

Full title: **Englishness Politicised? -- the Constitutional and Normative Implications of the McKay Commission**

Short title: **Englishness Politicised?**

Author Details: *Michael Kenny: School of Politics and International Relations, Queen Mary, University of London; [m.kenny@qmul.ac.uk](mailto:m.kenny@qmul.ac.uk); mailing address: 6 Church Street, Haslingfield, Cambridgeshire CB231JE*

Abstract: This article draws attention to signs of an emerging consensus within British politics about the significance of recent shifts in the national identity favoured by the English. It focuses on the nature and assumptions of this emergent perspective, and critically evaluates the prevalent understanding of the ‘politicisation’ of Englishness and the different kinds of constitutional and normative argument that have become prominent in response to the resurgence of this form of identity. Drawing upon a bevy of recent social-scientific studies of the qualitative dimensions of Englishness, I make the case for a different, interpretive approach to ‘politicisation’, which allows for a richer and broader understanding of the causes and implications of the renewal of English nationhood. The article then explores the findings and underpinning arguments of one particular expression of this new consensus about the politicisation of English identity -- the report published by the McKay Commission in March 2013. Attention is drawn to the particular blend of arguments that undergird its proposals for reform in relation to the West Lothian issue. Tensions between some of its main normative claims are, it is suggested, symptomatic of a deeper set of dilemmas facing the UK policy community.

Keywords: *Englishness, McKay Commission, West Lothian, Constitution*

## **Englishness Politicised?; Unpicking the Normative Implications of the McKay Commission**

### *Introduction*

This article draws attention to signs of an emerging consensus within British politics about the significance of recent shifts in the pattern of national identity favoured by English. It focuses on the nature and assumptions of this emergent perspective, and evaluates the different kinds of constitutional and normative arguments that have developed from it. It then explores the findings and underpinning arguments of one particularly important manifestation of this emerging consensus -- the report published by the government-appointed McKay Commission in March 2013. Treating this text as, in some respects, illustrative of this emerging perspective, I draw attention to the particular blend of arguments that inform the justificatory reasoning that underpin its proposals for reform in relation to the West Lothian issue. Tensions between some of its main normative claims are symptomatic of a deeper set of dilemmas facing the UK policy community. Above all, the report touches on, but is unable to resolve, the increasingly pressing question of whether 'the English question' is to be seen as a problem of representation and governance rooted in constitutional structures -- and defined, as much commentary suggests, by the place of England within the Union following the introduction of an asymmetrical model of devolution in the late 1990s -- or if it needs to be understood in relation to a broader range of causal dynamics, including a deepening disenchantment with representative politics, a rising sense of cultural anxiety and a growing demand for 'recognition' in political life.

### *Reappraising the English and their Question*

The prediction that a backlash against the asymmetrical model of devolution introduced by the first New Labour government would take hold among the English has been a familiar accompaniment to much of the academic and policy debate directed at devolution in the United Kingdom. But while this notion has been a mainstay of commentary in this area, in the years following these reforms few informed observers have argued that this expectation has been realised (Curtice 2009; 2010). Using the longitudinal data supplied by the British Social Attitudes Survey [henceforth BSA], John Curtice (2009) for instance, insisted that the English remained uninterested in emulating devolution and indifferent to its effects throughout this period (also see Condor 2010). He showed (2009) that while a small proportion came to feel more strongly that they were English, as opposed to British, in the immediate aftermath of devolution, no significant shift in terms of national identification, or in attitudes towards the union, was discernible a decade after it was introduced. Together with his collaborator Rachel Ormston, he did, however, observe, during the mid-2000s, a growing sense of irritation among the English directed at the so-called West Lothian question (whereby MPs from non-English territories are able to vote on issues affecting England, but English MPs cannot reciprocate in kind on a number of important issues, as a result of the varying degrees of constrained autonomy granted to governments in each of these territories) and the distribution of public expenditure across the territories of the UK (Curtice and Ormston 2010). Both of these issues figured increasingly prominently in the press -- both tabloid and broadsheet -- from 2005 onwards (Skey 2011: 109-11).

Within the political world, the refusal of successive Labour governments to accept that devolution represented any kind of inequity for the English ensured that this issue remained confined to the political margins (Kenny and Lodge 2009). This argument reflected a strong degree of partisanship – shaped by the presumption that reforms which strengthened the hand of English MPs represented a significant potential disadvantage for a Labour administration, but not a Conservative one -- which was dressed up in the familiar garb of constitutional orthodoxy. As Lord Chancellor Derry Irvine (1999) quipped, the best way to answer the West Lothian question was to stop asking it. All of the proposed solutions to the English question were widely held to be unworkable if the union was to be preserved, or likely to generate consequences that outweighed the putative benefits of reform (see the evaluation of these various proposals in Hazell 2006). The most popular reform proposal – the idea of introducing some form of ‘English votes for English laws’ [henceforth EvoEL] -- was dismissed by Labour on the grounds that it would create two distinct classes of representative in the House, and hence infringe one of Westminster’s foundational orthodoxies.

But other observers, and a small number of campaigners, remained convinced that the arcane West Lothian issue was, contrary to the orthodoxies associated with the Westminster model, the source of a significant inequity. Can it really be democratic that a legislature can enact laws for a particular nation when these are crucially influenced by the votes of MPs who represent another nation that is not affected by them (Hadfield 2005)?

The prevailing wisdom among constitutional and legal experts has been that this question that does not need to be seriously contemplated in the UK context. Instead, it has been repeatedly argued that there is little interest among the English in this supposed infringement of their national rights, or indeed in the implications of asymmetric devolution (Bogdanor 2010; though for a partial reappraisal of this judgement, see also Bogdanor 2013). More generally, West Lothian has typically been framed as one of a number of anomalies and asymmetries which are endemic to a political system that has developed in a largely incremental, adaptive and path-dependent manner, and has been required to manage the tensions arising from the attempt to sustain both a ‘unitary state’ and a ‘union state’ model of governance at the UK level (Gamble 1990; Mitchell 2009). As further powers were gradually and unevenly passed to Scotland, Northern Ireland and Wales from 1999 onwards, the UK parliament became ever more obviously and uncomfortably torn between its *de facto* – but now much more visible – role as the English parliament, on the one hand, and its status as the legislature serving the UK as a whole (Jeffery 2012). England, as Mitchell (2009) observed, was now the sole territory within the UK that was governed as a unitary state, a situation which itself generated a growing chorus of comment and complaint in the 2000s (Kenny and Lodge 2009).

Yet the conventional assumption that West Lothian did not, and should not, matter to the English has been shattered by the growing realisation at Westminster that the English are developing a stronger sense of English, rather than British, national affiliation.<sup>1</sup> And it is against the backdrop of a growing interest in ‘the politics of Englishness’ that the work of the McKay Commission (2013) -- appointed by the incoming Coalition government of 2010 -- should be considered. The justificatory reasoning set out in its final report (McKay Commission 2013), I argue, illuminates significant tensions among some of the main contending normative ideas associated with the popular re-emergence of an avowedly English, rather than British, sense of affiliation. And its reflections point toward the potential legitimisation of the UK as a multi-national state and the increasing imperative to concede the principle of devolution for the English. In order to appreciate the departure from established orthodoxy which, in some respects, this report has intimated, it is necessary to consider the nature of the consensus on West Lothian and Englishness which prevailed in the political

world following devolution, and appreciate the appearance of various fault-lines within this form of understanding.

### *Anxiety over the English Question*

Despite its initial hostility to the devolution legislation, and the overwhelmingly English composition of its parliamentary party, the Conservative party did little after 1999 to challenge the conservative orthodoxy reiterated by Labour in regard to England (Hayton and Mycock 2012). After a brief flirtation with the idea of identifying with English grievance in the wake of devolution under William Hague, the party's leadership decided that the English were largely indifferent to this issue, while some worried about the prospect of fanning the flames of English resentment (Hayton 2012). The Conservatives did, though, adopt a loose commitment to the idea of reforming the procedures of the Lower House in relation to West Lothian, and this was included in its election manifestos in 2001, 2005 and 2010.

Yet, the reservations of its parliamentary leadership were increasingly out of kilter with the status of this issue in the party at large. During the 2000s, this topic attracted ever greater political intensity. A handful of backbench Conservatives introduced Private Members' bills protesting against the inequitable position of the English as a consequence of asymmetrical devolution, including Teresa Gorman in 1999 and Robert Walter in 2007 in the House of Commons, and Lord Kenneth Baker in the House of Lords in 2006. Other MPs consistently sought to raise grievances about the alleged marginalisation of expressions of Englishness, and the idea of a public holiday to celebrate St George's Day in order to recognise the growing strength of Englishness was a popular cause among a small, but growing, group of Conservative MPs (Hayton and Mycock 2012: 8).

But the English Question issue really came to prominence in Conservative circles in the guise of an upsurge of interest in the West Lothian issue, following the controversy that accompanied the passage of the legislation introducing Foundation Hospitals within the Health Service in 2003 and the Higher Education Bill of 2004 which introduced 'top up' fees for students. These were both contentious pieces of legislation that applied primarily to England but required the votes of Scottish MPs to secure a majority for the Labour government. The territorial composition of Labour's parliamentary majority figured prominently in media coverage of, and public discourse upon, these pieces of legislation. Conservative MP Tim Yeo, for instance, denounced the 'constitutional outrage' which their passage represented, and a number of MPs from other parties agreed (Russell and Lodge 2006, 72).

Shortly after these episodes Malcolm Rifkind, a former Conservative Secretary of State for Scotland and a respected senior figure in the party, proposed that an English Grand Committee composed of all MPs representing English constituencies should deal with such legislation (Rifkind 2009a; 2009b). And, soon after he became Conservative leader in 2005, David Cameron established a Democracy Task Force chaired by the former cabinet minister, Ken Clarke. This body published its proposed answer to West Lothian in July 2008, recommending that Bills certified as English-only would pass through the normal Commons procedures as far as, and including, their Second Reading (Conservative Democracy Taskforce 2009). Their Committee Stage, it argued, should be undertaken by English MPs only, in proportion to the respective positions of the parties within England. At Report Stage the Bill would similarly be voted on by English members only, but at its Third Reading the Bill would be voted on again by the whole House.

Viewed by some Tories as a deliberately diluted expression of the principle of EvoEL (Nelson 2008), this proposal was presented by Clarke as a way of heading off the possibility that a sense of English resentment might -- if left unaddressed -- harden into a sense of grievance:

If there is, in the middle of what I regard as a load of silly attitudes, a genuinely slightly niggling point that has substance, then remove it, because there is always a risk that something dramatic might happen when something very unpopular is imposed on the English by a parliament in which the majority of English MPs voted against it (Clarke 2008).

But Cameron showed little interest in making either the West Lothian or wider English question prominent in political terms. Indeed, he sought to reassure voters in the run-up to the General Election of 2010 that he was unionist by inclination and committed to making the current system of devolution work (for instance Cameron 2008).

Given how settled and mutually reinforcing were conventional opinions about the ingrained indifference of English public opinion, the marginal nature of this issue in terms of the policy agenda, and the supposed irrelevance of principles of national-democratic right to the English, the appearance of cracks in this consensus in recent years is striking. A number of different factors can be identified as triggers for a major shift in political orthodoxy on this issue, not least the coincidence of the participation in government after May 2010 of the Conservative party, the imminence of the referendum on Scotland's membership of the UK following the election of a majority SNP government in Scotland in 2011, and the renewed salience of the question of Britain's involvement in the European Union (Kenny 2012). Other, less visible factors also had a politicising effect, notably the uneven territorial distribution of political power across the UK – itself a by-product of the 'first past the post' electoral system employed for elections to the Commons but not used anywhere else in the UK -- which has created a growing incentive for a largely reluctant Conservative party to pursue reform (given their lack of MPs outside England) and punish Labour, which has a much stronger power-base in Scotland and Wales. And the latter's reluctance to accept or engage with arguments for reform in this area reflects its perception of where its partisan interests lie and the accompanying (though much exaggerated (McLean 2007)) conviction that any restrictions to Scottish representation at Westminster will make it harder for the party to form a UK government.

In fact, shifting perceptions at Westminster of the mood of the English, and their potential irritation with their constitutional position, were discernible before the General Election of 2010. An anonymous survey of MPs conducted in 2009 revealed that a majority believed that the position of England within the post-devolved Union would need to be addressed in policy terms, and only a minority saw the new *status quo* as viable (Kenny and Lodge 2010).<sup>ii</sup> And, while most tended to support the different policy solutions favoured by their own party, a quite striking degree of unanimity about the rising strength of English national identity, and the potential for resentment, were also apparent. MPs were in fact much more attuned to shifting English sensibilities than conservative commentators tended to believe (for instance: Heffer 2000; Scruton 2006). The attitude of parts of the public was also beginning to shift on issues that were closely associated with the English question in these years. In response to a question posed by the annual British Social Attitudes survey of 2007, for instance, 61% of respondents in England said that Scottish MPs should no longer vote on English laws. And,

when asked by YouGov in April 2007 to choose between the *status quo*, an English parliament and some form of EvoEL, 51% chose the latter. Reviewing opinion trends in the mid-late 2000s, Curtice and Ormston (2010: 156) observed that public opinion in England ‘... consistently expresses some disquiet at the apparent inequity of the WLQ [West Lothian Question]’.

Surveys also showed that a significant proportion of the post-2010 intake of Tory MPs identified more clearly with the idea of English grievance, a trend that reflected an on-going shift within grassroots party opinion (for instance the survey of Tory prospective parliamentary candidates reported in Montgomerie 2009). Whereas a poll conducted in December 2008 revealed that only 32% of party members thought that England should have its own parliament, by December 2010 this figure had reached 51% (Hayton and Mycock 2012: 9).

The Coalition agreement that bound the two parties in government in 2010 included a plan to establish an independent Commission to examine the impact of devolution upon the House of Commons. What was clearly an issue of low priority for this administration began to assume greater significance as the government’s relationship with a restive and disaffected set of Conservative backbenchers became a pivotal political dynamic, investing issues on which the Tory leadership was perceived as out of kilter with grassroots party sentiments with particular political significance. Backbencher Harriet Baldwin MP introduced a Private Members’ Bill on the territorial extent of legislation which aimed to require all draft legislation to identify with greater clarity its effects separately for England, Wales, Scotland and Northern Ireland (Baldwin 2011). Unofficially re-titled ‘the English Question’ bill, it was rejected after its third reading in September 2011, but elicited a nervous response from the government, which rushed out an announcement about the McKay Commission on the eve of its final Reading.

Labour too appeared to be shifting its thinking in this area. This change was occasioned in part by the removal of Gordon Brown, who was so strongly associated with a promotion of a US-style patriotism that involved a liberal and civic reclamation of Britishness (for instance Brown 2007). In the leadership campaign of 2010, heir apparent David Miliband claimed that Brown’s emphasis on (multicultural) Britishness was central to the failure to ‘resolve Labour’s English question’ particularly when many citizens were ‘expressing an identity bound up in the history and iconography of England’ (Hayton and Mycock 2012, 10). A handful of senior figures associated with Labour’s years in government now spoke out about the importance of issues of identity in general, and urged Labour to engage less warily and more positively with Englishness in particular (for instance Lewis 2011). In June 2012 party leader Ed Miliband delivered a set-piece speech which combined a focus upon the merits of patriotism (occasioned by the Queen’s Diamond Jubilee and London Olympics) and issued a challenge to progressive suspicions of English national identity. Given the identification of most of the party with British patriotism, this represented a striking break with precedent, though the speech itself was devoid of anything more concrete than an injunction to talk about Englishness. Beneath the rhetoric emanating from some parts of the parliamentary party, very little changed in terms of Labour’s substantive thinking about the English question, with the party refusing to make any submission to the McKay Commission, and showing very little inclination to consider why its own preferred answer – devolution to the regions – had fallen apart during its years in office.

Miliband also made reference to one looming event that was also an important catalyst for growing sensitivity at Westminster to the national mood in England -- the impending

referendum on Scottish independence, due to be held in September 2014. This spawned considerable interest in the political ramifications of nationalism within the policy community, and has been a key factor in tipping some politicians and policy-makers who had hitherto regarded 'Englishness' as either a quixotic or irrelevant topic, towards an acceptance of the potential importance of English attitudes. In 2013, for instance, leader of the Local Government Association, Merrick Cockell (2013) -- with one eye on developments in Scotland -- called for the creation of a new Government Department for English affairs so that it could take the lead in financial negotiations with the devolved nations (Bogdanor 2013).

Viewed historically, the emerging idea that the national identity of the English, and their sense of affiliation with the structures and ethos of the British system of governance, might no longer be taken as a 'given', represents a development of considerable intellectual, as well as political, import. This is primarily because defenders of the UK's political system have typically justified its anomalies and inequities through reference to the well-worn notion of the English as a people distinguished by their lack of desire for representation outside the arenas of sport and culture, and via the companion idea of Britishness as 'the' nation that encompassed the other national identities within the United Kingdom (Aughey 2010).

### *The Origins of a New Consensus?*

A growing number of commentators and politicians came to believe that a mood of nationally-rooted disquiet, triggered primarily by growing resentment over devolution, represented a wholly new challenge to which the political system now needed to react. Yet this assumption about Englishness, and its relationship to political attitudes, merits careful consideration. For a start, it tends to separate out ideas and expressions of English nationhood from politics and political factors in a way that obscures the roles that political traditions, actors and parties have played in framing and 'decontesting' Englishness (Freedon 1998). Historian Peter Mandler's (2006) study of how successive ideas about the national character of the English were woven into elite forms of political thinking from the late eighteenth to the mid-twentieth-centuries illustrates this symbiotic relationship very well. Equally, this simple causal model neglects the degree to which political factors and dynamics other than devolution -- not least the emergence of a powerful set of populist, anti-political currents in western democracies, and the slow decline of the mass political party as a source of political allegiance and stability -- may well have also played a constitutive role in bringing a sense of 'dominant ethnicity' nationalism to the fore (on the latter, see Kaufmann 2004; and for the suggestion that Englishness is a vital ingredient in current forms of populism, see Ashcroft (2012)).

By 2012, the rise of the populist challenger party, UKIP, was interpreted by many different commentators and practitioners as an indication that populist nationalism was now a major force, and that Englishness itself was now becoming 'politicised' (Wyn-Jones et al 2012). Yet the nature, extent and implications of politicisation are much contested by historical experts on modern nationalism, and merit more careful elucidation and definition in this particular case.<sup>iii</sup> There is, in particular, an important conceptual distinction that needs to be made here between a 'strong' idea of politicisation, which implies a uni-directional causal relationship between the adoption of a particular form of national identity and an inclination towards a particular part(s) of the political spectrum, on the one hand, and a 'weaker' conception which identifies new inter-relationships between political traditions and affiliations and forms of nationhood, allocating causal influence to both sides of this relation.

Too much of the debate on Englishness takes the first model as a 'given', and has, as a result, neglected the different political versions of Englishness which have emerged in recent years, and the importance of political processes in shaping and mediating ideas of nationhood (Kenny 2014).

A more historically minded view also suggests the need for scepticism about the way in which Englishness is gauged in political circles and commentary. For this reveals that English national identity has been (re)emerging for some while, and cannot plausibly be explained with reference to a causal account that rests so heavily upon devolution. The crucible of circumstances in which a more Anglicised sense of nationhood began to re-emerge coalesced in the early-mid 1990s, prior to the introduction of devolution (see Kenny 2014). It was in these earlier years that various pollsters observed the rapidly declining appeal of a sense of Britishness – in England as elsewhere in the UK (Bechofer and McCrone 2007; Heath and Roberts 2008). And this helped instigate an extended debate within elite cultural and political circles about the prospects for, and viability of, the UK, which itself played a role in sparking an interest in old and new forms of nationhood (Kenny, English and Hayton 2008).

Similarly, the growing correlation between English national sentiment and scepticism towards European integration, which has attracted considerable recent comment, was -- as studies by Anthony Smith (2006) and Ben Wellings (2012) have shown -- first apparent during the early 1990s. Then, a rejuvenated sense of English nationalism took the somewhat paradoxical form of a militant defence of the idea of parliamentary sovereignty, and was intertwined with a populist scepticism about the willingness and capacity of the 'political class' to defend the cultural integrity of the nation, not least because of its perceived Europhilia. The national heartland that was prototypically imagined as requiring vigorous defence 'from below' was that of the ethno-national majority – England, and this was cast as the antithesis to a sense of British national identity that was increasingly associated with civic and multiculturalist values (on the importance of the 'heartland' to populist-nationalism see Taggart 2000). The Eurosceptic core to this outlook was gradually supplemented with other Anglo-focused concerns during the 1990s, such as support for a traditionalist vision of the English countryside in opposition to the Labour government's perceived hostility to rural interests. There began to develop in these years, therefore, a broader and more complex web of declinist disaffection, within which a traditionalist and nostalgic account of a supposedly disappearing England was central (Skey 2013). It is, therefore, not accurate to see the re-assertion of Englishness as simply a reflex occasioned either by envy at the settlement granted to Scotland, Wales and Northern Ireland, or as a function of the growing realisation among the English that they were the sole remaining people whose nationhood was identified as British -- important as both of these political factors have also been.

More generally, the shifting consensus about Englishness that has begun to emerge within the policy community, is now creating the impetus for a more fundamental re-appraisal of some of the most embedded principles and values at the heart of the governing body of doctrine through which the British state, and national groupings within it, have been understood. For the foundational notion of the English as a people who do not require institutional and political recognition because of their deep affiliation with British institutions and patriotism, has long been one of the core tenets of the UK's parliamentary state. As political scientist Richard Rose remarked (1982: 29) 'English is a state of mind, not a consciously organised political institution'. But this foundational presumption is increasingly open to challenge, and, consequently, the broader question of how the interlocking territorial, constitutional and institutional characteristics of the UK are to be understood and legitimated is also beginning



to become much less certain. A fundamental dilemma arises from the contemporary recognition that a new sense of national identification among the largest population within the UK may be loosening the bonds of consent and allegiance upon which the legitimacy of Constitution, state and parliament has rested.

### *The McKay Commission – Finding a Voice for England?*

It is against this backdrop that the contribution and significance of the report produced by the government-appointed McKay Commission (2013) carries particular interest. In the remainder of this article I tease out some of the main normative arguments at the heart of the justificatory reasoning that it employed, and consider the extent to which these represent a departure from established traditions of constitutional thinking. The Commission was established to consider ‘how the House of Commons might deal with legislation which affects only part of the United Kingdom, following the devolution of certain legislative powers to the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales’ (McKay Commission 2013: Terms of Reference). It was chaired by Sir William McKay, a former clerk of the House of Commons, and a figure steeped in the conventions and culture of British constitutionalism, and included two current political scientists -- Charlie Jeffery and Yvonne Galligan.<sup>iv</sup> One of its more unusual features was its commitment to move out of London and take evidence from a wide range of stakeholders across the UK, including the north of England. Its final report set out a number of proposals in relation to the West Lothian question that are currently under consideration by Government.

Below I identify the principal normative arguments which the report entertains, and argue that these are of more enduring importance than its concrete recommendations. And I draw attention to an unresolved tension at the heart of its argument – between the attempt to justify incremental reforms to the workings of parliament on the basis of a commitment to procedural justice for all nations within the UK, on the one hand, and the potential implications of its acknowledgement that other, more substantive ‘representative claims’ are increasingly made on behalf of the English, on the other.<sup>v</sup> The latter are, I suggest, much harder to incorporate into the conventions and doctrines associated with the Westminster system of government which are premised upon the notion of the English nation as one that does not require representation in institutional and political terms by dint of its affiliation to the encompassing British nation.

The Commission recommended a package of changes which have been widely regarded as constituting a modest alternative to EvoEL. Its primary normative contention was that decisions taken by the House of Commons that have a ‘separate and distinct effect’ (2013: 8) for England (or indeed England and Wales) should ‘normally be taken only with the consent of a majority of MPs sitting for constituencies in England’ (or England and Wales). It deliberately left open the question of what might be the best mechanism to ensure that consent was ensured, identifying a number of different possibilities, including consideration of relevant Bills by a Grand Committee of MPs representing relevant constituencies, and the committal of relevant Bills to specially-constituted Public Bill Committees. The report also proposed the creation of various political obstacles to the enactment of Bills falling under the ‘separate but distinct’ heading that might contravene the wishes of the majority of MPs representing English constituencies. But these deliberately fell short of any kind of procedure that would hand English MPs a collective veto over the legislative programme which the UK government might wish to pursue.

Subsequent responses to these proposals reflect an entrenched disagreement about how serious a problem West Lothian represents and whether it can be redressed without breaking the bounds of current constitutional practice (see Tomkins 2013; Elliott 2013). Rather than entering into this particular debate, my focus here is upon the normative character of the reasoning supplied by the Commission, the manner in which Englishness is understood within its Report, and the inferences which are derived from its resurgence.

The Commission contends that:

Survey research on public attitudes in England reveals *differences of interest* that people in England perceive as distinct from the interests of other parts of the UK. Evidence suggests a significant level of grievance among the people of England, sparked by the perception that Scotland enjoys advantages relative to England under current governing arrangements, particularly in the distribution of public spending and economic benefit. There is a clear and enduring sense that England is materially disadvantaged relative to the other parts of the UK, especially Scotland. (2013: 7)

It maintains too that the largest nation within the Union sees itself as its victim, ‘lacking a voice under current arrangements’ (2013: 23). The reforms which the report outlines are, therefore, conceived as a response to this emerging -- but as yet not clearly articulated -- demand on the part of the English that their interests be protected through a clearer and fairer system of national representation in parliament. The normative justification for its recommendations is multi-stranded. The Commission maintains, first, that the introduction of devolution has resulted in the implicit accommodation of a new democratic principle by the UK parliament -- the notion that ‘decisions at the United Kingdom level with a separate and distinct effect’ (2013: 8) for a particular territory should normally be taken only with the consent of a majority of MPs who represent seats within it. Critics have leaped upon the potential looseness of the ‘separate and distinct effect’ formulation (Elliott 2013). Yet, little attention has been paid to the novelty, in constitutional terms, associated with the extrapolation of this principle to England -- which has historically been conceived as a territory that, by definition, does not require any kind of ‘separate and distinct’ treatment within the Westminster system. The normative departure implied by this idea is hinted at in the Commission’s recommendation that its status should be clarified by being ‘adopted by a resolution of the House of Commons’ (2013: 8-9).

As a consequence of its insistence on the applicability of this principle to England, the Commission has moved onto territory that has only rarely been occupied by the political parties and policy community in the UK. But its convictions that the English now see themselves as holding separable and distinct interests, suggest a quite significant re-configuration of constitutional orthodoxy.

This principle is at the heart of the case that is made for procedural reform. But it is calibrated against a ‘realist’ appreciation of the path-dependent nature of the evolution of parliamentary government in the UK, and the entrenched character of constitutional thinking within Westminster. The changes that McKay advocates are therefore framed within the terms that have proved most auspicious for reformers, invoking the argument that the judicious exercise of statecraft periodically requires addressing egregious anomalies or tensions in order to preserve the integrity and virtues of the system as a whole. The commitment to procedural justice which animates the report is, thus, overlain with the kind of precautionary conservatism that has long been a staple element of UK constitutionalism (King 2009). Given

the possibility that English self-consciousness, and the institutional and political dissatisfaction with which it is correlated, may continue to grow, the Commission's contention is that it makes sense to act now to address a situation that may turn out to be the source of considerable resentment.

This sensitivity to constitutional orthodoxy, and indeed to the fraught political context in which its recommendations will be received - given the highly sensitive nature of this issue for both main parties - shapes the Commission's judgement about which changes are likely to have the best chance of securing bipartisan support. It thus accepts the long-established conservative objection that any scheme restricting the voting rights of any particular group of MPs means breaking with the core convention that all representatives should be able to vote on all pieces of legislation coming before them (2013: 26). There cannot, in other words, be 'two classes' of MP in a system that promotes equality among its representatives.

Those reforms that the report does advance are, accordingly, justified in highly pragmatic terms, representing 'the adaptation of an existing institution' which 'would not involve the upheaval, cost and likely destabilising effects of establishing a new institution' (2013: 26). The logic of its justificatory reasoning undoubtedly owes more to Edmund Burke than to John Stuart Mill. It thus dismisses with a minimum of comment some important counter-arguments, including the objection that the asymmetries created by devolution have themselves established two *de facto* classes of MP - those able to vote on matters affecting other territories, and others - notably English MPs -- who are not able to do so, as a result of the passing of primary legislative powers to Wales, Scotland and Northern Ireland.<sup>vi</sup> And it avoids engaging a very different, but increasingly powerful, 'representative claim' that is increasingly aired in the political arena - that there are now two classes of constituents in relation to the UK legislature, with a majority now the subject of decisions taken by representatives from other nations, without any opportunity for reciprocal influence (Bryant 2008; Keating 2012). This, arguably, is a much more resonant and popular way of conceiving the West Lothian question than the more cramped and orthodox formulation of this issue associated with constitutional discourse at Westminster.

The Commission also steers clear of the argument made by advocates of more wholehearted versions of EvoEL -- that, as in other federal systems, a culture of negotiation and compromise might well become a welcome feature of political life were the UK government in a position where it lacked a majority of English MPs who were empowered to block those parts of its legislative programme that applied to England only (see for instance Bryant 2008; Holtham 2012). Here too the Commission bows before the orthodox constitutional objection that such a situation would lead to the bifurcation of executive authority and threaten the essence of parliamentary government (Bogdanor 2010).

For the most part, the changes it recommends are framed in precautionary terms as a potentially wiser option than the long-term risk associated with current arrangements, as these may in certain circumstances 'erode the legitimacy of the UK's political system in England' (McKay 2013: 23). In this key respect the Commission's judgement may well reflect a shift in the balance of opinion in elite political circles. Given the rarity with which Bills have been passed against the majority preference of MPs from English constituencies, the Commission's recognition that this is an issue which has a symbolic significance that exceeds its practical implications, is very striking.<sup>vii</sup> So too is its attempt to establish some distance from the abiding sense of wariness attached to this issue in the main parties, as it seeks to frame the 'mood' of the English in more positive and engaged terms than is true of

most other political commentary upon Englishness (which tends to take a wary or hostile stance towards this form of national identity) (Aughey 2007; Kenny 2014).

But while the link that McKay imputes between a sense of dissatisfaction with the union and the imminent desire for 'voice', strikes an optimistic note, there is a tendency here to overlook the more negative and resentful facets of English grievance. Thus, recent polling data could be read as indicting that the English are increasingly exhibiting a more separated and inward-looking cultural and political outlook, and are more inclined to turn away from both of the multi-national associations of which they are a member, with 'exit' rather than 'voice' increasingly appealing (Lodge 2013; Wyn-Jones et al. 2013). The notion of an imminent demand for 'voice' sits uneasily alongside the conviction of some commentators that the English no longer have the appetite for unions with other nations (Jenkins 2013).

### *Beyond the Constitution – Understanding the Drivers and Dynamics of Englishness*

Equally, the notion that Englishness is itself the primary motor of broader attitudinal changes – as is implied by the 'strong' understanding of politicisation – is a shaky one. Other recent research -- particularly that produced by a number of sociological commentators (for instance: Garner 2012; Leddy-Owen 2013; Mann 2011; Mann and Fenton 2009; Skey 2011) – offers a very different interpretive standpoint in relation to the 'meanings' identified with ideas of English nationhood, but has rarely been engaged by political scientists, commentators and practitioners who have been over-reliant upon polling data. Put broadly, this body of research suggests that the vernacular of injured Englishness is both a vehicle for the shift towards ethnic-majority nationalism which some see as a major trend across a variety of democratic states in the last decade (Kaufmann 2004), and also a manifestation of a deepening, class-rooted sense of disaffection and resentment (Mann and Fenton 2009). Other commentators disagree, however, stressing that these attitudinal shifts are apparent across different social classes (Garner 2012).

Such interpretations point towards the idea that a new sense of ethnic-majority nationalism may well be one of the forces behind the deepening sense of disenchantment with politics, politicians and the political system, as well as also being a consequence of the latter. The bundle of dynamics and currents bringing populism into the political cultures of western democracies may represent the key exogenous shift to which different political systems -- the UK's included -- increasingly have to respond. And Englishness may well, therefore, be significant in political terms because of its entanglement with these broader currents, a consideration that takes an understanding of its development beyond the parameters of constitutional discussion. Its appeal stems in part from the redemptive, visionary and normative meanings it conveys in a context where the language and modes of thinking associated with party politics have waned quite significantly. And it is for this reason that analyses which interpret its renewal through simple or linear causal narratives are unlikely to succeed in capturing its dynamics and appeal, or in framing appropriate policy responses.

This body of research also tends to emphasise that ideas about who belongs to the ethnic-majority nation are far from being stable and settled, and may have a more liberal cast in England than is often supposed. Michael Skey (2011), for instance, points to the fluid and complex nature of the ways in which boundaries between 'us' and 'them' are drawn in relation to the imagined community of Englishness in contemporary England. Like others, he notes how immigrants in general, and Muslim communities in particular, are often deemed to be a threat to the culture and rights of the English nation, in the popular vernacular of

nationhood, while other ethnic minorities are routinely included within it. Karen Wells reports similarly -- based upon her study of shopkeepers in London -- that '... the collapsing of 'white' skin into English identity has apparently started to unravel' (2005: 270). Members of some minority communities were regularly included in references to the English in the nationalist-populist discourse she dissects, while others (for instance Somali Muslims and Bangladeshis) were not.

Skey also stresses the sense of security and ontological 'givenness' afforded by everyday talk of 'the nation', and observes how these feature are ever more appealing given the heightened sense of anxiety and insecurity in the wider culture. References to the national community afford a rich language through which the regaining of 'our country' can be imaginatively projected, and present-day circumstances lamented (Wells 2005). 'We want our country back' is one of the most ubiquitous slogans associated with ethnic-majority nationalism, providing a rich seedbed for populist complaints about the liberal, modernising and multi-culturalist values associated with elites. This form of national consciousness appears to represent a determined rejection, 'from below', of the attempts of liberal elites to craft and disseminate civic forms of nationalism. And in the UK context, the latter has become associated with the endeavours of politicians and public authorities to promote an 'approved' form of liberal British patriotism which appears to have been rejected in favour of the more organic and meaning-rich idea of an imagined English national community. A range of evidence points to a new spike in the appeal of Englishness around 2007 and 2008, just after a Scottish MP who was very clearly identified with the public promotion of Britishness was appointed Prime Minister, and complaints about the number of Scots serving in the Cabinet were increasingly prominent (Skey 2011; Kenny 2014). Simon Lee (2012) has argued that the effacing of England as a national political or cultural community was a persistent feature of Labour's period in government. In fact, this semi-deliberate negation may well have generated an unanticipated recoil, making ideas of Englishness all the more attractive and appealing in a strongly anti-political environment.

Both the growing attention being paid to the ethnic character of 'dominant' forms of nationality and awareness of the possibilities for political mobilisation associated with the perceived grievances of the (white) nation (Hage 2000; Swain 2004), offer some important insights into the English case, and suggest that attention be paid to a wider set of causal dynamics in relation to Englishness. Across Europe, as various commentators have observed, the success of parties associated with the populist right is linked to their willingness to embrace issues associated with the themes of culture, belonging and identity (Brader, Valentino, and Suhay 2008; Citrin and Sides 2008; McLaren 2012). Populist solutions to anxieties about cultural fragmentation, the perceived weakening of national identity and the presence of 'others' who do not appear to share western values and habits, have resonated widely with both middle- and working-class publics (including some ethnic minorities) in this period. And in the UK too, these broad themes have steadily moved to the centre of the political stage. They found an important vehicle in the middle of the electoral cycle in the shape of UKIP which has transformed itself from a single-issue party focused upon Europe to a more wide-ranging populist challenger (Skey 2013).

These qualitative studies raise some important interpretive and evidential questions about Englishness, and the manner in which it is understood and engaged within the political world. They suggest too the limits of the conceptual language through which mainstream political science (and the McKay Commission) frames national identity, conceiving of this as the rational assertion of a shared set of interests. Such a framework neglects the values of belonging, culture and entitlement which are also integral to the representative claims that are

routinely being made on behalf of the English, and which are increasingly central to its politicisation.

Englishness is, in analytical terms, better seen as an ‘empty signifier’ rather than an ideologically fixed category that is forever defined by, for instance, its conservative connotations. It has been expressed in conjunction with a variety of different political traditions and sensibilities, including liberal, socialist and radical ones (Kenny 2014). And there is little evidence from existing survey data to suggest that those who privilege an English national affiliation are significantly more likely to be on the conservative wing of politics. In the BSA survey of 2007, for instance, the proportion of those prioritising Englishness in terms of their national identification who said that they identified with the Conservative party was, at 30%, just four points higher than the equivalent figure amongst British identifiers. The most recent *Future of England* (Wyn Jones et al. 2013: 32-34) survey does suggest that voters inclined to support the Conservatives and UKIP are now most likely to identify with Englishness, but it is notable too that this is also the national preference of a majority of Labour sympathisers.

### *Conclusions*

The highly specialist nature of the West Lothian question, and the media’s scepticism about the public’s appetite for constitutional questions, ensured that the McKay Commission’s final report did not elicit much in the way of public debate. Yet, its endeavour to make a case for reform to how the House of Commons treats legislation affecting England has, I have suggested, resulted in an unusual engagement with a number of different democratic arguments. Despite the highly restrictive constraints which the terms of reference set out by Government placed upon it, this report can be placed alongside various other keynote documents produced by parliamentary bodies since devolution -- most notably the report produced by the Justice Committee in 2009 -- which have all highlighted the increasingly imperative question of what kind of governing doctrine is now appropriate for a state whose established forms of self-understanding are fraying so badly (on which see King 2009).

The Commission’s reflections also throw into relief the growing acceptance in the UK’s policy community and political circles that the established pattern of national identification of its largest nation is beginning to change, and the widespread conviction that such a development carries various political ramifications. While many political analysts, practitioners and stakeholders assume that a direct causal line flows from developments in national identity towards attitudes to the constitution and political system, a good deal of social-scientific research – especially that which investigates the qualitative, rather than quantitative, dimensions of nationhood -- tends to show how different senses of English nationhood are closely tangled up with, and partly constituted by, a deepening disenchantment with politics and a rising sense of cultural anxiety.

There is, then, a strong case, in both intellectual and policy terms, for a wider-ranging investigation into the relationship between new expressions of national identity and the political and constitutional dimensions of Englishness. And the observations included in McKay’s report about the need to consider a variety of different methods of accommodating an English desire for voice suggest that its members would agree. More attention needs to be paid to the substantive policy issues and questions that animate English disenchantment, and which figure in a new cacophony of ‘representative claims’ that are made on behalf of the English as a people. Policy-makers need to learn to evaluate the different kinds of claim that

are made upon politics and the state in the name of the imagined community of England. Some of these can be couched in terms of the demand for due process for England within the post-devolved system of governance. But Englishness also frames and carries other kinds of representative contention. Some of these are ultimately about substantive questions of equality and justice, either for sections of the working class, or for England's peripheral regions. And some give voice to a deepening sense of alienation from politics and the political system. Each of these different claims requires different kinds of response. Guardians and interpreters of the policy community should also come to appreciate the very different ideological registers – including liberal and conservative, as well as populist and nationalist – in which ideas of Englishness are expressed. Those committed to understanding the political dimensions and ramifications of Englishness need to explore why it is that England has become an increasingly attractive community of attachment at the same time as popular affiliation to the two multi-national unions of which England is a part, is in decline. And such an investigation requires a richer conception of the various senses of identity and belonging that England conveys, in addition to an understanding of the various 'interests' which it is increasingly said to encompass.

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<sup>i</sup> The shifting debate about whether the English have become more attached to a sense of English identity, and when and why this complex shift has occurred, is analysed in Kenny, 2014.

<sup>ii</sup> This anonymous, web-based survey elicited a completion rate of 18% of MPs, a figure which is in line with the targeted response rate of most polling companies. The responses broadly reflected the party, gender and regional composition of the House (Kenny and Lodge 2010: 7-8).

<sup>iii</sup> See for instance the contrasting theses on the political dimensions of nationalism advanced by Breuilly (1985) and Hutchinson (1987).

<sup>iv</sup> In addition to Sir William McKay, its membership included Sir Geoffrey Bowman, former First Parliamentary Counsel (who resigned 20 June 2012), Sir Stephen Laws, retiring First Parliamentary Counsel, Sir Emyr Jones Parry, former UK Ambassador to the United Nations, Professor Charlie Jeffery, University of Edinburgh, and Professor Yvonne Galligan, Queen's University Belfast.

<sup>v</sup> For a stimulating evaluation of the normative and democratic challenges associated with different kinds of representative claim, see Michael Saward (2010). His elaboration of the multi-faceted and dynamic nature of such claims has considerable pertinence for some of the political rhetoric and arguments that are bound up with contemporary assertions of Englishness.

<sup>vi</sup> This point was registered in the evidence supplied to the Commission by, for instance, Keating (2012).

<sup>vii</sup> Jim Gallagher's analysis of Bills passing through parliament in 2006 found that of the 55 public Acts that were passed, some 29 were UK-wide in their extent, 18 were assigned as primarily applying to England or Wales (though 10 of these had some Scottish content), and only 8 had no visible Scottish content but might have reasonably been deemed to be pieces of legislation in which Scottish MPs have a legitimate interest. Only 1 Act in this period could have been deemed to apply to England alone; see Gallagher (2012), Annex 2., 'Public General Acts of 2006 and their General Suitability for an England-Only Legislative Process', 37-39.