we believed that a suite of smaller taxes should properly be within the Assembly's control, we also believed that it was important that a significant tax should also be within that control in order to achieve real increased financial accountability. For various reasons, we ruled out corporation tax, value added tax, fuel duties and national insurance, but we concluded that the income tax base should be shared between the governments in Cardiff and London, with the Welsh Government free to alter each rate of tax independently, enjoying – or suffering – the consequences of any variation they made.

We called our Report "Empowerment and Responsibility: Financial Powers to strengthen Wales". We felt that having to make fiscal choices would bring a deeper accountability to Welsh political life and would enrich the political process. It would also empower a Welsh Government to use its financial powers to strengthen Wales economically.

It was important to us and significant politically that all four parties in the Assembly endorsed our recommendations, but we had to wait a long time for the UK Government's formal response. A Wales Bill was eventually published, and completed its passage through Parliament at the end of last year. This takes forward most of our Part I proposals. The important ability to vary each income tax band differentially was not initially included, and the Welsh Government would have been hobbled by what has been dubbed the lockstep. But at last year's Conservative Party Conference, the Secretary of State announced that the lockstep would be scrapped and the Bill was amended accordingly.

There remains a disagreement between London and Cardiff about reform of the Barnett funding formula – a precondition set by Carwyn Jones for triggering the referendum on income tax devolution. And

there are certainly those in Welsh Labour who express concern about devolution of income tax – Peter Hain has done so recently, and Owen Smith has also done so. But, all in all, I think that our Part I report on the way towards implementation, with the acceptance that the Welsh Government needs to move from being a spending agency and to have the responsibility for raising a proportion of its own revenue – even if it will need to rely on financial support from London – a integral part of the social union.

The remit for Part 2 of our work was

> *To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.*

We formulated a vision for Part 2, and we tested this with people at public meetings from Abertillery to Beaumaris. Our vision was:

> *We believe that the people of Wales will be best served by:*
> - *a clear, well-founded devolution settlement that allows coherent political decisions to be made in a democratic and accountable manner, and*
> - *political institutions that operate effectively and work together in the interests of the people they serve.*
>
> *Devolution of power to Wales should benefit the whole of Wales and the whole of the United Kingdom*

The evidence we received from both Governments and many other witnesses made it clear that the issue of where that devolution line is drawn was contested all across the frontier.

Our fundamental response was to try to establish an intellectually coherent rationale for what our terms of reference called the "constitutional arrangements" of Wales. We did this on the basis of a set of principles against which we could judge the many contested issues that we had to consider. These principles were: accountability, clarity, coherence, collaboration, efficiency, equity, stability and subsidiarity. These principles for good governance are hardly startling in their originality, but their clear enunciation and their

adoption as the foundation for our recommendations, was enormously helpful.

Our conclusion was that the Welsh devolution settlement was unduly complex. There was broad support for further devolution, though there were concerns throughout Wales about the performance of the Welsh Government, and a sense of frustration that grew the further one moved away from Cardiff. There was also a general feeling that Welsh and UK Governments and institutions should work together better.

I do not have time to talk in detail about the important recommendations that we made about altering and rationalising the devolution boundary in areas like policing and justice, transport, broadcasting, water and energy. I will also pass over our recommendations about improved scrutiny where we called for more compatible data to be available to improve transparency, as well as for a larger Assembly to do the job of scrutiny to which every Executive should be subject.

We also made a number of apparently dull recommendations about better working together between London and Cardiff – apparently dull, I say, but recommendations that we regarded as crucial and central. These included a number of proposals for more effective intergovernmental and interparliamentary relations, including through the establishment of a Welsh Intergovernmental ministerial Committee, and also a better grip on cross-border issues, where we called for both Governments to put the citizen's needs at the centre of their thinking.

But I will say a little more about our principal recommendation to clarify the settlement: that Wales should move to a legislative model based on reserved powers – the single issue on which we received most evidence.

Many of you may be familiar with the issue, but in case you are not, it is a simple concept. In Wales powers are held by Westminster unless conferred upon the National Assembly. The powers of the legislatures and executives in Scotland and Northern Ireland are limited only by what is reserved to Westminster. Interestingly, we could not find another state in the world that has both the conferred and reserved powers models operating in different parts of the same union.

We concluded unequivocally that the reserved powers model would be better for Wales. It would be clearer for the public, for the institutions and for civil society to understand that the National Assembly is responsible for everything unless Parliament has reserved it. It would encourage more confident, effective government, and allow the public to better understand who needs to be held to account. It might even free up a little time in the Supreme Court, which has three times considered whether Welsh legislation is within competence on the reference either of the Attorney General or Counsel General – something that has never happened in Scotland. The Supreme Court's most recent decision – this week on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, with the Justices divided three to two – is pretty clear evidence that the legislative model is not clear.

Interestingly, the 1978 Scottish devolution legislation was based on the conferred powers model. The years of cogitation in Scotland on devolution that then followed the election of the Thatcher Government in London allowed Scots to recognise how flawed the conferred model was – something expressed trenchantly by the late, great Donald Dewar when he introduced the Scotland Bill in the House of Commons in 1998.

In many ways, moving to the reserved powers model is not a major change at all, and is certainly not the panacea to solve all the issues that were raised with us. It will not in itself change the powers that Wales has, but the process of deciding where powers sit will need to be reassessed and a new Act carefully drafted that will delineate precisely the powers to be reserved to Westminster, with those not reserved passing to Cardiff. This cleansing of the Welsh legislative stables will be therapeutic in itself. You could say that the process will flush out anomalies – if you will pardon the pun after recent speculation about devolution of hunting!

The idea of a move to reserved powers was resisted by the previous Secretary of State, but I am very pleased to say that it has now been accepted by all three Westminster parties. The present Government has undertaken to come forward with detailed proposals by St David's Day.

One argument against a move to the reserved powers model will be of particular interest to any of you who are lawyers. This is the argument that it is not possible to do so without creating a separate jurisdiction for Wales. This is both because it is argued there is no such concept as the law of Wales as distinct from the law of England and Wales, and because it would be next to impossible to reserve fundamental principles of civil law, or the criminal law in its broadest sense.

There are also those who argue in favour of a reserved powers model but believe that it would be essential to create a Welsh jurisdiction at the same time to avoid the complexities and uncertainties that would arise if the common law of tort, trusts, equity, contract etc were reserved to Westminster.

It will clearly be important to ensure that the reserved powers model does nothing to restrict the existing and future ability of the National Assembly to create criminal sanctions where it is necessary to support its wider devolved law making powers, or to exercise legislative powers in public law. If, for example, it wished to legislate to impose some contractual controls on bodies that provided services to the NHS in Wales, it should not be prevented from doing so because the law of contract was reserved.

We did not discount the complications that the drafter would face in this area. There are undoubtedly complexities that do not arise in either Scotland or Northern Ireland. However, the problems are not insuperable. We were particularly interested by the provisions of the Scotland Act 1978. This Act conferred on the Scottish Assembly the power to make criminal and civil law and it defined what it meant by those terms. If it is possible to define “civil law matters” and “crime” to confer them, then it is also possible to define them to reserve them.

We did not recommend the creation of a Welsh jurisdiction, in the sense of separate courts and separate legal professions. Wales certainly has two of the characteristics of a jurisdiction – a separate territory and separate laws (though at present the vast majority of law is shared with England). Our recommendations could be regarded as jurisdiction-lite: we believed that all judicial business affecting Wales should be able to be conducted in Wales, with High Court and Appeal Court judges who understood the special needs of Wales. As far as the professions are concerned, we recognise that it is

not in the interests of Welsh or English practitioners to debar them from practising on both sides of the border, but we do recognise that where the law diverges significantly, lawyers' practices will increasingly specialise in English or Welsh law. In our view, this pragmatism is in the interests of the citizen who should be able to employ lawyers from England or from Wales.

Let me now look to the future. I am going first to look at the possible mechanisms for considering the future Constitution of the United Kingdom, particularly the proposals for a Constitutional Convention. I will then indulge in some crystal ball gazing and speculate on what the constitutional position of Scotland, Northern Ireland and Wales may be in 20 years time. And I will also consider where England fits in to all of this.

Dyfal donc a dyr y garreg. Every drip wears away the stone. The almost imperceptible shifts in constitutional practice in the UK allow us a flexibility and adaptability that we perhaps ought to value. Constitutional change perhaps ought to be a process rather than an event. This school of thought believes we are particularly fortunate in the United Kingdom in not having a written Constitution.

Of course, we have a Constitution. Professor Vernon Bogdanor, in his History of the British Constitution in the Twentieth Century, argued that the historic British constitution based on tacit understandings more than codified rules might, at the time he wrote ten years ago, be in the process of transformation to a quasi-federal codified constitution, but that it also risked remaining in no-man's land because there was "little political will to complete the process, and little consensus on what the final goal should be".

Perhaps the consensus about the goal is still a way off, but I do believe that there is now a general political will to complete the process, and the vehicle for doing so is now most frequently seen as being through the establishment of a Constitutional Convention – something first called for, as far as I can gather, by Carwyn Jones. But what could such a Convention look like and what would it consider?

Conventionally, bodies of the great and good have been set up to ponder on constitutional questions. Kilbrandon, Richard, Calman have all been of this type. So was my own Commission.

A recent letter to William Hague from the Electoral Reform Society and sundry other experts called for any new Convention to involve "every section of society". "It is essential", they said, "that people are given a say in the shape of our political system", and they suggested that a Convention could be led by 30 to 100 people chosen randomly from the electoral roll.

There are three interesting international precedents. In Iceland, a new Constitution was agreed between 2009 and 2010 in a three stage process – a Citizens' Assembly of 1500 fed into a National Forum of 950 and to a Constitutional Council of 25 members who worked full-time over four months. In Ireland, a body consisting of 33 politicians and 67 citizens considered a number of tricky constitutional issues between 2012 and 2014. Finally in New Zealand, a Constitutional Advisory Panel – a group, admittedly, of the great and good, embarked on what they called a "national conversation" which resulted in over 120 meetings and 5250 written submissions, as well as 118000 individuals visiting their website.

All three of these countries are small nations, and I am not personally convinced that a model that mandated citizens to take part in the process would work in the UK. Would a random group of citizens really have the time, inclination and ability to rethink the British Constitution? And would they, in any case, be representative?

What about a Convention that worked in the way my Commission did? Each of the four main Welsh political parties nominated a person with enough seniority in their party to be able to depart from party orthodoxy. Non-political nominees were also distinguished – people like your former Vice-Chancellor.

But we were still a group of people picked by politicians, and I can readily see that we could be criticised on the basis of our ages, genders, ethnicities and general unrepresentativeness. In a more charged area, we have seen how two successive attempts to appoint a Chair to the child abuse inquiry have failed because of popular anger. Even the civic society-based Scottish Constitutional Convention of 1995 was recently described by a Labour MP who took part in it as "self-appointed", "elitist", and "ultimately unrepresentative" of Scottish society and not a model for a future constitutional convention. So there is a real dilemma about the way the Convention should be set up.

The next issue is the width of the potential agenda. In a pamphlet published just yesterday by the Constitution Society, Professor Bogdanor argued that the case for a convention is strengthened *because* constitutional issues are all inter-linked. To quote him:

Our constitutional problems must not be regarded as separate and discrete. They are in fact inter-connected….resolving the Scottish problem would be easier to achieve with reform of the electoral system. Resolving the English problem through decentralisation requires the reform of local government. The referendum on Britain's membership of the European Union and the proposal for a British Bill of Rights could impinge upon the Scottish Question and also upon the Northern Ireland settlement. A successful policy of devolution and decentralisation requires a clear understanding of what matters are fundamental to the United Kingdom as a whole – basic constitutional, social and economic rights – and what matters are capable of different treatment in different parts of the United Kingdom. It is because our constitutional problems are inter-connected that there is so strong a case for a constitutional convention.

And it is easy to think of other interlinked issues: House of Lords reform; direct democracy; gender; the Monarchy; democratising the judiciary; disestablishment of the Church of England and so on. There is no end to the potential list of constitutional issues that the Convention might consider.

Then there is the issue of its timetable. When would the Convention begin? When would it end? This may make it all unmanageable. As Professor Robert Hazell from the Constitution Unit at UCL has argued: "A constitutional convention sounds an attractive idea. But a convention established hastily, overloaded with too many tasks, inadequately staffed or required to report too quickly is almost certain to fail. That will be damaging to the cause of deliberative democracy as well as to constitutional reform."

A Convention is thus easier to advocate than to pin down. But if there is a Convention, it is certain to consider the issue of the nature of the United Kingdom as either a federation or a unitary state, or something in-between – what has been called a "quasi-federation".

Baroness Hale, the Deputy President of the Supreme Court, strikingly concluded a scholarly address to the 2012 Legal Wales Conference with these words: "the United Kingdom has indeed become a federal state with a Constitution regulating the relationships between the federal centre and the component parts."

Perhaps the Supreme Court has indeed taken on some of the functions of a Constitutional Court in a federation – arbitrating between the federal and state governments. But a true federation is based on equality of powers between all its constituent States.

We are some way from that, and when Nicola Sturgeon recently suggested that each of the constituent nations of the UK should have a veto on any proposal to leave the European Union, she was throwing down a rather cheeky and premature federalist gauntlet.

Her argument was based on the common provision in the Constitutions of federal nations that gives certain rights to the constituent States of a Union - rights they have by reason of their constitutional position and not by reason of their population. Thus in the USA, California and Wyoming have equal constitutional status as in Germany do Bremen and Bavaria, while in Canada there are some parts of the Constitution that can be modified only with the unanimous consent of all the provinces together with both Houses of Parliament.

I should say in parentheses that Sturgeon was right to identify a real constitutional crisis in waiting: England voting to leave the EU, and the other nations voting to remain. Scotland, Wales and Northern Ireland could be thrown out of the EU against their wishes – or England kept in against its wishes.

During our work with the Commission on Devolution to Wales, we increasingly realised that what we called "the problem of England" prevented a more rational constitutional settlement for the UK as a whole.

There are a number of distinct threads in this debate about England, and they are often mixed up: rebalancing the economy away from the South East; new government structures inside England; and some form of English Government.

English regional government is not a new idea. It was proposed by Gladstone in the Midlothian campaign, by Churchill in 1911 and, of course, by Tony Blair. From 2000, London has had a form of regional government, with a strong elected Mayor and a rather weak Greater London Assembly. Moves to spread regional government in England stalled in 2004 when voters in the North East overwhelmingly rejected the proposal for a North East Regional Assembly. The Blair Government's proposed referendums in the North West and Yorkshire and the Humber were then dropped.

There has been a recent revival in English support for some sort of regional empowerment. George Osborne and Nick Clegg have both talked about revival of strong northern city self-determination. The idea of some form of fiscal devolution to the cities is being canvassed, with the City Growth Commission Report last year arguing that allowing the 15 biggest UK cities to make their own decisions on tax and spending would generate £79bn.

An opinion poll published last November showed that some 80% of people in England support having more powers devolved to local areas. However, it is not easy to draw conclusions about forms of government from this: Professor John Curtice has suggested that the poll needed to be more specific because people might interpret "local area" in different ways and the result could change if they were asked about tax, education and policing separately.

While the strengthening of city regions might indeed empower Manchester or Newcastle and do something to rebalance the economy away from London, not all people in England live in cities. How would a city region based on Bristol, for example, reflect the wishes of Cornwall, or one based on Birmingham be regarded as locally-empowering in Hereford?

My perception from this side of the border is that regional identity is weak in England. I do not believe that there is an appetite in England for the creation of English regions with the legislative powers found in federal countries.

Could England then have powers to devolved to it as a nation? Could it have a similar status in the United Kingdom to Wales, Scotland and Northern Ireland? Support for an English Parliament in the

November survey stood (in England) at 53%, so the idea is no longer confined to an eccentric fringe.

But those who wish to see a federation have to face an uncomfortable fact: England, with 85% of the population and an even higher percentage of the wealth, would never tolerate a status equal to that of Scotland, Wales and Northern Ireland inside a United Kingdom federation. With the exceptions of Tanzania and Trinidad and Tobago, I am not aware of any federation where 85% of the population is in one unit.

The unfinished business since 1911 of House of Lords reform may appear to offer a beguiling way forward. Labour's recent proposal for a regionally elected House of Lords looks attractive. It reflects the position in countries like Australia or Italy. But the very fact that it has not been possible to agree on Lords reform in over 100 years suggests that we should not hold our breath for the creation of a regionally based upper House.

Then there is the subsidiary question of English votes for English laws, or EVEL as it is known in the political science trade. The infamous West Lothian Question: "Should MPs from outside England be entitled to determine laws that apply only in England, when MPs from England cannot determine laws outside England in devolved matters?" has been a dilemma since the time of Gladstone. The Scottish referendum has brought it to the front of the constitutional stage once more, with the BBC's November poll suggested that 66% of the English support the idea of allowing only MPs from England to vote on laws in the Westminster Parliament that affect only England.

The Commission chaired by my former colleague Bill McKay produced an elegant solution to the parliamentary aspect of the English question. Earlier this month, William Hague on behalf of the Conservatives proposed a stronger version of McKay. Under this, before a Bill affecting only England – or in some cases, England and Wales – is put to a final vote, it would have to have the approval of the English Grand Committee, a Committee consisting of MPs from England alone. But for its final vote, it would go before the House as a whole.

There are many difficulties here. Because of the Barnett formula, any Bill involving spending affects Scotland, Wales and Northern Ireland,

even if it ostensibly deals with England only. Take, for example, an imaginary Bill to privatise part of the non-operational policing function. It would not apply to Scotland, but would have a direct effect on Scottish funding by reducing public funding of English policing. And the Bill might give discretion to the National Assembly to decide in Wales whether the services should or should not be privatised. Would Scottish or Welsh MPs be excluded from consideration of the Bill under the Hague rules?

Nor do the Hague/McKay proposals solve the problems inherent in having the government of England and the government of the United Kingdom institutionally intertwined. As Gordon Brown has noted, no State in the world, federal or other, gives different statuses to different groups of its parliamentarians.

On the other side, I doubt that the Hague proposals will have satisfied those who want a stronger voice for England on laws that affect England alone. EVEL is, as they say, a wicked problem.

Let me finally do some crystal ball gazing for the other three countries of the United Kingdom.

Northern Ireland is relatively peaceful, but a deep-seated resentment between the two communities has not gone away. The forced coalition between DUP and Sinn Fein is always teetering on the edge of crisis. It is noteworthy that only 5% of Northern Ireland's school children attend integrated schools. There have been some successful cross-border institutions, and the Republic of Ireland has muted its traditional demand for an united Ireland. However, demographics favour the nationalist community: Irish identification is stronger among young people, with Catholic birth-rates outstripping protestant ones. If and when a referendum is called on reunification, I would not hold my breath for a peaceful outcome. So, despite the activities of so many people of goodwill on both sides of the border, I think we must at least contemplate new conflict. And I do not believe that most of us who live in Great Britain will ever truly identify the people of Northern Ireland – from either community – as just like us.

In the case of Scotland, we will see in the short term the consequences of the vow given in panic by the three London party leaders in the week before the 2014 referendum. There were cynics who thought that the timetable of agreement by St Andrew's Day for

Smith, and publication of draft clauses by Burns night would not be met. At least they have been confounded.

But there are influential voices inside both Conservative and Labour Parties who feel that the tax devolution proposals go too far, while there will undoubtedly also be those within the independence movement who will regard Smith's proposals as not going far enough. Nicola Sturgeon's reaction to the Smith Report was described as "grudging" and she has said that the draft clauses water Smith down even further. There may also be real practical problems in Smith's proposals – the devolution of all responsibility for income tax may leave Scotland in a monetary union with the rest of the UK, but not in a fiscal union.

Outlining substantial new powers for Scotland is always going to be much easier than reaching detailed agreement about those powers and their operation. English MPs, the London parties and the Treasury will all zealously seek to protect their own interests.

Let me give an illustration. Smith recommended that the Sewel Convention – that Parliament would not legislate on devolved Scottish matters without the consent of the Scottish Parliament – should become enshrined in law. The White Paper agreed. But the draft legislation proposes the insertion of a new subsection into the section of the existing law that provides for the supremacy of the UK Parliament in Scotland. It reads as follows:

> *(8) But it is recognised that the Parliament of the United Kingdom will not* ***normally*** *legislate with regard to devolved matters without the consent of the Scottish Parliament.*

Watch that little word "normally" in any legal document.

Especially if the SNP does well in the next UK General Election – and the latest polls have suggested that it might do very well indeed – there are likely to be new referendum demands - a "neverendum" that will only be determined when there is a yes vote. As Vernon Bogdanor observed in yesterday's pamphlet, "to keep Scotland within the Union will require exceptional reserves of sensitivity on the part of the Unionist parties, a sensitivity that they have not always shown in the past".

In any case, the unresolved questions about independence will not go away: can Scotland manage economically by itself, especially if oil prices remain low? What sort of monetary union will there be – could an independent Scotland really keep the pound? Will Scotland be able to join EU? And perhaps most of all, what does "independence" really mean in a connected and interdependent world? One outcome we ought to contemplate – and perhaps, in my view, the most likely one – is that Scotland will, to all intents and purposes, become independent while nominally remaining inside the United Kingdom.

Wales is not Scotland. Our GVA per head is 75% of the UK average compared to 99% in the case of Scotland. Scotland has been well served by the Barnett formula, and Wales has not been. Our border is much more porous than Scotland's. Scotland has retained civic institutions since 1707 and had, of course, emerged as a state in a way Wales never did in the early modern era.

Thus support for independence in Wales is very much lower: in September, an opinion poll showed just 3% wanted independence - the lowest ever level of support. At the same time, 14% either believed that the devolved institutions should be abolished or have their powers curtailed. 26% were content that the Assembly had the right powers, but 49% believed its powers should be extended.

So I believe that we will see further devolution to Wales within the Union; and I would naturally believe that this devolution should be based on what was recommended by my Commission. It was fortuitous that we had produced our reports just before the panic in Scotland. Thus there was a plan for Wales already on the shelf when it was needed. And there has been welcome progress – as, for example, a few weeks ago when the Prime Minister announced that the rail franchise would be devolved to Wales, as we had recommended.

Noises coming out of the interparty discussions that the Secretary of State has convened had initially seemed positive, though the First Minister sounded an altogether more pessimistic note at Question Time this week. Perhaps that is gamesmanship, but I do suspect that some of our proposals, such as the devolution of policing, are proving sticky. But we now have to wait to see what is announced on St David's Day – and then to see whether those proposals are endorsed in party manifestos for May.

One area where I hope that there will be progress is in enhancing the quality of intergovernmental cooperation – something to which both my Commission and the Smith Commission in Scotland gave great emphasis. The Joint Ministerial Committee met on 15 December 2014 and the Prime Minister and First Ministers agreed to commission work on a revised Memorandum of Understanding. This is a modest, but important, step forwards.

However, I do see problems: we are getting poorer rather than richer in Wales, and it may become increasingly difficult to argue both for the ability to do what we please autonomously and at the same time to expect increasing subvention from the United Kingdom. The arguments for the social union become a little stretched the more the paymaster is abused. And I do not myself believe that an independent Scotland will be good for Wales since it will leave us in a much more unbalanced Union.

The Prime Minister has spoken of the advantages of a rather untidy Constitution. Perhaps that is our destiny: a rather grudging unhappy marriage of four unequal partners, with the three smaller nations all jealous of one another and united only in their resentment of London – a resentment also felt in Truro, Huddersfield and Sunderland. Certainly I see no easy way forward to federalism or the sort of velvet divorce that split Czechoslovakia with relatively little acrimony. Nor do I believe that we are likely to see a stronger Union.

In the untied Kingdom, we are going to have to take care not to trip over one another's shoelaces.