



HOUSE OF LORDS

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Witnesses: Professor Richard Rawlings, Professor Robert Thomas, and Dr David S Moon

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Members present

Lord Lang of Monkton (Chairman)
 Lord Cullen of Whitekirk
 Baroness Dean of Thornton-le-Fylde
 Lord Judge
 Lord MacGregor of Pulham Market
 Lord Morgan
 Lord Norton of Louth

Examination of Witnesses

Professor Richard Rawlings, UCL, **Professor Robert Thomas**, University of Manchester, and **Dr David S Moon**, University of Bath

Q264 The Chairman: Good afternoon, gentlemen, and let me welcome you all. We have heard this morning from the Executive and the parties and now we hear from the experts. We are seriously very grateful to you for helping us with this really quite difficult inquiry into the union and devolution. We thank you for the evidence that you submitted. I know that you, Professor Rawlings, have submitted a paper recently, which was supplemental to your earlier paper, which was extremely helpful. We have a number of questions that we would like to ask you in the time available, and we may digress from them. Then again, we may not. I start with a broad general question. What do you think are the important features of the union to Wales? To what extent do you think that the people of Wales recognise what they are, or to what extent might they differ from your definitions?

Professor Robert Thomas: Thank you very much for the invitation to come here and give evidence. The most important features of the union to people in Wales, I think, are economic and social. Then there is obviously defence and the UK's role internationally and in the European Union. Those are the main benefits to people of Wales of the union—business, economic, social, international and defence and security.

Professor Richard Rawlings: I just emphasise two, Lord Chairman. On the social side, one has to recognise a particular ideological commitment among many people in Wales to a strong welfare state. That in turn reflects in part the considerable economic disadvantage in Wales, which no doubt you have heard a lot about this morning. Secondly, colleagues tend to work with the Calman template of political, social and financial union. Robert mentioned security and defence, and I would emphasise that one, in part because of a very strong commitment over many years from Wales to Her Majesty's forces.

Dr David S Moon: Again, I agree with everything that has been said—it is the problem of coming third, is it not? What I would add would be the union’s importance in terms of British identity. I know that the union is not the same as Britain, but being part of the union is key to a British identity in Wales. Obviously, Welsh identity is very strong, but I also think that British identity is very strong in Wales. That would be something that I would add.

As for what is underappreciated about the union, first, I think it is the age of the union. Some of you will have watched the Carwyn Jones/Nigel Farage debate recently on the European Union. Someone said from the audience, “The United Kingdom has existed for thousands and thousands of years perfectly well on its own”. Carwyn said in a little aside, “Since the 1920s”. It was sotto voce, but it was a nice point that, yes, Wales and England have been combined for a long time but the union itself has not been there for ever. It is relatively recent, and that does not mean that it is going to last for ever. That is important.

I do not think that people understand how it works; that is to say, they do not know where competency lies for many issues. That is partly the problem of not having a codified constitution, and so on; we all know those arguments. But that is a problem in all nations. It is not a Welsh problem, but a British problem—and it is not only a constitutional but a political issue. I have come across people who thought that their council tax was set by Westminster; this is not necessarily a devolution issue as well.

Finally, people are not aware of the interconnectedness, and the fact that there is so much policy footprint covering each other. We have talked about defence policy; that is from the Ministry of Defence, it is reserved, but you cannot put military bases in Wales if you do not have a functioning welfare state, with roads, schools and healthcare for people moving here. All this stuff overlaps.

The Chairman: Professor Thomas, you gave us a very concise list. Do you think that public opinion generally in Wales would reflect the same list of items, or would they have different priorities or perhaps simply not recognise some of the things that you have pointed out?

Professor Robert Thomas: I think that we would have to see more evidence about public opinion on that. The point is well made, and it was made in an earlier session, about the extent to which the Welsh public understand the constitutional arrangements under which they are governed. There is much more scope for greater public understanding of those issues.

Q265 Lord MacGregor of Pulham Market: I was struck by one aspect of the evidence put to us, in comparison with Scotland, in relation to independence and the referendum and all that sort of thing—that the sentiments are very different. I well understand what happens in Scotland with the media, which are fiercely aggressive and tend to be very anti-Westminster. I

understand that in Wales there is not anything like the same, and that much of the media, the television and newspapers and so on, are pretty similar to English newspapers and dominated by that English approach. Is that right, and does that make a difference in the general attitude towards independence?

Professor Richard Rawlings: I would not want the impression to be conveyed that the media drive the way in which people think in Wales. Clearly, the media will have an influence, but there are much deeper understandings and factors here than what the media do. We have to start with geography and demography. If one looks at population maps of Wales and at the distances between the main centres of population in Wales and England—Cardiff and Bristol is an obvious one, the north of Wales and Liverpool is another obvious one—there is a very different situation than you would find with Scotland and England. The cross-border flow on a daily basis of people driving to work in Bristol or Liverpool, and vice versa, all plays in a really important way. I would not want to say that the media are an insignificant factor, but I would certainly not want to address those issues through the prism of the media.

Lord MacGregor of Pulham Market: I did not want to suggest that, but one knows in Scotland that the media are so fiercely anti so much that goes on in Westminster, so the Scottish public is constantly fed with this stuff every day and night. That is not the same here at all, is it?

Dr David S Moon: I agree, but I would add that we have independent media—a Welsh media, with the *Western Mail*, BBC programmes, the *Daily Post* up north, but the readership and the people watching the programmes is small. The majority of the newspapers read are English—I think that we can call them English, frankly, as the coverage of Welsh politics is very poor. That is going to be an issue not because the media drive opinion but simply to explain how the system works.

Lord Morgan: Exactly.

Dr David S Moon: But I am not sure that the media in general would be the best route for explaining. I am not sure that if, you want to understand British politics, reading some of our newspapers is the best way to do that. It would have to be education in school at a young age.

Q266 Lord Morgan: I just want to comment on the last answers. I do not know whether any of you can understand the Welsh news on Sianel Pedwar, but there the emphasis in the Welsh language is heavily on what you might call English/British matters. It is not a national or nationalist agency. Devolution in Wales did not have a great deal of support; it squeezed through in 1997, which I do not think would have surprised historians. Until perhaps the 1960s, anything resembling Welsh home rule was really not a serious proposition. However,

devolution has acquired much more support since then. The voting on primary legislative powers reflected a growing interest and enthusiasm. I was wondering if you could give us a guess as to why you think that increasing support for devolution has occurred. If we are agreed that it has, would there be any conclusions that one could extrapolate in relation to, say, devolution in England?

Dr David S Moon: First, I think it is remarkable to compare the position that we were in in 1997, with a couple of thousand votes, to where we are today, especially because we do not have a vibrant media and cultural space. Why has that happened? I would argue that it is largely an example of path dependency and embedding; once you found a new institution, it becomes embedded and normalised and it is what people are used to. It latches on to something that is quite different from the 1970s: Wales as a coherent imagined community, to use Benedict Anderson's notion, is much clearer now. Obviously we have a north-side divide and an east-west divide, and we could go into other divisions, but between them the notion of Wales is much more accepted as a community to which a devolved legislature slots on top.

I would also bear in mind that acceptance is not engagement. People accept it but I do not know how enthused they are when we actually look at the figures. They do not want to get rid of it, but there is perhaps not huge excitement about it. I would note that the polling since 1997 onwards shows that yes, it is significantly better than it was then, with only 0.3% in favour of pushing it forward, but consistently in every single poll there have been 17% to 18% who want to scrap devolution. If you add in those who want fewer powers, that rises to about one-quarter of the population. One-quarter is not a majority, but it is still a significant number of people who we basically ignore—they are not part of the story. Research by myself and Dr David Cutts into this shows that, if you want to look at who these people are, they almost exactly map on to UKIP voters in Wales at the moment. They are very strong in the Welsh valleys, Labour Wales and British Wales. People need to be aware that this could become a repoliticised issue if these people found a voice.

Professor Richard Rawlings: Clearly, this is a thesis question, and a good one at that. It is true to say that there is a generational shift. The evidence suggests that for people growing up with devolution it is part of their landscape and, as you would expect, broadly they tend to be more in favour than older people. With regard to lessons that can be learnt, there are two particular features that I would emphasise. The first is accessibility. I am very struck when I speak to people who I know were fiercely opposed to the establishment of the National Assembly, especially in the business community. It is interesting to me quite how many of those people that I know have changed their view on that. What devolution in Wales allows

you to do, especially if you are in the business community, is speak to decision-makers in the Welsh Government in a way that, simply because of the size of the UK and Whitehall, it is very difficult to do unless, obviously, you are a multinational or that kind of thing. So there is an important accessibility issue there.

Secondly, there is a visibility issue. Of course the question of whether the Welsh Government performed well on the NHS and so on is a matter of political debate, and it should be—that is the lifeblood of politics. However, the National Assembly is all around us. Visibility is important, and there I would really like to draw a lesson regarding the union. From a union perspective, the UK Government do not do what they might well do to promote the union in a very practical way. I shall give one example of that: trains. Many colleagues round this room will have been brought up on those wonderful old Ladybird books, which had wonderful images, even if one might think they had a very old view of British history. One of the great images that I always remember showed the great moment when the train track in the United States, having been built from east to west and from west to east, joined up in the middle. Let us just think about that in the context of the UK, and ask this question: why is HS2 just being built south to north? Why is it not also being built north to south? It is a particular view in Whitehall that one starts in London and moves out from there. In terms of trying to promote the union and its importance, that is an excellent example of where Whitehall falls down. The symbolism of building it from both directions is very striking. More importantly, if you really want to hold the union together, why not have practical steps like a fast train service between Glasgow, Edinburgh and London to cut the distances and bring people together? I am afraid that this does not seem even to enter the mindset of Whitehall, as far as I understand it. The point I want to get at here is that, yes, we can talk about national identity, but when we talk about devolution we also have to think about practical things, and likewise when we are talking about the union and how one can demonstrate its significance. I really want to emphasise that point to the Committee.

Professor Robert Thomas: Yes, I agree. I do not have anything further to add to that.

Lord Morgan: I would like to follow up Dr Moon's comment. I am sure you are quite right to say that there is not enormous passion about Welsh devolution—you do not see flags in the street about it—but that might actually be a sign of its success, in the sense that in Scotland there is passion because there is a further powerful aspiration towards independence. The aspiration for independence in Wales is at most 6%, and personally I think even that might be overstated. It might be that this kind of settlement is appropriate for the aspirations and history of the Welsh people, and they are happy with it.

Dr David S Moon: I agree, but I would also say that I agree in particular because it is not specifically about the Welsh Assembly. There is a lack of engagement in and excitement about politics in general. People also feel that about Westminster.

Q267 Lord Morgan: National identity is something that is central to this theme and I would be most interested in your views on that. It always seemed to me, as a historian, that national identity in Wales was very different from, say, national identity in Ireland. In Ireland, the logic of national identity was the maximum degree of separatism you could manage—home rule, and then a republic, with Sinn Féin pressing for that. In Wales, national identity was expressed in other things, like disestablishment of the Church of England. That was the kind of image that I grew up with. What part do you see national identity playing now in the way that devolution is developing? Does it take a similar form in Scotland and Wales, or does it emphasise their differences as nations? What role do you think the sense of national identity might play in the future territorial organisation of the United Kingdom?

Dr David S Moon: I will start with Britishness and work my way back, if that is okay. The first thing to say is that, when we talk about national identity, I think we have to recognise Britishness. There is a difference in terms of how the Welsh sense of national identity is attached to itself—it feels very strange to be telling you this Lord Morgan, of all people. One of the things that I think is quite remarkable from the polling is in the report from the IPPR about English nationalism, *The Dog That Finally Barked*. What stuck out for me in that—it was 2012, so it is several years old now—was that the amount of English people who felt only English was 17%, while the amount of Welsh people who felt only Welsh was only 11%. The amount of English people who felt only British was 7%, but the amount of Welsh who felt only British was 15%—so more Welsh people felt only British and less felt only Welsh. The majority of Welsh people feel more Welsh than British, but there is something quite interesting in the notion of that middle ground. It is almost that they are the most British, but also more Welsh: it is an odd situation to have there.

That is why devolution works, as it reflects this combination. It is different and maybe more successful than in Scotland because the Labour Party, which has been the dominant party of Wales, was much quicker to adopt what I would call a soft nationalist way of doing politics. It embedded itself in a discourse and rhetoric of clear red water—red because of socialism but also because of the dragon—in terms of the difference between England and Wales, Welsh values, made-in-Wales policies and being a small nation. All those sorts of things meant, first, that a Labour Government in Cardiff Bay was able to follow different policies from London, and justify it on the basis that, “It is not because we disagree, it is just that we are different”,

which is useful politically. It also then creates a sense of identity, and a sense of national identity with that. It is positive: it creates a space where you can act. Labour was able to become the patriotic option, I would say, in a way that allowed it to overcome a threat from Plaid Cymru. Labour is a kind of Diet Coke: “it has the great taste but without the sugar in it”. There is no threat of independence, and the cultural and linguistic element is detoxified. Some people still see Plaid Cymru as forcing the Welsh language on people—although that would not be my opinion—but Welsh Labour is not seen as threatening in that way. That has been really key. All the political parties have become much more Welsh, and in a way the Scottish parties are kind of struggling to catch up.

Professor Richard Rawlings: I think that is very interesting, but I would just like to take it one step further. When I first came to devolution, when it first started off, I wrote a book on Welsh devolution called something like *Constitutional, Legal and Administrative Aspects of National Devolution*. I really wanted to stress the idea of “national devolution”, because it seemed to me that that would create a whole set of extra dynamics above and beyond simply the allocation and relocation of power. What has been described is exactly an example of that. As I said, I would like to take this one step further, as again I feel that sometimes the UK and union institutions do not give full and proper recognition to this and proceed in ways which are not helpful from a unionist perspective. We still have the language in Whitehall of the “devolved Administrations”. To describe the Scottish Government as a devolved Administration just seems to me to be a departure from reality.

I will give another example, which I included in my written evidence to the Committee and which shows that our judges, too, can be insensitive. Here I am referring to a very well-known Supreme Court case on asbestos diseases. One of the key issues in that case was the amount of deference or respect the Supreme Court should give to lawmaking by the National Assembly. Lord Thomas, the Lord Chief Justice, who was sitting in the Supreme Court on that occasion, was very firm. He said that it is a democratic institution—the elected representative body of the people of Wales—and we should give great weight to the legislative policy of the National Assembly. He was in the minority. Lord Mance, speaking for the majority, drew a distinction. On the one side, he placed the UK legislature, and said that when the UK legislature legislates, great weight should be attached, in the instant case; whereas when it came to devolved Parliaments and Assemblies, they would not have great weight accorded to their decisions, they would just have weight. Let us just stand back from that. One can understand how one could get to that proposition when Westminster is legislating on a UK-wide basis, but the idea that our judges should be more deferential to

Westminster legislation when it is specifically English in character than they would be to exactly the same legislation when it is passed in Scotland, Northern Ireland or Wales seems to me to be fundamentally unsound in terms of constitutional principle. Not only that, I would suggest that from a unionist perspective, it is foolish. You simply do not want to create that element of grievance that can then be used to put the union in question.

Just to finish this answer, my project this winter was to reread Winston Churchill's *A History of the English-Speaking Peoples*, and I came across a very striking phrase about constitutional policy. Churchill said that you must be bold but must also be prudent. It seems to me that, when it comes to issues of national identity around the UK, it would pay to be a little more prudent.

Professor Robert Thomas: I do not have anything to add on that.

Q268 Lord Morgan: We had some discussion earlier today on the desirability of a separate or different Welsh jurisdiction. With regard in particular to the points that Professor Rawlings made—with which I need hardly say that I have enormous sympathy—I was wondering whether you feel that having, in some sense, a structured Welsh jurisdiction with, in effect, Welsh law coexisting exist side by side with English law would be a help.

Professor Richard Rawlings: Let me take that first, because you can come in naturally on that once I have said one thing. The first thing to say is that this is a very important and fast-moving policy field. That is so because of all the controversy around the draft Wales Bill, which, as I am sure you know, Lord Morgan, has not gone down well in many quarters. It would be fair to say that it has concentrated many minds. When we talk about a separate or distinct jurisdiction, I think we need to take that in stages. Clearly, the words “separate” and “distinct” are sometimes used interchangeably but a particular formula, a shorthand, has arisen in the current debate: the idea that Wales might have a distinct but not separate jurisdiction. It is really important to emphasise that point. What is being talked about here is not the idea of Wales moving to a Scottish-style or Northern Irish-style situation. It is very much, if you like, a middle position. On the one hand, you would have a formal recognition of Wales-only law as well as England-only law to reflect the divergences caused by devolution, but there would be a common legal area of England and Wales reflecting the fact that many features of the unified legal system in terms of principle and doctrine go on. You would then have a Court of Appeal for Wales and a High Court for Wales, and likewise for England, but the key would be that you would have a joint judiciary doing both and a join legal profession. You would not be erecting boundaries in terms of legal business. There is a whole set of ideas behind that, but I key this in particular to the draft Bill, which is where Robert can now come

in because he has written on it. There is a major concern about the draft Bill that, with a view to retaining the “integrity” of the England and Wales legal system, very strong constraints are being suggested for the National Assembly in the areas of private and criminal law. One reason—I emphasise it is only one reason—why this idea of distinct jurisdictions is being developed is a way of, if you like, avoiding that particular outcome. In a sense, one could then continue with the many practical strengths that are clearly very important and that we derive from a joint England and Wales legal system. On the other hand, it allows the National Assembly a more obvious space inside the boundaries of Wales to do what, after all, an elected legislature should be doing: delivering effective policies and lawmaking for the people of Wales. Of course, lawyers sitting around the room will all know that if you want to produce effective legislation you have to enforce it and give it teeth. That requires you to have competence in the area of criminal and private law. As I say, Robert has written on that so I am sure he could follow on.

Professor Robert Thomas: The issue of a separate or distinct jurisdiction has been raised by the Bill and it really goes to the heart of the constitutional role of the Assembly and their effectiveness. For a legislature to be effective, it must have the requisite tools at its disposal. That usually involves enforcing legislation: introducing penalties or civil liability and so on. But the Bill reserves the law. The law is to be reserved except so far as modifications to private and criminal law may be made, in so far as they are necessary. This is the necessity test that would be introduced by the Bill. If you take a step back and look at the system, we have a unified legal system between England and Wales and we have two legislatures. It is an unusual set-up. The normal set-up is that you have one legislature and one legal system. That is the case in federal systems and so on. In a federal system, you have overarching federal law but we do not have that in the UK—perhaps we never will. So the purpose behind the Bill, or at least the Government’s rationale for it, is to preserve the single, unified jurisdiction not as a means to an end but as an end in itself. This is why the draft Bill would, so it has been argued, create lots of problems in terms of legal challenges against Assembly legislation over whether it is necessary. The Government introduced that to have some sort of boundary but it does not provide a clear boundary; it just leaves it for another day. The risk is that you will have lots of legal challenges to the Assembly. The way out of this would be to have the “distinct” legal jurisdiction. The Lord Chief Justice said that a distinct jurisdiction would not need a separate court system with the costs associated with that. That is one of the reasons for it. It would be possible to do it. I think that a lot of thought is needed on the mechanics, planning and so on but it is one possible way forward. The purpose would be to ensure that the Assembly here

had an effective role in making and enforcing their own legislation, which they are democratically elected to do.

Q269 Lord MacGregor of Pulham Market: I want to ask about the social union. As you know, the Scottish Government advocate full fiscal autonomy for Scotland, particularly in relation to the provision of additional welfare benefits and other things of that sort. That would mean that all but certain core functions such as macroeconomic policy, the currency, foreign affairs and defence are devolved. We do not yet know what the fiscal settlement will be but that is the position of the Scottish Government. It is very clear from the written evidence received from the Welsh Government, that, “resource and risk sharing, in the interests of social protection for all UK citizens, are at the heart of the Welsh Government’s understanding of the social union”. That was dismissed when we were in Scotland by the Scottish Minister, who rejected the idea of a social union as put by the Welsh Government and others, describing fiscal redistribution as amounting to central control. There is a very clear difference of view on this area. Is that right and why is there that difference of view?

Professor Richard Rawlings: Again, there are different layers of explanation. The first and most obvious one to me is often missed. If one thinks about the development of devolution around the UK, with one short interlude the Welsh Government stand out as they are the one devolved Government that are consistently pro-union. The Welsh Government are not in the game of trying to break up the union. They are firmly committed to the union and wish Wales to have a good role in, play its part in and benefit from the union, and all those things. That is not the position of the Scottish Government, obviously. One starts from a very different political base. To that might be added that we are obviously dealing here with a Welsh Labour Government and a particular ideological commitment to, and history over many years of, a strong welfare state. I am sure that Lord Morgan would agree with me that one of the proudest things that Welsh people like to think about is the contribution of the National Health Service and the way it was developed by Nye Bevan and given to the rest of the UK. There are very different starting points here. Turning to full fiscal autonomy, I have written that I regard it as a poison pill for the union. But if I were an SNP person, wishing to leave the United Kingdom and having lost in the referendum, the next best thing for me to press for would be full fiscal responsibility. Of course, one can have an argument about what the impact of that would be in the light of oil price changes and so on, so perhaps we will not hear quite so much about that now as we did a few months ago. Perhaps we will hear it again in the future. Putting that to one side, if you are committed to independence, it seems to me that you would push for full fiscal responsibility and essentially say, “Scotland looks after itself; we may look after other

disadvantaged regions of the UK if we are in a good mood, but we are under no obligation to do so". I can see where they are coming from. If you put an SNP hat on, that makes sense to me. I am not an SNP person, obviously, but I see where they are coming from. My explanation is that the starting points here are just very, very different.

Professor Robert Thomas: I think you have to define in a bit more detail what we mean by a social union. Is there a distinction between social in terms of cultural union and the welfare union? When it comes to the welfare union, social security is the largest area of public spending. There is no enthusiasm in Wales for devolution of those purposes. The politicians are very wary, for instance, even about devolving attendance allowance. There is a good strong rationale for retaining it because these are universal benefits, national insurance and so on. If that was to go further, there would be a lot of discussion about fiscal devolution. But the devil is in the detail and that has to be resolved.

Dr David S Moon: Basically, the question is: does fiscal responsibility raise the risk of increasing inequality among the components of the union? Yes, it does.

Lord MacGregor of Pulham Market: If oil prices continue at the present level, we might see a different debate in Scotland.

The Chairman: Even without that, fiscal autonomy in Scotland would be disastrous for the people of Scotland, not that I am in any way biased in one direction or the other.

Q270 Baroness Dean of Thornton le Fylde: Just to follow on from the last point, we have to remind ourselves—certainly we were reminded by the Institute for Government—that there are already differences in public policy, benefit and welfare; for example, student fees, pensions, prescription charges and care of the elderly. We are not starting from the same base point. Certainly, Scotland is ahead of the game, if you like. In a way, the train has left the station. Professor Thomas went right to the heart of it when he talked about welfare benefits, Wales being in a very different position from Scotland. But looking at it from the union point of view, to what extent can the service delivery and those policies as between the United Kingdom and—apologies, Professor Rawlings—the devolved nations continue before we start to undermine the union? I am very interested to hear your views on that. To finish that point, what are the risks and benefits of diverging on that? I would like Professor Rawlings to start, please, because you finished on that point in answer to Lord MacGregor.

Professor Richard Rawlings: I do not think that you can fix a point. Let me try to address this in a number of ways. The first is, and it reflects perhaps what you just said, Baroness Dean, that I would not start from here.

Baroness Dean of Thornton le Fylde: But we are.

Professor Richard Rawlings: We are starting from here, but I would not. That is important to say. What happened in Scotland in the context of the independence referendum, from a unionist perspective, was, I think, very bad indeed. History will be a harsh judge of the way in which the unionist parties went about dealing with the politics surrounding the Scottish independence referendum—at least, it will be when I am writing it. The vow was about the worst possible way of approaching these things. That has to be said. It was right to have an independence referendum in Scotland, given the electoral mandate of the SNP, but the unionist parties had to make it clear in advance what the unionist offer was. To try to conjure up some kind of unionist offer a week before the referendum vote was the worst possible way of going about things. I want to put that out on the table. I accept what you say, that we are where we are, and that we have to start from here. But a lot of perfectly sensible policy approaches, not least around the Barnett formula, have been rendered very difficult by the vow. That is the first point that I would make.

The second point I would make is that, for me, it goes back to the idea of visibility. The more that the union withdraws from basic universal benefits, pensions and so on, the more that the position of the union, long-term and historically, will be eroded. For the union to survive, and it may or may not survive, the UK Government have got to be seen to be making an impact and to be important in people's lives. There is a really big constitutional issue here. It is not just about should attendance allowance go down to Wales or should this go to Scotland et cetera. The more the UK retreats in that field, the more support for the union will erode.

Dr David S Moon: I will tackle some of the benefits and negatives of policy divergence. You can see several benefits. First, the devolved Governments could act as legislative laboratories. You can try out new policies; if they are successful, you can then spread them across. This is an idea that was put forward as well. One of the problems then is how you sell those, which is something I have looked at in my research. There is a danger that if you start saying we are doing this for the specific Welsh or Scottish circumstances, it does not cross national boundaries. But that idea of a legislative laboratory could be a positive thing. Take, for example, free prescriptions. Everyone talks about it in Scotland and it started in Wales. We can learn from that. Secondly, the benefits are that it allows more tailored politics. Different countries have different situations—we have talked about the poverty in Wales—and you need different ways to deal with that.

In terms of negatives, first, there might be dangers in the future in areas where the policy footprint overlaps between the devolved and non-devolved or reserved areas; there could be tensions. I said that previously about military basing, which is a perfect example of this. If we

were to have devolved Governments making funding decisions affecting certain services vital for military personnel who are in Scotland or Wales, the Ministry of Defence is going to have a problem. There has to be some sort of system for the two working together. Again, we are touching on the issue of a minimum provision. Another negative of differential policy is that it can allow political parties to basically attack the other Governments for their domestic audiences. The most obvious example of this for me, being somebody who studies Wales, is the constant attacks on the Welsh NHS by the Prime Minister at Prime Minister's Questions throughout the last Parliament. Every single time it came up, the Welsh NHS was attacked: "This is what you're doing in Wales". The issue here is that that was not a message for the Welsh people; it was a message for the English people. It was a way of saying: "English people, you don't want the Welsh NHS". Polling showed that the Welsh were quite happy not to have the new system in the English NHS, and there was a problem with that. It led to arguments about Welsh people swamping over the border and flooding England. This is not good rhetoric, and it is certainly not good for the union.

With regard to other negatives, on a very small point, I teach devolution. I have no Scottish students at an English university, because obviously there are different tuition fee policies. That is not good for the union.

Baroness Dean of Thornton le Fylde: With due respect, that was before the referendum.

Dr David S Moon: Certainly, but it is still an issue of policy divergence.

Baroness Dean of Thornton le Fylde: As were prescription charges.

Dr David S Moon: And if you want to increase the number of people who would be supportive of independence if they do not leave the country, that might be an issue. Wales is currently looking at whether the stipend it gives to its students will apply only to Welsh universities, so again we might see Welsh students not leaving Wales to study. The final thing that might be worth bearing in mind is that the days of Keir Hardie, Ramsay MacDonald, Jim Callaghan, Michael Foot, Neil Kinnock and Gordon Brown—basically, I am not sure we are in a situation where having leaders of major political parties not from England is going to be possible any more. How could you have a Welsh leader stand up and propose changes to the NHS in England that he could not then vote on and would not apply to his own constituency? I think the Scottish referendum has changed that from when it was acceptable under Brown. I think the attitude has changed.

Professor Robert Thomas: Briefly, the question is: should there be a minimum level of provision. One response to that is, "Who would set the minimum level of provision?"

Baroness Dean of Thornton le Fylde: Exactly.

Professor Robert Thomas: If you devolve, you should not claw back or seek to regain that lost ground. Devolution means that there will be differences. That is the whole purpose of it.

Baroness Dean of Thornton le Fylde: Would that mean, Professor Thomas, having a different situation? Scotland is clearly pushing ahead with the agenda that people want independence, but that is not the situation in Wales, we have been told. If you then moved to say, “You will have differential benefits”, is that not going against the will of people in the Welsh Assembly—except perhaps one small part of it, Plaid Cymru?

Professor Robert Thomas: I do not know, to be honest. I do not have a response to that.

Professor Richard Rawlings: You are raising a very interesting dynamic, Baroness Dean, if I may say so. The way in which devolution has understandably been portrayed and visualised so far, is in a sense, demands for more devolution. Is there now a developing scenario where we may be thinking in terms of devolution being imposed? The UK Government could say, “You may not particularly want this, but this is what you are going to have”. There are elements of that around, and one can certainly see how that could fit in in the context of English votes for English laws. I have seen arguments on the Floor of the House of Commons, suggesting “Why are we bothering with the Welsh? Why don’t we simply give the Welsh their stuff and we can get on more with the English stuff, when it comes to domestic matters?” Obviously, there is still a UK-wide perspective. You are signalling a very interesting possible dynamic that we may see emerging, in particular in the context of Wales, precisely because the Welsh Government are not enthusiastic about things such as welfare devolution, and thus far have not been particularly enthusiastic about tax devolution. As you know, there is a continuing issue about whether we will remove the requirement for a referendum to start the income tax powers that are available. They are triggered by a referendum under the most recent Wales Act. You probably know that the Chancellor has suggested that we may be removing that referendum requirement.

Baroness Dean of Thornton le Fylde: I found that discussion really helpful. Thus far, it could be argued that the whole area of welfare benefits in the devolution debate is possibly one of the pragmatic areas that we could deal with. It is not one of the high-principle areas such as law. But the more I hear, personally, I think that it is becoming probably one of the most intractable areas of the devolution debate to get an acceptable settlement.

The Chairman: Rather than ask you to comment further on that, I would draw attention to the time. We have three questions that we want to ask and 15 minutes left allowing for our overtime. May I ask no more than five minutes collectively by way of answer?

Q271 Lord Norton of Louth: We have looked at some of the consequences of devolution and I want to look at the asymmetrical aspects of devolution, quickly picking up on Dr Moon's last point. I think it is fair to say that neither the Conservative nor Labour parties are going to have a leader drawn from Scotland in the near future, but it is not impossible for either to have a leader drawn from Wales. On asymmetry, we have heard conflicting evidence. There has been a view that asymmetry is necessary, but it is not a necessary good. There are problems attached to it. Some have seen it as a stabilising element, whereas Justice for Wales told us, "We consider that, so long as asymmetries exist, there will be the potential for grievances and for misunderstandings". How do you see the consequences of asymmetry both for the union and also for Wales?

Dr David S Moon: Asymmetry was obviously built in from the very start, and we have to look at why that was. Part of it is due to a particular Welsh context and part of it is purely political and due to the fact that they could not find agreement between the Welsh Labour Party and other organisations. It was a muddle; there was a fix. In many ways, it linked back to the Harold Wilson period of government and reaching back to those plans. There are honourable and good reasons for the asymmetry. We are looking at different countries with different situations, but there is also the problem that it was just a mess. What that has brought with it is a normative belief that, classically, "Devolution is a process and not an event"—Ron Davies's statement. That has driven everything. There is this notion that there are asymmetries but we are moving slowly towards an end point where most of those will be removed unless for very particular reasons. That is something that is driving things forward. In terms of asymmetry, that is the major issue. In Wales, it is less of an issue. The major problem for asymmetry at the moment is the fact that England does not have a clear position. That asymmetry is the largest danger. If there is a particular question on EVEL, I will mention it later.

The Chairman: We will come on to that.

Professor Robert Thomas: I would flag up the draft Wales Bill. I would flag up issues there with regard to the structures that are being created and the differential powers of the Assembly. On the features of the Bill, I have mentioned the necessity test, but there are other matters such as the provisions concerning Minister of the Crown consents and the rollback of powers. There was a Supreme Court judgment on the Agricultural Sector (Wales) Bill that gave a relatively generous interpretation as to how you determine legislative competence. That is effectively being reversed by the draft Bill. I would flag that up as an example of unwarranted asymmetry. You are going to have asymmetries with this. The question is: do we

have any agreed criteria for finding out what is an acceptable and unacceptable asymmetry? I would flag up the draft Bill in that respect.

Professor Richard Rawlings: Given the little time that we have, I am not sure I have that much to add to that. It seems to me that an element of asymmetry is inevitable, and we have to accept that. So then it is a question of where and to what degree. But I will use the opportunity to say two things. In a way, Lord Norton, you are putting into question the whole federal idea, because it would be very difficult to have a federal construction in the context in which we find ourselves. I should like to say that. Secondly, turning the question, as it were, in my written evidence I said to the Committee that I thought it had an important continuing role to play here. I really want to emphasise this, because it is a theme that links many of my answers today. This will run and run. If one wants to protect the union and go on with the union, one has to go on and on working constructively for the union. You cannot do it in a single moment of time. I want to urge that point on the Committee. I am sure that the Committee will produce a terrific report, but I hope it does not stop there. My suggestion to the Committee was that, on an annual basis, there should be a state of the union review by this Committee. I cannot think of anybody else better equipped to do it. You will have this whole report to hand that you have spent months working on. It seems to me that there is a real gap of accountability in terms of central government. Who in central government is responsible for constitutional policy relating to the union? I am unclear about that. This Committee has an incredibly important role in holding the UK Government to account for its approach to the union on a regular basis, asking what they are doing to promote the union—all the questions that we have had today. I really encourage the Committee to take that idea seriously. I cannot think of any other body in our constitution which is better placed to do that.

Lord Norton of Louth: There is a question about which ministry is responsible for constitutional policy, full stop. You are very well aware of our terms of reference. As you say, this Committee is the body that needs to keep the constitution under review—not least because, as you have said, and Dr Moon made this point, it is a process. Even saying “process” gives it a coherence that perhaps it does not deserve. On Dr Moon’s point, I think you are suggesting that there will be something of a convergence and that there will not be quite the same gap in devolved powers in Scotland and Wales as there is now. But is there an element where it will be seen as Wales playing catch-up?

Dr David S Moon: I do not know whether there will be a convergence, but I think that is certainly one of the aims that it is driving at. The idea of Wales constantly playing catch-up is central to how people view politics.

Professor Richard Rawlings: May I just add one thing? Just to pick up on Professor Thomas's point, at one level, one could see the draft Bill in terms of greater symmetry. If Wales can have a properly constructed reserved powers model rather than a conferred powers model, that will be a good thing. At the moment, we have a conferred powers model for Wales. But the big question, which Professor Thomas has raised, is that it has to be a properly constituted one. In other words, the issue is not moving to a reserved powers model; the issue is moving to a properly constructed model.

Q272 Lord Cullen of Whitekirk: I would like to turn to England, if I may. Some people have advocated recognising England as a nation for the purposes of devolution; others have advocated devolving within England to regions and communities. Is it possible to deliver a settlement that covers both? On the connection with communities and regions, is it possible to devise a realistic solution for devolution of legislative powers within England?

Professor Robert Thomas: To get the discussion going, I do not think an English Parliament is really a credible answer. I do not think that you could have a credible federal system, whereby one part of it comprises 84% of the population. English votes for English laws is one response to that, but we will have to see how that plays out and how it works over time. However, I would emphasise what has been happening—and it is not just about the northern powerhouse and not just about Manchester. It is about many other combined authorities throughout England, and how they develop, which may over time develop into regional assemblies; there may be a call for it. In the process of constitutional change, there will be elected mayors, for example. Manchester had a referendum on whether it wanted an elected mayor in 2012, and the answer to that was no. It has been imposed top-down, in an elite-driven process. There has not been the discussion or debate within England about what the English want. England does not really exist as an autonomous unit. There is, supposedly, the English question—but it is not, it is various English questions. If the problem is whether there should be legislative power, the answer might be an English Parliament. Part of the issue is that the system of government itself is too centralised. If that is the issue, an English Parliament does not really resolve that; it will be through combined authorities, possibly—administrative decentralisation.

Dr David S Moon: I agree completely. I agree with the idea that it is very hard to imagine an English Parliament, with 85% of the population within one body. The problem is that all the polling shows that that is exactly what the English prefer. We tried regionalism: Churchill, Crossman and Prescott all supported English regionalism, but none of them could make it work. The major thing that came back from my research on the north-east election was the

amorphous nature of a north-east identity. Gluing Yorkshire and Humber together is very difficult. It is a problem of how you manage to bring that about. The issue with the city regions is that it feels like a classic British ad hoc muddle. There are bits and pieces, bits and bobs all over the place. There is no coherence to it. If we keep on down this route we might end up not with the West Lothian question but the central Manchester question at some point. There are issues here to be dealt with.

In terms of EVEL as produced, there is a problem that we are muddling through at the moment. We have had the first votes on it. It was a vote that had Barnett consequential, yet it went through. William Hague when pushing it through was asked about the Barnett consequential and said that this will be less of an issue as tax powers are devolved. That is a terrible argument: we will put up with it until eventually it will be fixed. This is part of the problem with the way we do politics in the United Kingdom.

Professor Richard Rawlings: I will give you a brief footnote, Lord Cullen, since we are very short of time. I invite your legal advisers to do some research on this, but in the draft Wales Bill there is a formulation that I have never seen before referring to the union of “the nations of Wales and England”. We will see whether the legal advisers can find one, but I have never seen in legislation before a reference to the nation of England.

The Chairman: Perish the thought. We come to our last question.

Q273 Lord Judge: Let me put it simply: what impact will the proposed arrangements of English votes for English laws have on the union as it stands—a union in which, let us not overlook it, the majority in Scotland rejected independence? What will be the impact of EVEL on the union?

Dr David S Moon: Regardless of whether the policy is good or bad—I do not think it is very good—the way it was announced the morning after the Scottish independence referendum, in which the Scottish people had voted, “Yes, we want to stay in the union”, for the Prime Minister to then go, “This is fantastic, we’re glad you’re in the union: we’re going to be stripping powers from your MPs”, was hugely insulting to the Scottish people and one of the worst things he could have done for the union. The fact that that was followed up with an election campaign where Scottish MPs are shown as pickpockets, thieves and puppet masters with people in their pockets, all these tropes, comes back to what Professor Rawlings was saying: the union has been doing a very bad job of speaking up for itself. In fact, it has been using diabolical language. On whether it is a good idea, the danger is that it is seen as putting party first, rather than proper constitutional issues. That is all I would say.

Professor Richard Rawlings: I have always been instinctively opposed to EVEL, because I think in the long term it will work to corrode the union. That said, I have to accept that there is clearly a demand—if I may say so, a wholly understandable demand—for some recognition in our political process of England qua England and English national identity. I think I should leave it there, because I am Welsh and I have to be careful about that. It is very easy for me to say that I am instinctively opposed to EVEL—looking at it from a unionist perspective I am—but being Welsh I have the National Assembly as well.

Lord Judge: Could you not as a Welshman tell the English what they should do?

Professor Richard Rawlings: I am a city deals type of person. I accept that there are clearly problems of patchwork. There are constitutional questions about transparency and accountability, et cetera. However, I am sure all colleagues around the room would agree with this: London is a wonderful thing and it is vital that we have a vibrant capital city and world economic centre in London, but it does weight the whole country to the south-east. That is why I am very in favour of the Manchester powerhouse, and whatever you call it in the Midlands. That is the way forward for England. The question is: is there one answer to the England question? It is futile to search for one answer. It is a question of having a number of answers. I think that the Manchester and Leeds types of ideas are really important.

Professor Robert Thomas: The way EVEL was introduced was not the best, but there is a lot of artificial anger in response to it. Let us see how it actually works in practice. Do not just look at one Bill, but look several years ahead and at how these decisions are made by the Speaker. It is part of the answer. There was a demand for it. There is a sense of disaffection in England not just with the causes of EVEL, but with the Barnett formula as well. Let us see how it works in practice, rather than make educated guesses about it.

The Chairman: Gentlemen, I am sorry that we had to accelerate things towards the end, but you had some fascinating answers for us. Even in that compressed form, you still gave us some strong, clear messages. We are extremely grateful to you for making time available and for helping us with our difficult inquiry. We hope, when it comes to producing our results, that Wales will feature in a way that does not disappoint you too much, but I cannot guarantee anything. Thank you very much indeed.