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The House of Commons and Devolution¹

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Abstract

New Labour's Devolution programme represented a major reform to the working of the UK's constitution. While devolution has a longer pre-history than is sometimes appreciated, including in the form of the 1921-72 Stormont model of devolved governance in Northern Ireland, the post-1997 reforms were nonetheless a remarkable constitutional moment. However, there has been little attention paid to the collective implications of devolution for the House of Commons.

This article attempts to provide a stock-take on devolution so far as it has impacted Westminster since 1999. Its main argument is that the defining feature of the relationship between devolution and the House of Commons has been asymmetry. As has been long acknowledged, devolution has been an inherently asymmetric process, with Scotland, Wales and Northern Ireland each enjoying distinctive devolution dispensations. It should, therefore, not be surprising that this asymmetry has spilled over into the relationship between devolution and the UK Parliament. The impact of devolution on the House of Commons, and Westminster's scope for influence within the devolved nations post-devolution, defies a one-size fits all description. Instead, we need to take a four nations approach to understanding the full implications of devolution for the House of Commons.

Keywords: *devolution; UK constitution; British politics*

Introduction

In September 2020, the House of Commons Procedure Committee announced an inquiry into *The Procedure of the House of Commons and the Territorial Constitution*. This inquiry sought to look at the English Votes for English Laws (EVEL) standing orders, how legislative consent decisions of the devolved legislatures should be notified to the House, and "the procedural steps required to facilitate greater joint working between committees of each of the UK's devolved legislatures and Committees of the House of Commons".²

The Committee's inquiry represents a rare moment of reflection at Westminster on how it has been impacted and affected by devolution. Select Committees, in both chambers, have looked at devolution issues since 1999.³ However, these have often

¹ The author would like to thank the editors, an anonymous reviewer and Dr Robert Jones for their helpful suggestions and comments.

² House of Commons Procedure Committee (24 September 2020), Committee launch new major inquiry on House of Commons procedure and the territorial constitution, <https://committees.parliament.uk/committee/126/procedure-committee/news/119460/committee-launch-new-major-inquiry-on-house-of-commons-procedure-and-the-territorial-constitution/> [accessed 1 October 2020].

³ See, for example: House of Commons Justice Committee (2009), *Devolution: A Decade On*, Fifth Report of Session 2008–09, HC 529-I; House of Commons Public Administration and Constitutional Affairs Committee (2018), *Devolution and Exiting the EU: Reconciling Differences and Building Strong Relationships*, Eighth Report of Session 2017–19, HC 1485; House of Lords Select Committee on the Constitution (2016), *The Union and devolution*, 10th Report of Session 2015–16, HL Paper 149;

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been assessments of the broader constitutional impacts of devolution, or examinations of specific devolution proposals, with the Westminster dimension often limited to concerns about Parliamentary sovereignty or the question of inter-parliamentary relations. Certainly, there appears to have been little attempt to take stock of how the past two decades of devolution has affected the practice and procedures of the Westminster Parliament.

This article therefore attempts to provide such a stock-take on devolution, so far as it has impacted the House of Commons. As devolution has been an asymmetric process, with differing models of executive and legislative authority provided to the respective devolved institutions, this paper will seek to avoid a “one size fits all” analysis of the impact of devolution at Westminster. Instead, it will argue that, just as devolution has been asymmetric, so too the impact at Westminster has been asymmetric – varying considerably from nation to nation. This article will begin by setting out the context for devolution in the UK, it will then go on to discuss the initial response of the House of Commons. This paper will then progress to a detailed nation by nation breakdown of how devolution has impacted on the role of the House of Commons. We will then explore how inter-parliamentary relations have developed post-devolution before concluding with some final observations.

Context

In 1997, Labour was elected to power with a landslide majority and on a manifesto which included the establishment of devolution to Scotland and Wales. Referendums held later that year saw devolution endorsed by the electorates of those two nations (albeit in nail-bitingly close fashion in Wales). As a result, in 1999 the first elections were held for the newly created Scottish Parliament and National Assembly for Wales.

The establishment of political devolution for Scotland and Wales was a major constitutional development, forming a central part of what Bogdanor has described as a “New British Constitution”.⁴ However, 1999 (when the devolved institutions of Scotland and Wales held their first elections) can by no means be considered to be devolution’s year zero. Indeed devolution has a history which long predated the New Labour constitutional reform agenda, not just in terms of campaigns or debates surrounding devolution proposals, but also in terms of actually existing devolution.

Between 1921 and 1972 Northern Ireland enjoyed a model of devolution which was so extensive in terms of competencies and architecture that it might be considered to have had de-facto dominion status within the United Kingdom. Northern Ireland was, of course, created out of the furnace of the longstanding Irish Home Rule debate, with Ireland partitioned into two distinct administrative and political entities under the Government of Ireland Act 1920.

While the Act envisaged devolution to Northern and Southern Ireland, alongside pan-island mechanisms which could be the basis for a future unitary model of devolution

House of Lords Select Committee on the Constitution (2022), *Respect and Co-operation: Building a Stronger Union for the 21st century*, 10th Report of Session 2021–22 HL Paper 142.

⁴ V. Bogdanor, *The New British Constitution* (London: Hart Publishing, 2009).

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in Ireland, it only came into practical effect for the North. Northern Ireland was established with a bicameral devolved legislature (a House of Commons and an indirectly-elected Senate), powers over vast swathes of domestic policy (including the then nascent world of social security), a separate civil service, and perhaps most curiously of all (from today's gaze) a vice-regal officer in the form of the Governor of Northern Ireland.⁵

In terms of Northern Ireland's relationship with Westminster, there were two clear consequences of devolution. The first was that the number of Northern Irish Westminster constituencies was sharply reduced from the number that had existed for that geographical area prior to partition and devolution. Second, there emerged a convention that devolved matters would not be discussed by MPs at Westminster, nor would Westminster legislate for Northern Ireland in areas that were devolved without the consent of the Northern Ireland Parliament.⁶ While the old Stormont model of devolution came to an end in 1972, these arrangements have had a continuing legacy. Indeed, as will be later discussed, they can be seen as the ancestors of what is now known as the self-denying ordinance (whereby questions cannot be tabled on matters which are the responsibility of devolved, rather than UK, ministers) and the legislative consent convention.

This is not to dispute the significance of what materialised in the late 1990s. A century after leading Liberals and Labour figures called for "Home Rule all round", "New Labour" had successfully established devolved government in three of the UK's four home nations. Crucially, these reforms were asymmetric in nature, reflecting the unique relationships each of these nations have with the UK central state and their distinctive histories, cultures and demands for territorial recognition.⁷ Scottish devolution was established on a reserved powers model (i.e. all power is devolved save for those areas specifically reserved to Westminster) with the Scottish Parliament having primary law making powers over, and the Scottish Executive (now Scottish Government) given executive responsibility for, substantial swathes of domestic policy, including education, health, justice, policing and transport. Indeed, as a result of the questions put to voters in Scotland at the 1997 referendum, the Scottish Parliament also had the power to vary the basic rate of income tax by up to three pence in the pound.

As a result of the multi-party negotiations which concluded in the Belfast/Good Friday Agreement, Northern Ireland was also provided a substantial devolution settlement – reflecting its prior history of autonomy, including over social security and with its own civil service. The other unique aspect of Northern Ireland's devolution

⁵ D. Torrance, *Parliament and Northern Ireland, 1921-2021*, House of Commons Library Briefing Paper No. CBP-8884 (21 December 2020), pp.34-50.

⁶ A. Evans, "A Tale as Old as (Devolved) Time? Sewel, Stormont and the Legislative Consent Convention" (2020) 91 *Pol. Q.* 165; G. Walker and G. Mulvenna, "Northern Ireland Representation at Westminster: Constitutional Conundrums and Political Manoeuvres" (2015) 34 *Parliamentary History* 237, pp.242-244; A. Evans, "Parliamentary representation at Westminster and devolution: from the 'in and out' to EVEL" [2022] *PL* 9.

⁷ For a full discussion of how the asymmetric histories, cultures and traditions of the home nations have shaped the UK's territorial governance, see: J. Mitchell, *Devolution in the UK* (Manchester: Manchester University Press, 2009).

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dispensation, and again a consequence of the 1921-72 period of devolution, was its structure of government. Unlike the majoritarian Unionist one-party and one-community rule which dominated that earlier experience, the 1998 model was based around consociational power sharing (as had been temporarily attempted under the 1973-4 Sunningdale Assembly) with mandatory coalition government between the Unionist and Nationalist parties.

Wales, where support for devolution was perceived to be less strong than in Scotland (and indeed where devolution had been rejected by a four to one majority in 1979), had the most minimalist model of devolution. Ironically, given the failure of the 1979 referendum, this model was based closely on that earlier proposal.⁸ A National Assembly for Wales was to be established as a body corporate (i.e. with no formal legal split between the Assembly and its Executive Committee) and with only secondary legislative powers over the devolved matters which were conferred to it (a contrast to the primary legislative and reserved powers model of devolution offered to Scotland). As this paper will contend, this asymmetry has had clear implications for the House of Commons' relationship with, and experience of, devolution.

The initial response of the House of Commons to Devolution

As New Labour's devolution legislation progressed through the UK Parliament, attention turned to how Westminster should adapt to the reformed territorial constitution. In April 1998, the House of Commons Procedure Committee launched an inquiry into the *Procedural Consequences of Devolution*.⁹

The Procedure Committee published its main report for this inquiry on 19 May 1999. The Committee was wary of imposing a strict prohibition on discussing devolved matters, as had existed for much of the history of the old Northern Ireland Parliament, but concluded that the rules about questions should be amended. According to the Committee, these rules should "recognise the fact of devolution and limit the range of permissible questions accordingly", make clear to Ministers the areas with which the House will expect them to deal, and "avoid drawing Ministerial responsibility so tightly that questions about the relationship between the devolved legislatures and administrations and the United Kingdom government and parliament are ruled out of order". They therefore recommended a resolution that had been drafted by the then Clerk of the House:

"Subject always to the discretion of the Chair, and in addition to the established rules of order on the form and content of questions, questions may not be tabled on matters for which responsibility has been devolved by legislation to the Scottish Parliament, the Northern Ireland Assembly or the Welsh Assembly unless the question—

(a) seeks information which the UK Government is empowered to require of the devolved executive, or

⁸ R. Wyn Jones and R. Scully, *Wales Says Yes: The 2011 Devolution Referendum* (Cardiff: University of Wales Press, 2012), pp.40-42.

⁹ House of Commons Procedure Committee (1999), *The Procedural Consequences of Devolution*, Fourth Report of Session 1998-99, HC 185.

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(b) relates to matters which —

(i) are included in legislative proposals introduced or to be introduced in the UK Parliament,

(ii) are subject to a concordat or other instrument of liaison between the UK Government and the devolved executive, or

(iii) UK Government ministers have taken an official interest in, or

(c) presses for action by UK ministers in areas in which they retain administrative powers".¹⁰

While the Committee's report made other observations and recommendations, including expressing a preference for the territorial Grand Committees to be discontinued, it was the above recommendation which became the most important output of their inquiry. This recommendation would go on to be passed by the House of Commons as a resolution on 25 October 1999, becoming known as the "self-denying ordinance".¹¹

This was not the sole example of what might be broadly described as a politics of restraint adopted at the UK level post-devolution. During the passage of the Scotland Act 1998 through Parliament, Lord Sewel, a junior Scottish Office minister, told the House of Lords that the government expected "a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament".¹² This undertaking would go on to be enshrined in the Memorandum of Understanding reached between the UK and devolved governments, and the Devolution Guidance Notes (DGNs) produced by the UK government to assist civil servants in dealing with devolution issues.¹³ While initially limited to Scotland and Northern Ireland, this legislative consent convention was extended to Wales as a result of the Government of Wales Act 2006 providing a two stage process for the Assembly gaining primary legislative powers – first incrementally via the LCO process and then in full within the twenty devolved subject areas after the 2011 Welsh referendum.¹⁴ It would later be recognised (rather than purposefully enshrined) in law as a result of the Scotland Act 2016 and the Wales Act 2017.¹⁵

This politics of restraint can be seen as the House of Commons responding to devolution by returning to some of the key practices adopted during the existence of the 1921-1972 Northern Ireland Parliament. The self-denying ordinance can be seen as an heir to the earlier practice of avoiding discussion, or questioning, of devolved business at Westminster, although it must be stressed that the ordinance is much

¹⁰ House of Commons Procedure Committee (1999), *The Procedural Consequences of Devolution*, Fourth Report of Session 1998-99, HC 185, paras. 6-10.

¹¹ D. Natzler and M. Hutton (eds.), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* [Erskine May] (London: LexisNexis, 25th Edition, 2019), para. 11.13.

¹² HL Deb (21 July 1998), vol. 592, c.791.

¹³ Evans, "A Tale as Old as (Devolved) Time?" (2020) 91 Pol. Q. 165.

¹⁴ National Assembly for Wales Constitutional and Legislative Affairs Committee (March 2012), *Inquiry into Powers Granted to Welsh Ministers in UK laws*, paras. 9-18.

¹⁵ Scotland Act 2016, s.2; Wales Act 2017, s.2.

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less onerous than the state of omerta adopted, and strongly enforced, at Westminster for much of that earlier period. The legislative consent convention also has its (arguably much firmer) roots in the old Stormont experience, as Lord Sewel himself acknowledged in 1998.¹⁶

More generally, though, devolution did not entail a major reform of the House's working practices or internal organs. The legislative consent convention, which has become the subject of increasing debate post-Brexit, has not (at the time of writing of this article) been accompanied in any reforms to the House of Commons' procedures, e.g. to provide for a debate or statement when legislative consent is denied (although the Order Paper now indicates when consent has been sought and provided/denied).¹⁷ However, it is worth noting that one of the terms of reference for the Procedure Committee's current inquiry into the procedure of the House of Commons and the territorial constitution is "procedures for notifying the House of decisions made in devolved legislatures where relevant, including decisions on legislative consent motions."¹⁸

The three territorial Grand Committees, despite the evident desire of the Procedure Committee in its 1999 report for those bodies to cease functioning, continued to exist – although, as will be discussed below, only one has continued to meet frequently during the lifespan of devolution. So too did the three territorial Select Committees, albeit, as will be discussed in the next section, their workloads have, to varying degrees, been reduced.

While in broad terms this implies a picture of relative continuity, a much richer and dynamic picture materialises when one looks at the impact of devolution on a nation by nation basis. As the following sections of this paper emphasize, since devolution has been an asymmetric process so too has the impact of devolution on the House of Commons.

Asymmetric devolution = Asymmetric impacts on the Commons

Scotland

Of the three devolved nations, Scotland has seen the most marked, and arguably the most consistent, impact of devolution. As already noted, the Scotland Act 1998 established a powerful set of devolved institutions responsible for key areas of domestic policy. At the 2005 General Election, the new post-devolution reality was reflected in a reduction in the number of Scottish MPs from 73 to 59.

The markedly reduced remit of the Scotland Office (as it became known in 1999) post-devolution had a consequential impact on the Scottish Affairs Committee in the House of Commons. Gone were the days where the Scottish Office controlled the

¹⁶ HL Deb., 21 July 1998, c.791; Evans, "A Tale as Old as (Devolved) Time?" (2020) 91 Pol. Q. 165.

¹⁷ Erskine May, para. 27.6.

¹⁸ House of Commons Procedure Committee (24 September 2020), "Committee launch new major inquiry on House of Commons procedure and the territorial constitution", <https://committees.parliament.uk/committee/126/procedure-committee/news/119460/committee-launch-new-major-inquiry-on-house-of-commons-procedure-and-the-territorial-constitution/> [accessed 1 February 2021].

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education system or oversaw health policy in Scotland, and so the scope for scrutiny by the Scottish Affairs Committee also declined. The Scottish Grand Committee, which allowed Scottish MPs to debate matters of interest and also to scrutinise Scottish-only legislation, and which had been pitched as an alternative to devolution by the Conservative Party during the 1980s and 1990s, fell into abeyance and has not met since 2003.¹⁹

The decline in the role of formal mechanisms for representing Scottish interests at Westminster was in marked contrast to the continuing, indeed burgeoning, prominence of Scottish politicians at Westminster during this period. A number of Scottish Labour politicians played particularly eminent roles in ministerial office (with Scottish MPs holding all four of the “great offices of state” as well as, controversially, key departments such as education and health where responsibility was devolved to Scotland, prompting some columnists to bemoan a “Scottish Raj” governing England.²⁰

While the Scottish Affairs Committee’s role had been much reduced as a result of devolution, the Committee began to reassert itself after 2007 – when the SNP assumed power at the devolved level in Scotland – conducting a number of constitutionally themed inquiries. This trend continued in the run-up to the 2014 Scottish independence referendum when the Committee produced reports on the potential implications of Scottish independence for several policy areas, including currency, pensions, higher education and defence.²¹

As a result of the 2012 and 2016 Scotland Acts, there has been a growth in the number of policy fields where responsibility is shared concurrently between the UK: and Scottish governments – principally taxation and social security policies. The number of areas where policy responsibilities are either shared, or where there is some overlap, has also grown as a result of the UK’s withdrawal from the EU. These concurrent areas provide a new opportunity for Westminster, and in particular Scottish MPs, to conduct scrutiny of, and to seek to influence, policy developments post-devolution, as well as offering potential scope for strengthening ties with the Scottish Parliament. For example, the Scottish Affairs Committee and the Scottish Parliament’s Social Security Committee conducted “joint sessions” in March 2017 on the implementation of the partial devolution of social security powers to Scotland.²²

Finally, we cannot conclude a section on Scotland and Westminster without mentioning the electoral rise of the SNP and their status since 2015 as the third largest party in the House of Commons. Third party status does not bring the same level and extent of benefits that arise from being the “official opposition” in the House of Commons, but it does provide some notable advantages.

¹⁹ A. Evans, “Scotland at Westminster”, in M. Keating (ed.), *The Oxford Handbook of Scottish Politics* (Oxford: Oxford University Press, 2020), pp.592-593.

²⁰ T. Peterkin, “Britain run by Scottish Raj, claims Paxman”, *The Telegraph* (14 March 2005), <https://www.telegraph.co.uk/news/uknews/1485591/Britain-run-by-Scottish-Raj-claims-Paxman.html> [accessed online 1 December 2017].

²¹ D. Torrance, and A. Evans, “The Territorial Select Committees, 40 Years On” (2019) 72 *Parl. Affairs* 860, pp.868-870; Evans, “Scotland at Westminster”, p.592.

²² Evans, “Scotland at Westminster”, p.592.

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Since 2015, the SNP has been entitled to two Select Committee chairmanships, as well as representation on all committees (although it has chosen via deals with the “usual channels” to forego representation on some committees in return for additional seats on Scottish Affairs Committee). Within the main chamber of the House of Commons, third party status has guaranteed questions for the party’s Westminster leader at Prime Minister’s Questions, as well as speaking slots for other party spokespeople at set piece occasions, as well as after each Ministerial Statement or in response to Urgent Questions. The party is also allocated three of the twenty “Opposition Days” which are provided each parliamentary session, although it is expected that some of that time will be shared with other smaller opposition parties²³ As Evans has concluded, since 2015, “the SNP has had a unique platform from which to provide a distinctively Scottish voice to proceedings at Westminster”.²⁴

The relationship between Westminster and Scottish devolution has ebbed and flowed since 1999, however while some of the institutional mechanisms for representing Scotland or promoting debate and discussion on Scottish affairs have either been reduced in scope or fallen into abeyance, Scottish politicians have continued to have a strong influence at Westminster.

Wales

In Wales we have arguably seen the most significant process of evolution in terms of Westminster’s influence post-devolution. The model of devolution established for Wales after 1997 was, when compared to Scotland and then Northern Ireland, particularly modest in nature. While significant swathes of executive responsibility (essentially the full functions of the Secretary of State for Wales and the Welsh Office) had been devolved to the new Assembly, Westminster remained the sole primary legislature for Wales.²⁵

The transfer of the Secretary of State’s previous powers and responsibilities had a consequential impact on the potential scope for inquiry of the Welsh Affairs Committee, as well as reducing the potential grounds for oral and written questions which could be tabled by backbench MPs (as a result of the self-denying ordinance). However, Westminster continued to have sole responsibility for passing primary laws (statutes) for Wales, including in those areas where executive responsibility had been devolved. This resulted in a high degree of policy and legislative interdependency between Wales and Westminster, in turn leading to a number of incidents where the Welsh Affairs Committee and the National Assembly’s committees duplicated one another’s work. Such duplication produced frustration and resulted in a successful lobbying campaign for the Welsh Affairs Committee to have the power to conduct joint meetings with Assembly committees.²⁶

²³ L. Thompson, “Understanding Third Parties at Westminster: The SNP in the 2015 Parliament” (2017) 38 *Politics* 443.

²⁴ Evans, “Scotland at Westminster”, p.591.

²⁵ R. Rawlings, “The New Model Wales” (1998) 25 *Journal of Law and Society* 461.

²⁶ A. Evans, “Inter-Parliamentary Relations in the United Kingdom: Devolution’s Undiscovered Country” (2019) 39 *Parliaments, Estates and Representation* 98, pp.102-105.

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This power, initially granted on an interim basis in 2004, was formalised as Standing Order No. 137A(3) in 2005. The Standing Order provides that “the Welsh Affairs Committee may invite members of any specified committee of the National Assembly for Wales to attend and participate in its proceedings (but not to vote)”.²⁷ This rather modest provision has been one of the main procedural consequences of devolution for the House of Commons of devolution (particularly now that English Votes for English Laws has been repealed).

The dynamics between Westminster and Welsh devolution changed further as a result of the Government of Wales Act (GoWA) 2006. As briefly mentioned earlier, the Act provided a two-stage process for the Assembly to become a law making body. The first stage, as provided under Part 3 Schedule 5 of GoWA 2006, would see the Assembly bid, on a case by case basis, for competence to legislate on matters within the twenty devolved subject fields. The second stage, which was contingent on a referendum, would see the Assembly have full primary law making competence within the twenty devolved fields.²⁸

The first stage maintained Westminster’s key role in the development of Welsh devolution. Bids for legislative competence, via what was known as the “LCO (legislative competence order) process”, not only gave both Houses of Parliament a veto power, but also saw the Welsh Affairs Committee conduct scrutiny of draft LCOs.²⁹ The Committee embraced this role, conducting extensive pre-legislative scrutiny on draft LCOs. While it had been hoped that this process, and dual scrutiny in Parliament and the Assembly would facilitate inter-parliamentary relations and see full use made of Standing Order No. 137A(3), such formal cooperation failed (with one exception) to materialise – a consequence of draft LCOs being brought forward for scrutiny in the Assembly and at Westminster at different times.³⁰

As Torrance and Evans note, the 2007-2011 LCO process gave the Welsh Affairs Committee a much higher-profile in Welsh political life than it had arguably enjoyed since the advent of devolution in 1999.³¹ However, this higher profile came at the expense of some criticism of the Committee’s enthusiastic approach to scrutinising LCOs, particularly from those who had hoped for a rather more light touch approach from Westminster.³²

The LCO experiment came to an end in 2011. A referendum that March saw Welsh voters endorse, by a 64 per cent to 36 per cent majority, the Assembly moving to the second stage of the legislative journey outlined in GoWA 2006 – namely full primary legislative powers in the 20 devolved subject fields. Since then, the Wales Acts 2014 and 2017 have resulted in fiscal devolution and a move to a reserved powers model.

²⁷ House of Commons, *Standing Orders: Public Business*, Standing Order No. 137A(3) (2019).

²⁸ Wyn Jones and Scully, *Wales Says Yes*, pp.48-50, 85.

²⁹ S. Griffiths and P. Evans, “Constitution by Committee? Legislative Competence Orders under the Government of Wales Act (2007–2011)” (2013) 66 *Parl. Affairs* 480.

³⁰ Griffiths and Evans, “Constitution by Committee?” (2013) 66 *Parl. Affairs* 480, p.495; Evans, “Inter-Parliamentary Relations in the United Kingdom” (2019) 39 *Parliaments, Estates and Representation* 98, pp.104-105.

³¹ Torrance and Evans, “The Territorial Select Committees, 40 Years On” (2019) 72 *Parl. Affairs* 860, pp.871-872.

³² Griffiths and Evans, “Constitution by Committee?” (2013) 66 *Parl. Affairs* 480, pp.504-505.

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In 2020, the Assembly voted to rename itself as the Senedd Cymru – Welsh Parliament – capping its transformation from a body corporate Assembly which had only secondary legislative powers to a law making and tax raising legislature.

Westminster's influence, as a result, has declined markedly since 2011. However, that is not to say that Westminster has no influence when it comes to the governance of Wales. The devolution dispensation in Wales is still more limited than that enjoyed by Scotland and, in some respects, Northern Ireland. As Torrance and Evans note, these limits mean, for example, that the Welsh Affairs Committee continues to have the "scope to inquire into areas that would not otherwise be within the remit of other territorial committees"³³, such areas include policing, justice, the benefits system and aspects of energy policy.

In addition, Wales has always seen a number of areas, post-devolution, where responsibilities are shared. This too has continued in recent years. Tax policy is one particularly significant area, but these concurrent policy areas have also grown, as in Scotland and Northern Ireland, as a result of the UK's withdrawal from the European Union. As a result, even though Welsh devolution has enjoyed a remarkable transformation since 1999, and the number of MPs from Wales is due to be reduced (from 40 to 32) as a result of the Parliamentary Constituencies Act 2020 (), Westminster continues to be a powerful force.

Northern Ireland

Northern Ireland, the first part of the UK to experience devolved government, has been the place where there has been the most inconsistent and unsettled relationship between Westminster and devolution since the late 1990s. After the fall of the old Stormont model of devolution in 1972, direct rule was introduced. It was hoped that this would be a temporary measure while a new scheme of devolution could be agreed and introduced. In 1973, these efforts brought forth the Sunningdale Agreement – an attempt to introduce consociational (cross-community) power sharing government in Northern Ireland based on a coalition between the Ulster Unionist party and the SDLP.³⁴

However, Sunningdale collapsed in 1974 and direct rule became the standard operating model for governing Northern Ireland (despite other attempts to restore devolution in the province) until eventually power-sharing talks succeeded in 1998. The Good Friday, or, more formally, Belfast, Agreement included a number of strands, one of which was the creation of an Assembly and a power-sharing executive drawn from qualifying parties from both the unionist and nationalist communities.

Devolution promised a marked decline in the day to day interactions between Westminster and Northern Ireland, with most domestic policy matters set to fall within the remit of the Assembly and the Executive. However, what would follow was

³³ Torrance and Evans, "The Territorial Select Committees, 40 Years On" (2019) 72 Parl. Affairs 860, p.872.

³⁴ S. McDaid, *Template for peace: Northern Ireland, 1972-75* (Manchester: Manchester University Press, 2013).

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a pattern of turbulence with the Assembly and Executive only able to operate on a sporadic basis after 1998, with multiple suspensions occurring before direct rule introduced on a full time basis from 2002 until 2007.

During direct rule, transferred (i.e. devolved) matters were legislated for via Orders in Council.³⁵ For much of the period prior to the restoration of devolution in 2006/7, these Orders were scrutinised in Delegated Legislation Committees, with only a small number referred to the Northern Ireland Grand Committee for more detailed pre-legislative scrutiny. Although the Northern Ireland Affairs Committee's role was enhanced by direct rule, there were clear limits to its ability to scrutinise the full panoply of policy areas which had previously been the responsibility of the Northern Ireland Assembly and Executive.³⁶

The St Andrews negotiations in 2006 resulted in an agreement by the DUP and Sinn Fein, the dominant parties in their respective communities, to enter into government and nominate a First and Deputy First Minister. After a shadow period, full devolution returned after the 2007 Assembly election. What followed was a period of relative stability, with devolved government functioning for a decade until 2017 when the Renewable Heat Incentive (RHI) scandal prompted Martin McGuinness to resign as Deputy First Minister - a move which triggered the collapse of the Executive.³⁷

Unlike previous scenarios when the Executive had collapsed, this did not trigger a return to direct rule. Rather, there emerged an experiment in "indirect rule". According to Evans, the following were the key features of indirect rule: first, governance by civil servants, with ad hoc London intervention; second, this governance was strictly bounded in nature with civil servants restricted in their decision-making capacity; third, organic development—indirect rule was not a static beast, rather it changed over time; and fourth, constant cycles of "negotiation" to restore power sharing.³⁸

During the period of indirect rule, Westminster's role became, as it were, a "backstop", providing intermittent and ad hoc democratic legitimacy for the Northern Irish Civil Service which had been left in the unenviable position of governing Northern Ireland in the absence of devolved ministers. However, while Westminster's role was less structured than during formal periods of direct rule, that is not to say that it lacked influence. MPs and Peers were required to pass a number of budget Bills for Northern Ireland (to enable civil servants to continue to finance the running of public services), as well as Bills extending the period for Executive formation (i.e. to postpone the triggering of an early Assembly election). Indeed, the Northern Ireland Executive Formation etc. Act 2019 (the 2019 Act) was the subject of major amendments during its passage through Parliament. These amendments effectively extended same-sex marriage to Northern Ireland and liberalised abortion laws (both of which were areas which fell within devolved competence) should an Executive fail

³⁵ D. Birrell, *Direct Rule and the Governance of Northern Ireland* (Manchester: Manchester University Press, 2009), pp.40-68.

³⁶ D. Birrell, "Northern Ireland Business in Parliament: The Impact of the Suspension of Devolution in 2002" (2007) 60 *Parl. Affairs*, 306-311.

³⁷ A. Evans, "Northern Ireland, 2017-2020: An Experiment in Indirect Rule" [2021] *PL* 471.

³⁸ Evans, "Northern Ireland, 2017-2020: An Experiment in Indirect Rule" [2021] *PL* 471, p.473

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to be formed before October 2019. The deadline was missed and thus significant policy changes in Northern Ireland were brought in by Westminster as a by-product of indirect rule.³⁹

Despite these major social reforms, one should be wary of overstating Westminster's engagement in Northern Irish politics during indirect rule. As Evans has shown, all of the pieces of legislation needed for indirect rule to continue to function in Northern Ireland were fast tracked through Westminster – thus reducing the potential scope for debate and scrutiny by the UK Parliament. While the 2019 Act attracted the most attention of all of these pieces of legislation at Westminster, it too was fast tracked through the Commons in one day (although it then took three sitting days to proceed through the Lords).⁴⁰ What detailed scrutiny existed during indirect rule occurred through the Northern Ireland Affairs Committee. The Committee's inquiries into how some policy areas were functioning in the absence of devolved government included: *Health funding in Northern Ireland*, (an inquiry conducted jointly with the Work and Pensions Select Committee), and *Education funding in Northern Ireland*.⁴¹ However, the Committee did not set out, nor would it have been able, to replicate the level of scrutiny which the Assembly and its departmental committees would normally be able to undertake of devolved policy areas.

After multiple rounds of cross party negotiations, a deal (the optimistically titled "New Decade New Approach" agreement) was finally reached in January 2020 for the DUP and Sinn Fein to nominate a First and Deputy First Minister and for all five principal political parties (DUP, Sinn Fein, SDLP, UUP and Alliance) to re-enter the Northern Ireland Executive. With a restored Executive and Assembly, it might have been expected that Westminster's role would reduce in relation to Northern Ireland. However, Westminster has had to pass legislation to implement some of the commitments of New Decade New Approach, as well as being deployed as a backstop to legislate if issues like language rights cannot be delivered at Stormont.

More significantly, the continuing impasse regarding the Northern Ireland protocol has prompted fresh instability at Stormont. It first resulted in the then DUP First Minister, Paul Givan resigning in February 2022, leaving the Executive unable to function fully and with caretaker Ministers operating instead. Since then, the DUP has cited concerns about the protocol in defence of the party's decision, post the 2022 Assembly election (when for the first time Sinn Fein topped the poll and returned the single largest number of MLAs), to block the appointment of a new

³⁹ Evans, "Northern Ireland, 2017-2020: An Experiment in Indirect Rule" [2021] PL 471, p.477; J. Sargeant and J. Rutter, *Governing without Ministers: Northern Ireland Since the Fall of the Power-Sharing Executive* (London: Institute for Government, 2019), p.31.

⁴⁰ Evans, "Northern Ireland, 2017-2020: An Experiment in Indirect Rule" [2021] PL 471, pp.479-480.

⁴¹ Northern Ireland Affairs Committee (2019), *Health funding in Northern Ireland*, First Report of Session 2019, HC 300; Work and Pensions and Northern Ireland Affairs Committees (2019), *Welfare Policy in Northern Ireland*, First Joint Report of the Work and Pensions and Northern Ireland Affairs Committees, HC 2100; and Northern Ireland Affairs Committee (2019), *Education funding in Northern Ireland*, Ninth Report of Session 2017-19, HC 1497.

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Executive or to even allow a Speaker to be nominated so that the Assembly can function as a scrutiny body.⁴²

Political volatility thus remains the order of the day in Northern Ireland, making it much more likely that Westminster will continue to have an influence, and importance, in the day to day governance of the province far beyond that envisaged by the devolution settlement.

England

Devolution to Scotland and Wales, as well as the return to devolved government (albeit less consistently) in Northern Ireland, has raised a series of questions about the governance of England, both in terms of potential devolution within England as well as for how English interests might best be protected or represented at Westminster. As this paper is focused on the implications of devolution for the House of Commons, we will explore the latter set of questions. These have encompassed attempts to accommodate English interests and concerns through dedicated committees, and more prominently via English Votes for English Laws (EVEL) as a response to the “West Lothian Question”.

English Committees

The Standing Committee on Regional Affairs was originally established in the 1970s (around the time that devolution was being proposed for Scotland and Wales by Harold Wilson’s government). While it fell into abeyance in 1979, it remained in the House’s Standing Orders and a revival was attempted in 2000 in the wake of New Labour’s devolution programme. The Regional Affairs Committee was based on the European Committees that had been established following the UK’s accession into the then European Communities in 1973. Proceedings were split into two parts: 1) a slot in which a Minister of the Crown could make a statement and then take questions from Members; followed by 2) time for debates on matters which had been referred to the Committee (based on the general motion “[t]hat the Committee has considered this matter”).⁴³

The Committee last met in 2004, although it continues to exist in the House’s Standing Orders. Between 2009 and 2010, the Committee was, however, temporarily displaced by the establishment of regional Select Committees. In 2008, the House of Commons Modernisation Committee had recommended the establishment of regionally focused select and grand committees as a means of resolving concerns about regional accountability in England. As a result, on 12 November 2008, MPs passed a temporary Standing Order to establish Select Committees for the East Midlands, East, North East, South East, South West, West Midlands and Yorkshire and Humber regions of England (a London Select

⁴² BBC News 13 May 2022, NI Election 2022: Prime Minister to visit NI as DUP blocks Assembly, https://www.bbc.co.uk/news/uk-northern-ireland-61427418?at_campaign=KARANGA&at_medium=RSS [accessed 14 May 2022]

⁴³ HC Debates (Hansard), 11 April 2000, Vol. 348, cc. 289-338; Erskine May, para. 39.61.

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Committee would later be established in June 2009). These new committees were given a remit to examine regional strategies and the work of regional bodies – principally the Regional Development Agencies.⁴⁴

As Torrance and Evans note, these regional select committees “enjoyed a fleeting existence”. They were the subject of boycotts by the then opposition Conservative and Liberal Democrat parties, and were criticised for their lack of visibility. Unsurprisingly, the temporary Standing Order which provided for their existence was not renewed after the 2010 General Election when Labour lost power and was replaced by a Conservative-Liberal Democrat coalition government.⁴⁵

The West Lothian Question and EVEL

Westminster has for centuries operated as a dual-hatted legislature – operating as a pan-state legislature, as well as the domestic legislature for the constituent parts of the UK. While this dual-hatted role was perhaps less constitutionally problematic prior to devolution, the prospect of asymmetric devolution carving out this domestic role in some, but not all, parts of the UK has long raised concerns about the parliamentary representation and voting rights of the affected areas. Or to put it more bluntly, in the words of the Cabinet Office’s Constitution Unit in 1975, “it is often argued that devolution (particularly legislative devolution) should entail either a restriction of voting rights or a reduction in the number of MPs at Westminster”.⁴⁶

The history of these debates has been covered in detail elsewhere.⁴⁷ For the purposes of this article, it is worth noting that these debates, which had originally emerged in the context of Irish Home Rule, became particularly focused on the voting rights and representation of Scottish (and to a lesser degree Welsh) MPs in the 1970s – when it earned the title the West Lothian Question. Following the introduction of devolution to Scotland and Wales in the 1990s, the Conservative Party spent considerable time developing its response to the West Lothian Question: EVEL.

EVEL would finally become a political reality after the 2015 General Election, when after fifteen years of Conservative policy development of, and support for, EVEL, on 22 October 2015, the House of Commons voted by a margin of 312 votes to 270 to amend the Standing Orders of the House and to establish a system of EVEL. Essentially, EVEL saw the Speaker certify Government legislation prior to Second Reading whether the Bill in question, either in whole or in part, applied solely to

⁴⁴ Torrance and Evans, “The Territorial Select Committees, 40 Years On” (2019) 72 *Parl. Affairs* 860, pp.873-874.

⁴⁵ Torrance and Evans, “The Territorial Select Committees, 40 Years On” (2019) 72 *Parl. Affairs* 860p.874.

⁴⁶ The National Archives (TNA), CAB 198/533: Bantock to Elridge, 6 Nov. 1975; A. Evans, “Devolution and Parliamentary Representation: The Case of the Scotland and Wales Bill 1976-7” (2018) 37 *Parliamentary History* 274, p.278.

⁴⁷ A. Evans, “Parliamentary Representation at Westminster and Devolution: From the ‘In and Out’ to EVEL” [2022] PL 9; Walker and Mulvenna, “Northern Ireland Representation at Westminster: Constitutional Conundrums and Political Manoeuvres” (2015) 34 *Parliamentary History* 237, pp.238-242; V. Bogdanor, *Devolution in the UK* (Oxford, Oxford University Press, 1999), p.30; J. Mitchell, “Devolution”, in D. Brown, R. Crowcroft and G. Pentland (eds.), *The Oxford Handbook of Modern British Political History* (Oxford: Oxford University Press, 2018), p.177.

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England or to England and Wales and would otherwise fall within devolved competence. Theoretically, Bills certified as wholly English only, would then be sent after second reading for its Committee Stage to a public bill committee consisted solely of English MPs. Otherwise, where only parts of a Bill were certified as English or English and Welsh only, the respective legislation would proceed as usual through Second Reading and Committee and Report stages.⁴⁸ After the Report Stage, the Speaker would re-certify any such Bill and if it still contained English/English and Welsh only provisions then it would be referred to a Legislative Grand Committee where English and/or English and Welsh MPs would need to provide their consent. If consent was granted then the legislation would have its Third Reading before the whole House as usual. Lords Amendments to Government legislation, as well as Statutory Instruments, would also be certified by the Speaker prior to consideration in the Commons and both required a double majority (of both English/English and Welsh MPs and the House as a whole) to be accepted.

A fuller analysis of the EVEL Standing Orders, their operation and demise can be found elsewhere.⁴⁹ The Standing Orders were suspended on 22 April 2020 as part of a package of emergency procedural reforms which had been implemented to keep the Commons functioning during the Covid-19 pandemic. As Evans notes, even when the hybrid arrangements changed over the course of the pandemic, “EVEL would remain in procedural purgatory”.⁵⁰ On 13 July 2021, the plug was finally pulled and the House of Commons voted to abolish EVEL.

The abolition of EVEL may not have been widely mourned, but it ended the most significant procedural adaptation in the House of Commons to devolution. The move against the Standing Orders may reflect the “muscular unionist” statecraft of the current administration and the fact that unlike pre-2015, the Conservative Party now has respectable levels of representation across Great Britain and is, as a result, not the same party that in opposition came to develop and endorse EVEL.⁵¹ However, it leaves the West Lothian Question unanswered as well as the broader question of how England’s rights and interests should be best defended and represented within a House of Commons which continues to wear two hats as a pan-Union and English legislature.

⁴⁸ EVEL also included provision for English, Welsh and Northern Irish only votes in relation to Finance Bills (reflecting the greater level of fiscal devolution to the Scottish Parliament).

⁴⁹ D. Gover and M. Kenny, “Five Years of EVEL”, UCL Constitution Unit blog, (23 October 2020) <https://constitution-unit.com/2020/10/23/five-years-of-evel/> [accessed 2 June 2021]; D. Gover and M. Kenny, “Answering the West Lothian Question? A Critical Assessment of ‘English Votes for English Laws’ in the UK Parliament” (2018) 71 *Parl. Affairs* 760; Evans, “Parliamentary Representation at Westminster and Devolution: From the ‘In and Out’ to EVEL” [2022] PL 9.

⁵⁰ Evans, “Parliamentary Representation at Westminster and Devolution: From the ‘In and Out’ to EVEL” [2022] PL 9; See: S. Priddy, *The Coronavirus Timeline: Measures Taken by the House of Commons*, House of Commons Library (26 May 2021), <https://commonslibrary.parliament.uk/house-of-commons-coronavirus-timeline/> [accessed 1 June 2021].

⁵¹ A. Evans, “Parliamentary Representation at Westminster and Devolution: From the ‘In and Out’ to EVEL” [2022] PL 15-18

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Inter-parliamentary relations

Inter-parliamentary relations (IPR) have generally been considered to be relatively weak and underdeveloped post-devolution.⁵² While at the official-to-official level there are now relatively well engrained forums and networks to facilitate inter-parliamentary cooperation and information sharing, at the political level the record has been much less consistent.

In terms of the political level, Committees have been at the vanguard of driving closer inter-parliamentary relations. Procedurally, the most formalised arrangement is that enjoyed by the Welsh Affairs Select Committee - Standing Order No. 137A(3). The specifics of this Standing Order were discussed above, but it is worth reiterating that with the abolition of EVEL it is now the main surviving procedural adaptation in the House of Commons to devolution. It also seems to be one tangible area where further reform, and enhancement of inter-parliamentary relations, may be possible.

The Procedure Committee in its 1999 report appeared to be sympathetic to joint meetings of House of Commons and devolved committees, but ultimately the Committee did not recommend formal joint meetings between Commons and devolved committees due to concerns about the applicability of Article IX of the Bill of Rights (which underpins parliamentary privilege).⁵³ When the House's Standing Orders were eventually amended to accommodate joint meetings, they were limited to Wales due to the nature of that nation's devolution settlement. However, the current Procedure Committee's inquiry into *The Procedure of the House of Commons and the Territorial Constitution* has found considerable support for the Standing Order to be extended more generally.⁵⁴

That the Standing Order remains limited to Wales is a legacy of the asymmetric nature of devolution and the jagged edges and overlapping spheres of responsibility that defined Welsh devolution, particularly between 1999 and 2011. However, as noted earlier, there has been a growing trend in recent years towards concurrent policy areas. As a result, the Public Administration and Constitutional Affairs Committee (PACAC) argued in 2017 that "it makes little sense, given the increasing number of concurrent responsibilities, for [Standing Order No.] 137A(3) to continue to be limited to the Welsh Affairs Committee".⁵⁵

As a demonstration of the above points, in 2017 the Scottish Affairs Committee (SAC) and the Scottish Parliament's Social Security Committee (SSC) held two "joint meetings", in Holyrood on 13 March and in Westminster on 20 March, examining "how the Scottish and UK governments are co-operating to ensure a smooth

⁵² House of Commons Public Administration and Constitutional Affairs Committee (PACAC), *The Future of the Union, Part Two: Inter-institutional Relations in the UK*, Sixth Report of Session 2016–17 (2017), House of Commons, HC 839, para. 79.

⁵³ House of Commons Procedure Committee (1999), *The Procedural Consequences of Devolution*, Fourth Report of Session 1998-99, HC 185, paras. 43-49.

⁵⁴ Procedure Committee (Monday 22 March 2021), *Oral Evidence: The Procedure of the House of Commons and the Territorial Constitution*, HC 838, Qq41-44; Procedure Committee (Monday 19 April 2021), *Oral Evidence: The Procedure of the House of Commons and the Territorial Constitution*, HC 838, Qq 69-71.

⁵⁵ PACAC, *The Future of the Union, Part Two: Inter-institutional Relations in the UK*, para. 96.

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transition of the newly devolved powers, in particular the effectiveness of the Joint Ministerial Working Group”. As Evans has observed, while these were joint sessions in all but name, “procedural creativity had to be deployed to facilitate joint working” (essentially the members of the of the visiting committee in each session were technically listed as witnesses).⁵⁶

Another area where committees have been the drivers of IPR can be found in the Interparliamentary Forum. Originally established as a result of the House of Lords European Union Committee’s *Brexit: Devolution* report, the Interparliamentary Forum on Brexit brought together members from relevant committees in both Houses of Parliament and the three devolved legislatures. However, while the original Forum met on a regular basis between its establishment in 2017 and September 2019, it was at best a semi-formal arrangement and lacked any legal or procedural underpinning.⁵⁷ The original forum did not meet again after September 2019 (a result of first the 2019 December General Election and the time it took for new Commons Committees to be appointed and then the Covid-19 pandemic). However a new body, this time known simply as the Interparliamentary Forum (the Forum), was established in February 2022, following discussions between the Lord Speaker and his devolved counterparts.

At the Forum’s inaugural meeting, it was agreed that its primary purpose should be to “provide a mechanism for dialogue and cooperation between parliamentarians from the Northern Ireland Assembly, Scottish Parliament, Senedd Cymru/Welsh Parliament, House of Commons and House of Lords in meeting common scrutiny challenges arising from the new constitutional arrangements following the UK’s departure from the EU and to co-operate in finding solutions to overcome them”. Specifically, it was agreed that the Forum’s initial priorities would include oversight of

- Inter-governmental relations including agreeing a joint annual report on addressing common scrutiny challenges;
- The operation of international agreements including the Trade and Co-operation Agreement, the Withdrawal Agreement and the Ireland/Northern Ireland Protocol;
- The UK internal market including the UK Internal Market Act and Common Frameworks;
- The impact of the new constitutional arrangements on the legislative process including the use of secondary powers and the legislative consent process.⁵⁸

⁵⁶ Evans, “Inter-Parliamentary Relations in the United Kingdom: Devolution’s Undiscovered Country” (2019) 39 *Parliaments, Estates and Representation* 98.

⁵⁷ J. Sheldon and H. Philip, Written evidence (FGU0048) submitted to the House of Lords Constitution Committee’s Inquiry into the Future Governance of the UK, 2021.

⁵⁸ House of Commons Public Administration and Constitutional Affairs Committee, “The First Inter-Parliamentary Forum to agree Terms of Reference”, (1 March 2022), <https://committees.parliament.uk/committee/327/public-administration-and-constitutional-affairs-committee/news/161421/the-first-interparliamentary-forum-to-agree-terms-of-reference/> [accessed 1 February 2022].

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Concluding thoughts

New Labour's devolution programme represented a fundamental reform to the UK's constitution. While devolution had existed within these isles previously, the scope of the devolution programme of the late 1990s was far more extensive and "closer to home" than the 1921-72 Stormont experiment, when Northern Ireland swiftly became "a place apart" from the rest of the UK state. For the UK Parliament, devolution meant that it had gone from occupying a dual-hatted role as a UK-wide and domestic legislature for all the individual constituent nations, to a more complex arrangement where the second hat has been carved out to varying degrees for the devolved nations. It is now only in England where the UK Parliament fully retains that dual-hatted role.

That dual-hatted role for England, and the continuing ability of MPs from Scotland, Wales and Northern Ireland to vote on health or education reform in England, despite those functions being devolved in their respective nations, has long been regarded as a constitutionally problematic consequence of devolution. It eventually resulted in the single biggest procedural reform to the House of Commons post-devolution: the six year experiment with English Votes for English Laws (EVEL). The whole EVEL process can be seen as a contest between Parliament two hats. In the first instance, the establishment of the EVEL Standing Orders was arguably an attempt to reassure English MPs and/or voters that the UK Parliament could effectively fulfil its function as an English domestic legislature. The decision to rescind the Standing Orders, on the other hand, was not just a consequence of the oft-mentioned complexity of EVEL, but a deliberate decision to emphasise the first of Parliament's hats: that of a pan-Union legislature.

EVEL represented the latest, and the most substantial, of a number of efforts to address the English question through reforms at Westminster. With the rescinding of the EVEL Standing Orders, the difficulties of Westminster being a dual-hatted Anglo-UK legislature remain unresolved, although so long as there is a UK government with a majority of English and UK seats then those tensions are less acute.

England is a pertinent reminder of the asymmetric nature of the post-1997 devolution dispensations, and the resulting asymmetric impact at Westminster. As this article has sought to highlight, while there have been some important general responses/adaptations to devolution at Westminster, such as the self-denying ordinance and the legislative consent convention, the story of devolution and the House of Commons has been much more one based around asymmetry. Devolution has had differing implications for the House of Commons depending upon which devolved nation one is focusing. In Scotland, for example, the story of life post-devolution was generally a consistent one – substantial powers were devolved away from Westminster and Whitehall, resulting in a marked reduction in their role in Scottish politics. However, the constitutional question has given a new impetus to bodies like the Scottish Affairs Committee since the SNP first took office at the devolved level in 2007, while the growing number of concurrent policy fields is also providing additional opportunities for Westminster influence. In Wales, the story was much less static – a reflection of the notably more modest devolution scheme with

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which Wales was originally afforded and the dramatic increase in the powers of the Assembly (now the Welsh Parliament) in subsequent devolution statutes. Today Wales now has a tax-levying, primary legislative Parliament, operating under a reserved powers model of devolution. However, the number of reservations is still greater than in Scotland or Northern Ireland, meaning that Westminster continues to have responsibility over criminal justice and policing in Wales.

As for Northern Ireland, here we find the greatest turbulence. The Assembly and Executive created by the Northern Ireland Act 1998 has substantial competence. When these institutions function, Westminster plays little active role in Northern Ireland's political life. However, these institutions have not operated on a consistent basis, save the decade of relative stability between 2007 and 2017. Instead, there have been multiple episodes of direct rule, resulting in Whitehall having to take executive responsibility for Northern Ireland, and Westminster having to undertake policy scrutiny as well as legislative responsibility. After a novel three year period of indirect rule when civil servants were left to govern Northern Ireland, with Westminster providing sporadic democratic legitimation for their actions and ad hoc interventions (e.g. passing budget legislation and extending the window for a new government to be formed), devolution was restored in 2020.⁵⁹ At the time of writing, it remains to be seen whether this restoration will last.

It is also uncertain what, if anything, the Procedure Committee will recommend as part of its inquiry into *The Procedures of the House of Commons and the Territorial Constitution*. It may well be that the Committee recommends that the legislative consent convention should be given a firmer footing (or rather a footing at all) in the procedures of the House of Commons. It might also recommend that the provisions of Standing Order No. 137A(3) should be extended more broadly beyond the Welsh Affairs Committee. Both of those potential recommendations would represent a marked increase in the House's general response to devolution. However, so long as the UK's territorial constitution remains asymmetric, it is highly likely that the relationship between devolution and the House of Commons will continue to also be asymmetric.

⁵⁹ Evans, "Northern Ireland, 2017-2020: An Experiment in Indirect Rule" [2021] PL 471.