

Professor John Denham – written evidence (FGU0027)

House of Lords Constitution Committee Inquiry into the Future Governance of the UK

1. I am the Director of the Centre for English Identity and Politics at the University of Southampton. I was MP for Southampton Itchen from 1992-2015 and the Secretary of State for Communities and Local Government from 2009-2010. (In that capacity I laid the orders creating the Greater Manchester Combined Authority, the first combined authority). My published work includes a study of Labour's approach to the governance of England (in *Governing England*, British Academy, 2018). I am also a Founder and Director of the Southern Policy Centre.
2. The focus of the Centre for English Identity and Politics is on the relationship between national identity and political choices, and on the governance of England and the union. In the past twenty years English, British and combined identities have taken on a political salience with, for example, 'English not British' voters voting heavily Leave and 'British not English' voters tending to vote Remain. National identity is also a good predictor of attitudes towards English governance and the union.
3. The Southern Policy Centre is an independent think tank for central southern England. The SPC has delivered research, reports and events on devolution and regional policy since 2014 and has argued that any local devolution proposals should reflect a coherent regional strategy.

Summary

4. England's place in and relationship to the Union is rarely directly addressed. But many of the tensions within the Union stem from the conflation of the government of England and the government of the Union. The failure to delineate the two has serious consequences that have become more apparent since the establishment of the devolved administrations:
 - The Union government is perceived as confusing English interests with those of the Union and pursuing them irrespective of the wishes of other parts of the Union
 - England has been left without a coherent machinery of national government, any national democratic institutions, and as the most centralised nation in Europe
5. By separating the government of England from that of the Union it will be possible to:
 - Ensure that the Union can find a shared purpose for the 21st century,
 - Ensure coherent governance of the Union as a whole with powers exercised at appropriate levels
 - Enable relationships between the parts of the Union to be placed on a more transparent and robust basis
 - End the confusion between English interests and Union interests
 - Provide England with both a clear machinery of government and radical devolution
 - Create a national forum in which England's future can be shaped

6. Radical and ambitious change brings many complex challenges. Constitutional reform should be conceived as a process of 'strategic incrementalism' in which successive individual reforms move the Union and the nations in the desired direction.

The purpose of the Union

7. While the Union is underpinned by much shared history, shared experience and personal relationships talk of 'saving' the Union can imply that the Union's value lies in its historic role as a British state.
8. The 21st century case for the Union should be that its component parts can achieve shared aims – such as the transition to zero carbon economy, building a post-Brexit economy, and a more prosperous and inclusive society - more effectively together than separately. Such shared aims will require a Union in which power is distributed between the Union, the nations and the localities. This will create centres of autonomous and legitimate power, exercised by different political actors, and in which coordination and cooperation will be more important than any ability to govern from the centre. This is not how the Union currently works.

The dominance of the Union by England

9. UK devolution was both necessary and desirable but the underlying assumption that no further changes were needed to the governance of England or the Union was deeply flawed. This view still dominates much current thinking. The terms of reference of the recent Dunlop¹ Review, for example, made no reference to England.
10. England's position within the Union has been discussed since Home Rule debates of the late 19th century. The received wisdom, endorsed by the Kilbrandon Report in 1973 was that, given its disproportionate size, wealth and power, allowing England a democratic or political nationhood would dominate and thus destabilise the Union.
11. This view formed before UK devolution and the experience of devolved administrations. Twenty years of devolution have actually served to make England's size and influence more rather than less explicit. Its weight is no longer concealed within a Union government but made more obvious by it. In the eyes of many, particularly outside England, the Union is synonymous with a London centric Union state that has been unable to respond to the realities of devolution, and a government with Anglo-centric priorities which rest largely on electoral support in England.
12. The effect of the current asymmetric constitution is to give England an obvious and disproportionate impact on the United Kingdom government.

The UK Government

13. Education, health and social care, local government and many other areas of domestic policy are now devolved. In England they remain the responsibility of the Union government. As a consequence, the UK Cabinet now includes many

¹ <https://www.gov.uk/government/publications/the-dunlop-review-into-uk-government-union-capability>

members whose responsibilities lie exclusively in England. Those with equivalent responsibilities in the devolved administrations have no representation in the Union government. (Other members of the Cabinet have remits that only cover England and Wales, and others have significantly greater responsibility in England than the rest of the Union.) This institutionalises a fundamental imbalance between the representation of England within the Union government and that of the devolved nations.

14. A public manifestation of this came at the beginning of the pandemic when politicians, civil servants, and the London based UK media were often imprecise about whether UK ministerial announcements applied to the whole UK or, as was often the case, England alone.

Relationships across the Union

15. Reports and statements by senior civil servants², academics the first Minister of Wales³, and the Dunlop Report have all confirmed the weakness of mechanisms for intra-government coordination within the Union at both political and civil service level. Civil servants and Union ministers have variously ignored developments within the devolved administrations, acted as though devolution has not occurred, or sought to intervene in policy areas that are formally devolved.
16. The mechanisms that formally exist for intra-government coordination have only been used inconsistently. In discussions with other nations, the Union is frequently represented by UK Ministers who are also expected to represent English interests. Intra-governmental mechanisms do not guarantee devolved nations the right to ensure their views are taken into account. Court rulings have confirmed the limited power of the Sewell Conventions.
17. The devolved administrations in Northern Ireland, Wales and Scotland have all criticised Union government decisions on, for example, the Northern Ireland protocol and the Internal Market Bill that conflicted with their views on the best interests of the future of the Union⁴. The perception that the Union government reflects an English view of the future of the Union under Brexit has been damaging to the cohesion of the Union.
18. These attitudes and practices are deeply embedded in the culture of Westminster and Whitehall. They stem directly from the conflation of the Union government with the government of England, and the dominance of a London-centric view of both. The cumulative impact is to sustain a Union in which the UK government reflects an English view of what is best for the Union.

Divergent politics

19. The devolution process did not anticipate that the politics of the different parts of the Union would diverge as significantly as they have. In the last three general

² <https://www.bennettinstitute.cam.ac.uk/publications/union-crossroads/>

³ <https://www.theguardian.com/politics/2021/mar/04/wales-mark-drakeford-says-remote-boris-johnson-is-putting-union-at-risk>

⁴ <https://www.bsg.ox.ac.uk/research/publications/resist-reform-or-re-run-short-and-long-term-reflections-scotland-and>

elections, the British nations have been contested by different parties, often on different issues, and different parties have 'won' in each. The alignment between the Ulster Unionists and the SDLP in Northern Ireland and the Conservative and Labour parties has weakened with the rise of the DUP and Sinn Fein.

20. The current Union government is elected overwhelmingly in England but unable to win in the other nations. In contrast with the 1980s, however, it is not obvious that any single British party will be able to form a Union-wide majority government in the foreseeable future. The decline in 'British politics' in the sense of politics being contested across the British nations by the same parties and around essentially the same issues has highlighted the tension created by a Union government whose legitimacy rests almost entirely in England.

Fiscal fairness and solidarity

21. The Barnett formula is widely seen as unfair, providing an over generous settlement to Scotland, underfunding Wales, and proving English localities with no guarantee of a fair share of national or Union funding. The conflation of the Union government and the government of England reduces the political incentive to create a new formula based on Union wide principles and suppresses debate about fair funding for England.

England within the Union⁵

22. It might be assumed that the current asymmetric devolution must work to England's advantage. In practice it leads to a poor system of governance of England itself. The Westminster and Whitehall culture that has marginalised and undermined the devolved administrations is also reflected in the Union state's approach to England. The Union states variously ignores, marginalises or seeks to intervene in England's local democratic structures. As a consequence, England is over-centralised, has no national machinery of government, and no clear system of ministerial or executive accountability. England lacks any national democratic forum or institutions.
23. England as a nation is largely marginalised in political and official debate. England itself is rarely named in announcement by ministers or opposition politicians who normally refer vaguely to 'the country' or misleadingly to 'Britain'.

Machinery of government

24. The Union still operates as though the United Kingdom were a single unitary state in which England had no separate presence, a state of affairs that has not existed for 20 years.
25. Twenty years after devolution no clear machinery of government coordinates national policy across England. England has no First Minister, Secretary of State or permanent Cabinet committee. Despite the large areas of domestic policy that are 'England only' the Union state does not assess the cumulative impact of these policies nor provide the coordination that is essential between them.

⁵ See, for example, Denham, Gallagher and others in 'Governing England' British Academy, 2018

National democracy

26. England has no national democratic forum of English MPs that can provide a crucible for debate about the state and future of the nation. The obscure and bureaucratic procedures of English Votes for English Laws (EVEL) have not given England a national voice, nor do they ensure that laws that apply only in England are made entirely by MPs elected from England. This is in stark contrast to the Scottish Parliament, Welsh Senedd and Northern Ireland Assembly.
27. While the great majority of Westminster MPs are from English constituencies, the Westminster Parliament does not function as a national parliament for England. Ministers are accountable to the Union parliament, but no mechanisms provide for direct accountability to English MPs for English policy, or to assess the condition and future of England as a whole.

The centralisation of England

28. In the absence of a defined machinery of English government there is no coherent government from which powers can be devolved England. The patchwork of inconsistent and arbitrary measures which have passed for devolution stem directly from England's government by the Union and the centralised Union state's disinterest in England as a nation.
29. England is the most centralised nation in Europe (measured by the extent to which sub-national bodies have control over both the raising and spending of resources). It has become more centralised since UK devolution with, for example, the removal of much of school education from local government control. The impact of austerity fell disproportionately on England's local government. Together with the rising costs of social care the financial pressures have underlined how little control England's localities have over their own resources.
30. Over the past twenty years the extent to which regional structures, cities, combined mayoral authorities or 'levelling up' areas have been allowed additional resources or autonomy has been strictly limited in size and scope. Local 'deals' have been highly conditional on Union government approval. English 'devolution' has been described as a process of 'elite co-option'⁶ which aims to secure local implementation of Whitehall priorities.
31. The centralist and London centric approach to government towards both England's localities and the devolved administrations that is manifested by the Union state means radical and systemic devolution of power within England is unlikely as long as England is governed by the Union government.
32. [My evidence the PACAC Select Committee on the future of devolution in England can be accessed [here](#) and may be regarded as an appendix to this submission]

English public sentiment⁷

⁶ See [for example](#)

⁷ See for example 'Englishness', Henderson and Wyn Jones, 2021; Curtice in 'Governing England' *ibid*; BBC/YouGov 2018 and CEIP 2019, available from soton.ac.uk/ceip

33. English public opinion is not as clearly pro-Union as might be expected. While only a minority would support independence around half are at best ambivalent about whether Scotland leaves the Union. A majority of English residents think that England has distinct interests within the Union and want political parties to defend those interests.
34. There is relatively little public debate about England's governance and opinion polling needs to be treated with caution. However, for over 20 years a settled majority of English residents have supported the principle that MPs from outside England should be excluded from making English legislation. More residents support than oppose a separate parliament for England but many express no preference. In all polling, support for national measures (such as EVEL or a Parliament) is significantly greater than for devolution to regional assemblies
35. Notwithstanding the preference for English legislation and policy to be made at national level there is broad support for the devolution of the delivery of services to democratic local bodies.

England and the future of the Union

36. Future reform of England's position within the Union should have three aims:
- To constraint the ability of England or an English based government to act on behalf of the Union as a whole
 - To provide England with a national democracy and machinery of government equivalent to that in the other nations
 - To challenge and transform the culture and practice of the current Union state to support a genuine Union of nations.
37. To do this it will be necessary to separate the government of England from that of the Union, establish new mechanisms for determining Union-wide policy, and place relationships between the nations and the Union on a new formal and statutory basis.
38. No reform can alter England's size and weight relative to other parts of the Union. A Union of consent will depend on the balances of power, influence and finance that will always need to be struck between its component parts. Union reform will bring these trade-offs into a transparent and open process. Reforming England's position within the Union will enable the 21st century Union to be based on clear principles:
- The right of each nation to determine its own domestic policy within the Union, based on the principle of popular sovereignty
 - Separation between the domestic governance of each nation and the governance of the Union
 - Placing the relationships between the nations and between the nations and the Union on a statutory basis
 - Guaranteeing the rights of each nation within the Union and providing robust mechanisms for coordination across the Union
 - Fiscal solidarity and fairness across the Union
 - Subsidiarity with the Union and within each part of the Union

Strategic incrementalism

39. It is unlikely that all the institutional, legal, political and financial consequences of implementing these principles could be accomplished in one single constitutional reform . Identifying the principles of reform allows a process of 'strategic incrementalism'. This process would see the adoption, over time, of individual measures which move the nations and Union towards the full implementation of the principles. Each measure would be justifiable in its own right and as necessary, be allowed to 'bed down' and able to shape the next stage of reform.
40. Incremental changes have occurred ever since the initial UK devolution. These changes have lacked any consistency underlying principles or sense of strategic direction. A new approach is required

English institutions and the governance of England

41. A first step to create a machinery of English government would establish a Cabinet Committee for England, led by a Secretary of State and supported by Whitehall reorganisation.
42. A case can be made for a free-standing parliament, but both popular opinion and an incremental approach would suggest that evolving Westminster into a dual-mandate parliament – in which English only business is conducted by English MPs sitting alone - would be the easiest (and cheapest) first step. It would provide a democratic English national forum and legislature.
43. It can be anticipated that reforms to the machinery of government and Westminster might well lead towards the appointment of a First Minister for England, and clearer accountability of English ministers to English MPs. Support for a parliament for England might grow. But these outcomes do not need to be determined now, and the processes could evolve over time.
44. Similarly, the replacement of Westminster sovereignty by popular national sovereignty should be seen as process rather than a single event, continuing an evolution that began in practice (if not in principle) with the establishment of the Scottish Parliament, the Welsh Assembly and the Northern Ireland Peace Process.

Relationships between the Union government and the nations

45. The first priority should be to place the relationship between the nations and the Union government on a statutory footing. Robust mechanisms for the resolution of disputes between the nations and the Union government should be put in place. Mechanisms for improving coordination should be overhauled. England should be separately represented in intra-government discussions, perhaps by the Secretary of State for England.
46. As the machinery of government for England develops, the UK Cabinet should comprise only ministers with UK wide responsibilities, together with the formal representation of the first ministers of the devolved administrations. In the longer term more formal agreement will be need on the determination of policy on the key Union issues of macro-economic policy, defence and security, trade and foreign policy and fiscal fairness and solidarity.
47. In the short-term, a UK Senate could be created to represent all four parts of the nation, the UK government, and local government in all parts of the Union. While there is a case for the simultaneous abolition of the House of Lords, this could be delayed ensuring a smooth transition to new working practices in the Commons.

Fiscal fairness and solidarity

48. Fiscal solidarity and fairness requires a UK wide funding formula, based on local need, and from which local and national budgets can be constructed. Moving from the current Barnett formula will be a lengthy process that will not only depend on outcomes but on political trust and solidarity across the Union. In the short term the priority should be to address the most obvious current underfunding of Wales and of some English regions.

The illusion of English regionalism

49. Proposals for a Federation of the Nations and Regions have been made by a number of organisations and individuals including, most recently, in the contest for leadership of the Labour Party⁸. Although there is little detail available, the proposed Federation appears to involve enhanced devolution for the devolved nations and Northern Ireland, and devolution within England. English local government would be represented in a UK Senate comprising Wales, Northern Ireland, Scotland and the UK government. However, England would continue to be governed by the Union government, it would have no machinery of government, no national forum and no national representation within the Union.
50. Devolution within England cannot be regarded as an alternative to delineating the government of England at national level. It would be impractical, undesirable and deeply unpopular to divide England into mini-statelets with their own legislature. England is too densely populated and inter-connected to have, for example, seven or nine different higher education fees structures, or NHS and social care regimes. Without legislative devolution, England's law will remain the responsibility of the Union parliament and its national government will be the Union government. No representation of English mayors or regional bodies in a UK Senate would provide England with comparable representation to that of Wales, Scotland and Northern Ireland by their First Ministers, and the UK by the Prime Minister.
51. Administrative and executive devolution within England, although highly desirable in its own right, will not resolve any of the problems arising from the conflation of the Union and England's governments. England's weight within the Union government would continue to distort Union priorities.

Conclusion

52. The separation of the government of England from that of the Union is the single most important reform in re-establishing a robust and shared Union that can prosper in the 21st century.

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⁸ <https://www.theguardian.com/politics/2020/jan/26/rebecca-long-bailey-calls-for-greater-powers-for-scotland-and-wales>

