



## Constitution Committee

### Corrected oral evidence: Future governance of the UK

Wednesday 13 October 2021

10.35 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Doocey; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Hope of Craighead; Lord Howarth of Newport; Lord Howell of Guildford; Baroness Suttie.

Evidence Session No. 11

Heard in Public

Questions 136 - 158

#### Witness

I: Professor Iain McLean, Professor of Politics, Nuffield College, University of Oxford.

#### USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on [www.parliamentlive.tv](http://www.parliamentlive.tv).

## Examination of witness

Professor Iain McLean.

Q136 **The Chair:** Welcome to our witness. This is the Constitution Committee, as you know. We are conducting an inquiry into the future governance of the United Kingdom, and we are very grateful to you, Professor McLean, for coming along in person and talking to us for our first hybrid meeting. You have written quite a lot over the last few years, and you have been very directly involved in some aspects of government.

Can we start in general terms by asking you for a stocktake on where you think the state of the union is in constitutional terms at the moment, and what you would say are the main pressure points and difficulties that we are facing?

**Professor Iain McLean:** With pleasure, Chair. I need to start with a disclaimer, rather boringly, that nothing that I am about to say is to be taken as representing the opinion of the Northern Ireland Fiscal Commission, which is currently sitting.

You have heard from a number of witnesses with whom I can only agree that the state of the union is pretty fragile at the moment, and witnesses who have already spoken to you have made points with which I would concur. I think that what many people have described as the muscular unionism of the current Government is not, in my view, helping the cause of the union. I am not being politically partisan here, but I observe that, at least in Scotland and Wales, the Scottish Government and Welsh Government respectively are considerably more popular than the UK Government, ditto their Ministers. Therefore, UK Ministers taking a more active part in the politics of those countries may not achieve the ends that they hoped it will.

Sewel is a very painful pinch point—I see you had a lot of evidence and some very searching points made by Lord Hope to previous witnesses—and I concur that it is a difficult area.

The fact that English votes on English laws was abolished on a Friday afternoon recently has surprised some of your witnesses and it also surprises me somewhat.

Then there are much more long-standing things, such as the asymmetry of devolution, with the vast majority of the population of the UK being in England. There are current issues such as, for ever, the status of Northern Ireland, but especially the status of Northern Ireland now, under the protocol.

These are a few of the difficult issues, in my view.

**The Chair:** They are difficult issues. Do you think we need a sort of big-bang approach to the constitution, or do you see incremental change and incremental attention being given to these separate problems? Can they be looked at separately, rather than in a co-ordinated way?

**Professor Iain McLean:** A big-bang approach is not going to happen. We are not in Philadelphia in 1787, in a position to rewrite stuff from scratch. So by default, I think, reforms will have to be incremental, but they will have to work with one another.

**The Chair:** You have listed quite a few that I think we will come on to in more detail as we go along. Lord Hennessy—sorry, I was about to call you Professor Hennessy; you are still a professor really—would you like to come in?

Q137 **Lord Hennessy of Nympsfield:** Professor McLean, it is very good to see you again. Can I follow up the Chair's opening with another general-themes question? I do not know if you are still teaching undergraduates, but if you were, the beginning of term is the Autumn term about now. What if a clever first-year undergraduate said to you, "What is the British constitution for?" What would you reply?

**Professor Iain McLean:** I missed some of that, Lord Hennessy, because the line was poor, but I understand you to have asked: what would I be telling undergraduates as to what the British constitution is for? I might give the rather dry answer that the constitution is rules about rules, rules about procedure, and ways of managing disagreements. I do not think I would give, or even attempt to give, a very original answer, but I hope that is slightly helpful.

**Lord Hennessy of Nympsfield:** And if the clever undergraduate said, "What is truly singular about the British constitution?", how would you reply to that?

**Professor Iain McLean:** I missed the crucial word, Lord Hennessy.

**The Chair:** I think Lord Hennessy was asking what is particularly "singular" about the British constitution.

**Professor Iain McLean:** Thank you. Of course, as is often noted, the fact that it is not codified in a single document is fairly singular, as is the fact that it depends on conventions, some written, some not. And in a quotation that Lord Hennessy would have used many times to his students, as I have to mine, "We live under a system of unwritten understandings. Unfortunately, the understandings are not always understood". That was said by an academic about 100 years ago.

**The Chair:** That is like the known unknowns and the unknown unknowns.

Q138 **Lord Howell of Guildford:** Thank you. Good morning, Professor McLean. We come to the central question of the doctrine of parliamentary sovereignty, which you express some doubts about—you feel it has been eroded—and there is a general debate raging on whether it fits into the modern world. How do you see this problem? Is there not a central dilemma here between decentralisation of taxation and powers, which is what would result from a less centralised system, and the need centrally for greater powers in order to redistribute resources in line with needs?

These two things are at completely opposite poles. How can they be pulled together?

**Professor Iain McLean:** They are managed with varying degrees of success in many federal countries in the world, and in some of my writing I have drawn attention to Australia as a regime that manages both redistribution from the centre and autonomy for the states within their respective spheres of influence and power. So it can be done. It is done in some countries, I believe, better than in the UK, and I have to say that the mess that we are in does appear to have become a little deeper, with confusion over the respective roles of the UK Government and the devolved Governments.

**Lord Howell of Guildford:** How feasible is it here? The Acts of Union abolished the Scottish Parliament, abolished the English Parliament and created a union Parliament, which is, in a sense, central and all powerful. How feasible is it to start unravelling that?

**Professor Iain McLean:** It did that, of course, and it is important to acknowledge, as you just have, that they abolished both the Scottish and the English Parliament. In other words, the UK Parliament is not the English Parliament continuing. The Acts of Union also contained in their original text some guarantees of Scottish autonomy in matters of education, law and religion, which have on the whole been honoured. So right back in 1707, policymakers were grappling with the dilemma that you have raised, but, on the whole, quite successfully in the matters that mattered in 1707. Of course, other matters have come up since that have been more difficult to reconcile.

**Lord Howell of Guildford:** Thank you.

Q139 **The Chair:** Do you think Covid, and the experience of Covid, has actually clarified any of that or exacerbated the difficulties between the central Westminster Government and the devolved Administrations?

**Professor Iain McLean:** I noticed that in earlier evidence First Minister Mark Drakeford called co-operation on Covid one of the bright spots of the way the union is working at the moment, and I have seen nothing to contradict that.

Reverting to Lord Howell's dilemma, it may be relevant that co-operation between the Administrations allowed aspects to be run from the UK centrally, such as procurement, and others to be run by the four Administrations, such that rules on lockdowns and social distancing varied somewhat among the four jurisdictions. I think that is right and appropriate in a union Parliament, as established in 1707 and again, in effect, in 1920.

Q140 **Lord Faulks:** Good morning, Professor McLean. In your writings in 2010 you refer to the fact that parliamentary sovereignty was somewhat weakened by the fact that we were a member of the EU and that Parliament had passed the Human Rights Act. We are now no longer a member of the European Union, and it may be that under a new Lord

Chancellor we are going to have legislation which, if not actually repealing the Human Rights Act, results in a considerable weakening of it and our links with the Strasbourg court. Would that mean in your view that there had been, as it were, a reassertion of parliamentary sovereignty?

**Professor Iain McLean:** In one context, it clearly does. There has been a line of law cases of judgments, and members will be familiar with, for instance, the case of Thoburn, the metric martyr from Sunderland, in which the doctrines of AV Dicey on parliamentary sovereignty were directly challenged in the courts.

Things have changed since I wrote that book, as you say. Exit from the EU is of course relevant, as might be a change in the Human Rights Act. But, of course, the UK Government—here, I think, it is relevantly more the Government than the Parliament—are not sovereign, because they are bound by international obligations and by some international courts. For instance, if a direct appeal to the UK court on human rights matters was repealed, then, as you have just said, Lord Faulks, the individual recourse to Strasbourg would be an example of a constraint on UK government.

**Lord Faulks:** Thank you.

**The Chair:** Lord Hope, I think that leads in nicely to your area.

Q141 **Lord Hope of Craighead:** Yes, it does. Good morning, Professor McLean. I would like to explore two aspects of the Sewel convention with you, but before I do that I wonder whether we can clear up a point about sovereignty. Would you agree that it means different things according to the context in which you are looking at it? On the one hand, going back to Lord Faulks' question, there is a relationship between Parliament and the courts, and various things have been said about that, but when you come to the questions about the devolved Administrations, is there not a different aspect of parliamentary sovereignty?

After all, devolution is created by Parliament itself. It sets the boundaries for devolution in the legislation, and it reserves in the Act itself the power to legislate across the board in any event. That is the background to the Sewel convention. Is it right to distinguish between these two aspects of sovereignty, and are there different rules that apply to each of them?

**Professor Iain McLean:** Absolutely it is right. Thank you, Lord Hope. In regard to your second question, of course there was the sovereignty clause in both the Scotland Act and the Wales Act. The situation in Northern Ireland is rather different, because in a sense the Good Friday agreement and related legislation invite shared sovereignty over Northern Ireland. This takes us directly into Sewel territory as to how this supremacy-subordination relation is to be interpreted, and the interpretation, of course, takes us straight back to the courts, even if we wanted to get away from them, both in Miller 1, on which you have already commented to previous witnesses, Lord Hope, and in the recent

judgment that has just come out from the Supreme Court about the vires of the Scottish Parliament.

- Q142 **Lord Hope of Craighead:** In Miller 1, the Supreme Court would not interfere with Sewel, which takes me to my next question. How important is the Sewel convention in making the devolution settlements palatable to the devolved Administrations? It perhaps was important when it began, but is it still important today despite what has happened from time to time, where it appears to have been ignored?

**Professor Iain McLean:** It is quite clear from what your witnesses from Scotland and Wales have already said that they believe that Sewel is still very important and that they are deeply unhappy about the way in which the Court in Miller 1 held that the "not normally" phrase in Sewel, now in an Act of Parliament as regards Scotland, was not justiciable, that it was a political matter.

The willingness of the UK Government to declare that things are not normal in effect, and to override Sewel in quite a number of extremely important, but also, as some of your witnesses have said, relatively unimportant matters, is rather disturbing for those who think that Sewel was an important convention for getting consent.

- Q143 **Lord Hope of Craighead:** Does that not bring us back to Parliament? My next question then is: should something be done through the parliamentary processes, both here and in the devolved Administrations, to strengthen the Sewel convention, at least the way in which it is being administered? At the moment, there are no rules and there is no transparency. Things just simply happen. Can we improve on that, and if so, what suggestions do you have to make to us?

**Professor Iain McLean:** I think, by elimination, that if anything is to happen, it has to happen by a development of parliamentary convention. Parliament is not foreseeably going to amend the Scotland Act 2016 to remove the word "normally" from the Sewel clause, although if it were to, that would be a powerful signal.

I know that various things have been suggested, such as a parliamentary pause in the Westminster Parliament when one or more of the devolved Administrations have signalled that they would not wish to give legislative consent to a Westminster Bill, so that things can be negotiated. I would hope at least that that would deal with the small ones, although it might be inadequate to deal with the very big things such as, as many of your witnesses have already said, the internal market Bill.

**Lord Hope of Craighead:** The internal market Bill, as it was, is an interesting example, because steps were taken at a very late stage to deal with the problem of the common frameworks and other points. I wonder whether, if the legislative consent Motion had been considered at the end rather than half way through, as it were, it might have made a difference. Does that suggest that the timing at which the matter is looked at is important? The internal market Bill was rushed through, I think, because they wanted it completed by the end of the year, so there

was not much room for breathing and looking at it. Can something be done about the timing of the legislative consent process?

**Professor Iain McLean:** It is important for Ministers, because this is a ministerial matter before it becomes a parliamentary matter, to engage with their devolved counterparts from the outset. A lot of the evidence that you have had reinforces an ancient truth, which was well expressed by an anecdote told by my colleague Chris Harvie. When, in the mid-19th century, Scotland's leading public intellectual, John Stuart Blackie, visited England's leading public intellectual, Benjamin Jowett. Blackie said, "I hope you don't despise us in Scotland", and Benjamin Jowett said, "We never think about you".

I am afraid I see attitudes of that sort. It is difficult to change attitudes, but it would be good if, both in the Civil Service drafting stage and in the parliamentary stages, devolution consequences were brought up as early as possible

**The Chair:** We heard early on the phrase "devolve and forget" quite a few times.

Q144 **Lord Faulks:** Professor McLean, we have heard from a number of witnesses, and you referred to them yourself, speaking of better engagement to make the Sewel convention work better; I think almost all the witnesses said in one form or another that that was desirable. But, ultimately, you may get to the stage where, despite excellent engagement, pauses or whatever, there is a fundamental disagreement, and here there were differences between witnesses who said that parliamentary sovereignty in effect trumps all and those who said that the matter ought to be referred to an independent body of some sort to decide whether legislation can go forward, which seemed to me to be, as it were, not accepting the correctness of Miller 1. Do you have any observations about that?

**Professor Iain McLean:** I do not think the independent arbiter is viable. Take once again the case of the internal market Act, as it now is: would the UK Government have accepted the arbitration of some third party that was neither them nor the devolved Administrations? To be honest, I do not think that is realistic. So I feel that the question is inescapably political. If, to put it bluntly, the Westminster Government wish to ram through something that touches on devolved competences, despite the opposition of the devolved Administrations, then of course it is taking a political risk, and they and we have to live with that risk. I think that is all that one can really say.

Q145 **Baroness Fookes:** Professor McLean, earlier this morning you expressed surprise that the English votes for English laws procedure was repealed, I think you said on a Friday. Following on from that, how important is it for England itself to have a distinct identity in terms of constitutional arrangements? This is really the elephant in the room, is it not, because it is the biggest part of the four kingdoms.

**Professor Iain McLean:** Indeed it is. Let me use the acronym EVEL, which was an attempt to recognise the English question. Other things in the same spirit could be attempted, along the lines of special committee sessions for England-only legislation and so on.

We should not simply repeal the procedure just because it is not, under the current parliamentary arithmetic, likely to come up, although of course parliamentary arithmetic changes. In a sense, although not recognised as such, it really did come up in the 2017 to 2019 Parliament, when the UK Government depended for confidence and supply on the DUP. I am not sure that that situation was managed particularly satisfactorily in the interests of either party. So if you are not going to have EVEL, you have to have something in its place, because the present parliamentary arithmetic is not permanent.

**Baroness Fookes:** Are you suggesting anything as an alternative?

**Professor Iain McLean:** This is not my primary area of competence, Baroness Fookes, so I would simply refer to a number of think tanks and so on that have published proposals over the years—I know the Institute for Government has done so, as has the Constitution Unit at UCL—which involve more extensive consultation when something is English only.

There is, of course, also the question of parliamentary restraint, which I know was mentioned by Angus Robertson in his evidence to you. Of course, he is no longer an MP, so he is not in a position to say whether the SNP and the Commons will maintain indefinitely their abstention on England-only matters. Nor am I in a position to say independently whether it is actually true that the SNP consistently abstains on England-only matters, but I think this can be addressed only by conventions, not by rules, now that EVEL has been repealed.

**Baroness Fookes:** So it remains unresolved and unsatisfactory.

**Professor Iain McLean:** I would agree with both adjectives, yes.

Q146 **Lord Howarth of Newport:** Professor McLean, good morning. What is your assessment of the present state of devolution to metro mayors and combined authorities? Is it tenable, or do our current discontents amount to a revolt against the centre and therefore a crisis of legitimacy for Westminster and Whitehall? Do we, as some argue, need a more radical decentralisation to salve the resentment felt locally and regionally against an overmighty centre?

**Professor Iain McLean:** It seems to me that metro mayors are one of the more successful constitutional reforms of recent years. I have, as Americans say, some skin in this game, because my first political involvement was as an elected member of Tyne and Wear County Council back in the 1970s. As members will recall, the English metropolitan councils were all abolished in 1986. Most of them have just been recreated, many of them on identical boundaries to those created in 1972. The argument for a Greater Manchester, a Merseyside, a West Midlands and so on was good then and it is good now.

The biggest problem with the metro mayors' issue, it seems to me, is that if we have them in some places and not in others, as now, is there a risk that that disadvantages people who do not live in a metro mayor area? I think that is a risk. How do you do metro mayors in predominantly rural areas? That is tricky problem. But if there was a network of metro mayors that covered the whole of England and they had the authority, which it seems the current batch do—that they are regarded on the whole with respect by their electors—that might be a helpful solution or part of a helpful solution to the English question.

**Q147 Lord Howarth of Newport:** So would you favour a more homogeneous system of devolution across England as opposed to the present patchwork arrangements, which are negotiated to take account of local characteristics, or would you prefer to see a more standard model applied?

Can I also ask you what your thoughts are about fiscal devolution? Would you want to see the devolved regional authorities, mayoralities and so forth having more discretion about expenditure, and if so, should that be accompanied by an equivalent discretion and power in relation to tax raising? Otherwise, do we not get power without responsibility, and risk creating devolved institutions that are really playgrounds for extremism and political frivolity?

**Professor Iain McLean:** To the first question, there has to be consent, so it may be in the "too difficult" box. If people feel very passionately that, let us say, Rutland is an entity that must remain Rutland for ever, getting a metro mayor's framework over the whole of England may be rather difficult.

To the second question, on fiscal devolution, I will start from the end, if I may. So far, the evidence from the new English metro authorities has not been that extremism has triumphed. The elected mayors have seemed to be a pretty pragmatic bunch, irrespective of party.

There is of course a risk, as you have alluded to, that a body that can spend but not tax just wants to spend more and more, so it needs to have constraints. The power to tax is very restricted in the UK, in England in the metro areas and in the three devolved areas, and essentially the only taxes that are under local control throughout the UK, although it is changing in Scotland and a bit in Wales, are property taxes. The property tax base realistically has to remain the main tax base for subnational authorities, at least for subnational authorities in England.

**Lord Howarth of Newport:** The obvious worry about a property tax base is that it will be very unequal, given the unequal distribution of wealth across England.

**Professor Iain McLean:** That is of course true, but there are available fixes, which you can look at from international comparisons. I have already mentioned Australia, whose Commonwealth Grants Commission regime copes with that problem, in my view, very well.

The property tax base and system could be improved if council tax and business rates, but especially council tax, had a different form. This is taking me quite a long way out of devolution and constitutional territory, but there are good property taxes and bad ones, let me put it that way, and at the moment the UK has a raft of rather bad ones.

When the power to shape taxes was devolved, one of the best things to come out of it, in my view, was the Scottish Government's decision to abolish stamp duty in the indefensible form which it had taken up to that point and to introduce the Scottish land and property tax, which was then, in a piece of reverse engineering, more or less adopted by the UK for England. So there is an example of a devolution success in dealing with property tax and introducing a more defensible system of property taxation, at least up to a point.

**Lord Howarth of Newport:** Do you think our democracy is better revived at a regional level, or at a more local level?

**Professor Iain McLean:** That is a question so general that it is difficult to give it a general answer, and it takes us into the question of how many tiers of subnational government there should be, to which there cannot be a single answer. I am reduced to repeating that the metro mayor model seems to have worked well so far. I happen to be in favour of larger rather than smaller local authorities, but I have already told you about my past in this matter. I thought that the late, mostly unlamented Tyne and Wear County Council did a good job.

Q148 **Baroness Drake:** Good morning, Professor McLean. Greater decentralisation of power to make decisions and spend money requires building capacity at that decentralised level, otherwise the proposition fails. That would require an improved knowledge base about the flow of public expenditure to regions, regional issues, quality of linked data in particular.

You, Professor, have criticised the lack of such investment in building such a knowledge base. Could I ask you to elaborate on what you think needs to be done to build that knowledge base? Are there any important initiatives taking place at the moment that are beginning to address that weakness?

**Professor Iain McLean:** To take the last point first, the fact that Northern Ireland has now commissioned both the Fiscal Council and the Fiscal Commission, of which I am a member, is a sign that the Assembly there is beginning to take these matters seriously in a way in which it conspicuously failed, as members will be aware, in the renewable heat scandal of a few years ago. That affair, I think, threw up a number of lessons, one being that if subnational politicians think that the only thing that they are charged to do is spending money, there are too few constraints on them spending it responsibly.

Another lesson, going by the evidence to the Coghlin inquiry on renewable heat in Northern Ireland, was about the capacity of the Northern Ireland civil service. I must say that at the moment I am

working with a very tiny number of extremely able Northern Irish civil servants. A point that has been touched on at least slightly by some of your witnesses, which I would endorse, is to query whether we should have two civil services in the UK, or three or four or one.

That is a very partial answer to the large question you have asked, but I hope it helps.

**Baroness Drake:** What about actually building the knowledge base, not just in Northern Ireland but generally as a national effort, so that decision-makers at every level are more informed? What do you think could be done? What drivers do you think could be deployed?

**Professor Iain McLean:** As a public finance academic, among other things, I would be delighted if more people cared about public finance. All I can say is that it is important, and it would be good if policymakers, including civil servants and NGO members, were better informed about it. I have no blueprint to make that happen, but I agree with you that it is important.

**Baroness Drake:** Thank you.

Q149 **Lord Dunlop:** Good morning, Professor McLean. You wrote in 2005 about the flaws of the Barnett formula and questioned whether it could survive much longer. Here we are 16 years later and the Barnett formula is still with us. To what do you attribute the formula's durability, and in the current political environment how would you go about reforming it?

**Professor Iain McLean:** I think the most important part of that question was "in the current political environment". Things have got worse from an interregional equity and a fiscal responsibility point of view since I wrote then. I had written many times before, and since, about the inadequacies of Barnett.

Distributional inequities should be met by a needs formula and/or by automatic redistribution. We have some of the latter in the fact that outside Barnett, because Barnett does not on the whole cover social protection expenditure, the various benefits such as universal credit, state pensions and so on, respond to need, so have some automatic redistributive effect both between individuals and of course between regions.

As all members of this committee know, there have been exhaustive inquiries by this House, including one instigated by Lord Barnett himself, so there is plenty of evidence that whatever Barnett is it is not sensitive to the regions' respective needs. It continues, because it is very convenient for the UK Government of the day to avoid arguments and detailed salami slicing with the representatives of the territorial Governments.

But the things that were unsatisfactory about Barnett when I wrote that way back in 2005 are still unsatisfactory. They include its unilateral control by HM Treasury, its non-responsiveness to needs and the historical anomaly that spending per head in Scotland appears to be

higher than in some sense it ought to be. Historically, spending per head in Wales appears lower, and Wales, which is poorer than Scotland, has historically had lower Barnett settlements, which has always seemed mysterious. As members will know, there has been a fix to that, although it is a sticking-plaster sort of fix, which is the floor on the Barnett block grant that has been agreed between the UK Government and the Welsh Government.

So everything that was wrong with Barnett in 2005 is still wrong, and some extra things have been added, with the propensity of the UK Government to make extra Barnett allocations, which had dwindled but are now reviving again.

As to what you should do about it, I am on record many times saying that a needs assessment based, in my view, on the Australian model would be optimal. Not having been a politician since I came off Tyne and Wear County Council, I do not have a way of suggesting to you or your Commons colleagues how to implement that, but any redistributive system should have regard to relative needs.

Q150 **Lord Dunlop:** We heard evidence from Professor Roy of Glasgow University that the Barnett formula is less important now, because a greater proportion of the Scottish and Welsh budgets are funded by devolved tax revenues. How do you respond to that? What is your assessment of how the fiscal frameworks agreed in 2016 have worked out in practice?

**Professor Iain McLean:** I can confirm that Graeme Roy knows of what he speaks; he was formerly a senior official both in the Scottish Government and in the Scotland Office. I am afraid that his evidence was one of the ones that I was about to read when the wi-fi failed on the Chiltern train this morning, so I do not know in detail what he said.

The increased fiscal powers of the Scottish Parliament diminish the effect of the Barnett formula, but they do not eliminate it. The very fact of the extremely long and painful negotiations between the UK Government and the Scottish Government on block grant adjustment, and separately with the Welsh Government, show that Barnett problems have not gone away, despite the devolution of taxation.

There is the separate question, which I do not know whether Graeme touched on, that the assignment of a proportion of VAT to Scotland has not gone well and foreseeably is not going to go well, in Scotland or anywhere else. That limits the fiscal autonomy, in reality, of the Scottish Parliament.

Q151 **Lord Dunlop:** My final question relates to what you said earlier about the potential for fiscal devolution in England. We have obviously seen Michael Gove given responsibilities for levelling up, for English devolution and for the union, and the Government do seem to be seriously addressing what has been a profound and long-lasting problem of regional economic inequality, so my question is this. Is it possible to come up with a

comprehensive system that both embraces the fiscal devolution that has taken place in Scotland, Wales and Northern Ireland and what might happen in England, with all the asymmetries that that involves?

**Professor Iain McLean:** It is possible but not easy. Reverting to previous discussions, you certainly already have a form of spending devolution, and you could have a form of tax devolution to the metro areas of England, but then what about the non-metro areas? That goes back to the question of how you get a framework that covers the whole of England. You could have more transparent formulae for redistribution. There are distribution formulae, notably for health, which of course is a very large part of what is devolved expenditure in the three territories, but these are not really transparent, and they could be made more so.

These are some rather small, practical suggestions, one going back to the question of how you cover the whole territory of England, and the other making the formulae more transparent.

**Lord Dunlop:** Thank you.

Q152 **Baroness Fookes:** Professor McLean, you mentioned just a little earlier your approval of the Australian fiscal or financial model. I am not familiar with it. Could you explain it to us briefly?

**Professor Iain McLean:** That is something of a "summarise Proust" question, but I will attempt to. There is a public body called the Commonwealth Grants Commission, whose main job now is to allocate what they call GST, which is VAT, to the states and territories of Australia in a way that attempts to respect relative needs. Of course, some states are poorer overall than others, and they have different compositions of their populations and different proportions of the neediest people. For instance, in Australia there are the very acute problems of Indigenous people who are differentially spread across the states.

So relative needs are different, relative resources are different, and they have the particular problem of states that have very large but fluctuating revenue from mining royalties, and the system has to be robust enough to cope with that. The system is also designed not to suppress tax effort, and it works on the basis that an averagely efficient state making an average tax effort should be able to deliver a comparable level of services to equally situated citizens in each of the six states.

That is not as elegant as Marcel Proust, but it is my attempt to summarise what the Commonwealth Grants Commission does.

**Baroness Fookes:** Is that commission independent of all Governments?

**Professor Iain McLean:** Yes, all Governments. It is not controlled by the Commonwealth Government or any of the states' governments. I suppose that in our terminology it is a non-departmental public body.

As part of the machinery that could be relevant here, there is a conference of Australian governments that is a real thing, much more

real than the intergovernmental arrangements in the UK which various witnesses have told you about and which you will be well aware of yourselves. That would be something to study as well.

**Baroness Fookes:** Who sets it up? Is it this conference of governments that you are speaking about?

**Professor Iain McLean:** No, the Grants Commission was set up in the great depression in 1932 by the only Tasmanian so far to have served as Australian Prime Minister. Tasmania was at the time the poorest state, so the motivations were pretty clear. But having been set up it continues. It has recently come under criticism from another governmental NDPB, the Productivity Commission, as a result of which it is simplifying some of its procedures, but its place in the constitution seems assured.

**Baroness Fookes:** Thank you.

Q153 **Lord Howell of Guildford:** I want to pursue this, because I think it is very central to our examination. The whole question of needs is highly political. It may be less political in some countries than others, but here it is extremely political. Any similar commission here—you suggested a territorial grants commission—would immediately come under huge political pressures.

These would not just be needs in the traditional sense; these would be arguments such as, in Scotland, that England owes Scotland a lot of oil revenues from the past and it is about time those were fitted into any block grants for the future, or indeed that much higher independence for any tax arrangements should be allowed for Scotland, but again reflecting the need for the diversion of oil revenues to the Scottish budget and not to the London budget, if indeed Scotland is allowed in the future to develop any oil at all, and that of course is up for question.

We really do need to push on to find out what kinds of data can define needs in more detail, more coherently, and in ways that are going to be politically acceptable. You have mentioned Australia three or four times, and Baroness Fookes has rightly pursued you on it, but are there any other models we can turn to, because we are going to need much more precise guidance to get us through the political jungle ahead on this question of needs, without a doubt?

**Professor Iain McLean:** Yes. There is an important question at the root of what you have said, Lord Howell, which is that my need is your policy choice, and what can be counted as a need. This is something on which I know the Treasury engages with the devolved Administrations all the time. To give a possibly third-rail example, is having two separate education systems, in both Scotland and Ireland, an example of a need or an example of a policy choice? I am not going to attempt to answer that question, but will merely say that that question shows that the issue you raise is a tricky one.

It is not only Australia where this has been studied. I bring to the members' attention the fact that about 10 years ago the Holtham

commission on Wales did a very detailed study of that very question, in the course of establishing whether Wales would have been better off if it were treated as an English region, and the commission's answer was yes. That led indirectly to the floor on Barnett that has since applied in Wales.

However, the commission's technical papers—I do not know whether they are still on the web, but I hope the clerks can get them from Professor Holtham if it is of interest—go into considerable detail as to how you would go about establishing relative needs, and what indicators you would use. So there is literature out there not only in Australia but in quite a lot of jurisdictions.

I see your question about oil revenue as a rather separate question. Of course, you are right that the SNP has said for 50 years that it is Scotland's oil and it has used that as a reason to claim more public spending per head in Scotland. When the UK's oil revenue went to zero—in fact, it went negative in 2015-16—this argument no longer served a political purpose. To some extent, it has been revived in the form that Lord Howell just mentioned: "We have been cheated over all these years, and therefore we should be given it back now". I think any independent commission that was attempting to assess relative needs would have to say, "We are here now where we are. What has happened in the past is water under the bridge. Some unfortunate decisions or non-decisions were taken"—a sovereign wealth fund was not created in the 1980s, and in my view it should have been—"but we are where we are."

**The Chair:** When you were talking about Australia and giving us that kind of information, I think you said that part of the formula was an assessment of assumed income if you were operating successfully as a state. We have a situation where, in Scotland, you could say that the absence of the ability on the part of the Scottish Government to use all its fiscal powers could make a Westminster Government say, "You're not maximising the revenue that you could take yourself". Would that be a situation in the Australian system that would lead to a reassessment of a state's income from that fund that you were talking about?

**Professor Iain McLean:** The grants commission, in Australia, assesses the tax effort that would be made by a representative state. In a simple example, if it established that Western Australia, which has huge mineral resources, could make more tax effort from its mining royalties than it does, the grants commission might give Western Australia a smaller share of the VAT receipts than it does. That is an example of how it works in principle.

**The Chair:** So if Scotland was not using all its fiscal powers, it would not be compensated by another part of that formula.

**Professor Iain McLean:** If Scotland was differentially not using its fiscal powers, no. That is important, because property taxes in all four territories of the UK are somewhat regressive, although least so in Northern Ireland, which does not have council taxes, and all four Governments could make more effort, if they chose, on property tax. The

scenario that you are envisaging, Chair, would arise only if Scotland was making less effort than the other three.

**The Chair:** By not using some of its powers.

**Professor Iain McLean:** We are aware that some of the known defects of council tax apply in both Scotland and England. Wales has made some minor efforts to make it more progressive. Luckily for Northern Ireland, although Northern Irish people do not always appreciate that, it still has domestic rates.

Q154 **Baroness Drake:** If I may just develop that point, the UK starts with the problem that, in terms of advanced economies, it is probably one of the most, if not the most, regionally imbalanced economically, which brings its own problems when you are doing international comparisons. If one relies too much on local taxation powers as a route out of that, does that not throw up a set of difficulties where you are starting from such a high level of imbalance, because the burden of taking that policy route is not equal and falls heaviest on the most unequal regions? Is that not a problem?

**Professor Iain McLean:** Absolutely it is a problem. I think I would dissent from the view that the UK has the greatest regional inequalities of any democracy. I think you will find greater variation in the United States, for example if you compare GDP per head in Mississippi with that in Massachusetts, and I do not commend such interstate distribution mechanisms as there are.

**Baroness Drake:** I concede that point. I was not thinking of the United States, but I do concede that point. I was not clear.

**Professor Iain McLean:** I missed that, Baroness Drake.

**Baroness Drake:** Sorry, I was conceding the point about the United States. I remember reading it up yesterday. I apologise.

**Professor Iain McLean:** This takes us back to the point that redistribution expenditure either has to be automatic through, for instance, the universal credit system or the state pension system, or it has to be in some sense responsive to relative needs—relative needs, as Lord Howell reminds us, have to be assessed in some sort of objective way to avoid game playing—and you would need, ideally, a body that is a creature of neither the UK Government nor the four devolved Administrations to administer that.

Q155 **Lord Howarth of Newport:** Yes. Professor McLean, I have greatly enjoyed your exposition of the role and methodology of the Australian commission, which was at least as elegant as and much briefer than Marcel Proust, but can I just ask you to go a little further by telling us about the accountability of this body, and whether it escapes political controversy? In this country when, for example, Whitehall distributes revenue support grant, it is always intensely controversial, and in a way so it should be, because these are quintessentially political decisions

about the allocation of resources. You seem to be suggesting, unless I have misunderstood, that there is a sort of sublime body here that rises above politics and which is accepted as a wise umpire by all concerned. Can that really be right?

**Professor Iain McLean:** No, that is not right, and if I gave that impression I should not have done. The very fact of the recent inquiry by the Productivity Commission into the grants commission, which I just mentioned—one NDPB inquiring into another—was driven by resentment from the rich states, in effect, which have always been New South Wales and Victoria, and recently Western Australia.

Of course, you are right that these things are inherently political, but I would at least stick as a minimum with the principle that the Australians are more successful at depoliticising it than the UK. You mentioned the example of rate support grant in the UK, where of course the temptation for politicians is to run through the exemplifications, see which one is best for their patch and say, "I'll have that one please". At least in Australia they have succeeded in removing it somewhat further from politics than I believe we have in the UK.

Q156 **The Chair:** Let me ask you a different question, going back to Scotland. We talk about relationships between the Scottish Administration and Whitehall, but we do not very often hear much about tensions within Scotland for devolution within Scotland. We have talked about devolution to metro mayors in England. Have you any thoughts on what might happen and what the pressures might be in terms of devolution in Scotland?

**Professor Iain McLean:** It has often been observed that the Scottish Government, since the SNP gained control of the Scottish Parliament in 2007, has been quite centralist in its attitudes to Scottish local authorities. That is just an observation that has been made by people closer to the ground than I am, so I just pass it on for what it is worth.

There are of course places in Scotland with very distinct characteristics, most obviously the Northern and Western Isles, and any democratic system has to realise these distinct characteristics. All I can helpfully say—it may not be very helpful—is that it really has to be up to the Scottish Parliament.

Q157 **Lord Hope of Craighead:** There is an aspect of this that is very interesting. The UK Government are trying to spend more money in Scotland over the head of the SNP, and that is money that is going to local authorities. So there is an attraction for the local authorities—the Western Isles, the Northern Isles as an example—where they are getting, as it were, direct assistance from the UK that would not be coming through the Scottish system if it were left to itself. Is there something that we need to reflect on in that aspect of the way things are developing?

**Professor Iain McLean:** I hope this committee will reflect on that, because an obvious consequence, reverting to my answers to Lord

Dunlop, is that it further messes up the already messed-up Barnett system. Of course, local authorities are happy to get money from wherever it comes from, but these actions add further confusion about accountability to a system that is already confused about it.

**The Chair:** I invite Lord Hennessy to come in at this stage with a round-up question.

Q158 **Lord Hennessy of Nympsfield:** One of the running themes in our inquiry, as you will have seen from the transcripts, is the degree to which we have become a kingdom of strangers, to use Philip Rycroft's and Mike Kenny's phrase. I wonder whether you agree with that.

Allied to that theme, what do you think we need to do next? You talked about incremental and evolutionary developments being the only way that we can possibly do things. Do we need a royal commission, that ancient device of state that has fallen into disuse, a constitutional convention or citizens' assemblies? What do you think we should do next to keep this question where it needs to be, at the centre of attention? Recently, you will have noticed the Prime Minister, most unhelpfully, said that constitutional reform could not be lower down his agenda than anything else. How do you think we should go from here?

**Professor Iain McLean:** On a community of strangers, to start with some obvious recitals, at parliamentary level the SNP is overwhelmingly dominant in the representation of Scotland, as dominant as was the Irish Parliamentary Party between 1880 and 1918, and that did not end well. A parallel within that is that the Irish party split, as the SNP has now split, but the factions added together still had overwhelming parliamentary control in the two territories, and no role in UK government. That was true in Ireland from 1880 to 1918 and it has been true in Scotland since the SNP first won the large majority of Scottish seats.

In Northern Ireland, there was the anomalous situation that, for the first time since the creation of Northern Ireland, the parliamentary numbers made the DUP pivotal for two years; they have now ceased to be pivotal. The nationalist community in Northern Ireland has been underrepresented in Westminster since 1920 because Sinn Féin MPs have never taken their seats. This is just a recital of some well-known facts. Of course, there is also the fact that neither Scottish nor Irish nationalists feature in the composition of this House, to the best of my knowledge.

What can be done about that? At parliamentary level, not a great deal except for more respect in terms of Sewel or EVEL, some of the themes that we have touched on this morning and which previous witnesses have. At bureaucratic level, it is a very tired and banal thing to say, but I think there should be a UK civil service and that it should become commoner than it is for senior civil servants to move around between the UK and any of the four Administrations, including Northern Ireland.

**Lord Hennessy of Nympsfield:** What about a constitutional convention or a royal commission?

**Professor Iain McLean:** Those would be great, but I think academics like us can only dream on. As I said in my opening remarks, this is not Philadelphia in 1787 and I do not know how you get to a constitutional convention, unless you are in a crisis as deep as was faced by the delegates in Philadelphia then.

**The Chair:** I think some of us are worried that we may be facing a crisis in some respects if things do not change and we do not get more responsiveness in the political and constitutional approach.

Professor McLean, thank you very much indeed for the evidence that you have given us. We have touched on quite a few of the questions that have come up from time to time during our other witness sessions. We are very grateful to you for giving up your time today. Thank you very much.

**Professor Iain McLean:** Thank you for your extremely searching questions.

**The Chair:** Good to see you. Thank you.