SELECT COMMITTEE ON THE CONSTITUTION

The Union and devolution

Oral and written evidence

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About Us: A Force For Good
'A Force For Good' was launched by Alistair McConnachie on 21 March 2012 in order to campaign for a No vote at the referendum on 18 September 2014. It is both an Online and Physical Project located at aForceForGood.org.uk
Alistair McConnachie was the first 'Individual' to register as a 'Permitted Participant' for a 'No'. The Project continued, full-time, after the referendum. It does not support any political party or religious group. He has a degree in Scots Law, and is happy to attend a Public Hearing.

A Force For Good – 4-Point Statement of Position
The Position upon which we stand, and from which we judge the Philosophy, Policy, Projects and Activity which we promote:

1. The United Kingdom of Great Britain and Northern Ireland shall be maintained.
2. The United Kingdom is, and shall remain, primarily a Unitary State and One Nation.
3. Ever Closer Union between all the people and parts of the United Kingdom – including but not limited to elements; social, cultural, educational, economic, legal, territorial and political – shall be pursued.
4. The House of Windsor shall continue to provide the Head of State for the United Kingdom.

Read more> http://www.aforceforgood.org.uk/info/about

The following 6 and a half pages address the Key Questions asked at http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/news-parliament-2015/devolution-launch

KEY QUESTIONS
IS THE UK’S CURRENT CONSTITUTIONAL AND LEGAL FRAMEWORK ABLE TO PROVIDE A STABLE FOUNDATION FOR THE DEVOLUTION SETTLEMENT?

1. We do not use the word 'settlement' in relation to devolution since, clearly, nothing is 'settled'.

2. The basic constitutional and legal 'framework' of the UK is sufficient. The real task is educating our legislators to understand what is the United Kingdom (see para 6 below); to have a 'philosophy of Union' (see para 10 below) and to understand what is devolution (see para 16 below).

3. If these basics are not understood by our legislators then a stable foundation cannot be provided.

4. Unfortunately, the story of our constitutional and legal framework post-1999 devolution has been of a political class who don't understand these basics.

5. Consequently, they do not understand how the United Kingdom can be compromised and threatened by nationalist, separatist and federalist ideology and policy. Nor do they understand how it can be strengthened.
6. What is the United Kingdom? Contrary to the mistaken claim made in the Select Committee's 'Call for Evidence' document, the UK is not just a 'Union State', although it has elements of that nature. **It is primarily a Unitary State.** From the understanding of the UK as primarily a Unitary State, all else follows.

7. What is the difference? A Union State is 'a Union of 4 Nations'. A Unitary State is 'One Nation of Unions'. A Union State is 'a Family of Nations'. A Unitary State is 'a Nation of Families'.

8. The UK cannot be held together if the fundamental understanding of it is wrong! Imagining the UK merely as a ‘Union State’ is to expose it and make it vulnerable to nationalist, separatist and federalist ideology and policy – which, as we can see daily, only compromises its potential for unity and encourages division and dissolution.

9. Understanding the UK as primarily a Unitary State, however, ensures that the ideology and policy which feed it will tend towards its unity and survival. With this understanding comes the ability to protect the UK from fracture.

**WHAT ARE THE KEY PRINCIPLES UNDERLYING THE UNION?**

10. We addressed this question in our speech on 18 June 2015 entitled, 'One UK: The British Union from 30 First Principles' which can be read in full at [http://www.aforceforgood.org.uk/strategy/firstprins](http://www.aforceforgood.org.uk/strategy/firstprins) We identified 8 Broad Areas, and 30 Key Principles which underlie the British Union. In summary these are:

**PRINCIPLES OF STATE**  
Principle 1: The United Kingdom is a Unitary State  
Principle 2: The United Kingdom is One Country and One Nation  
Principle 3: The United Kingdom is a Family  
Principle 4: The United Kingdom is an End in itself, and not only a Means to an End

**PRINCIPLES OF RELATIONSHIP**  
Principle 5: The Nature of a Union is Joint Commitment to a Greater Collective Good  
Principle 6: It is Wrong to Demand More Powers and Expect to Remain in Union  
Principle 7: A British Frame of Mind puts First the Interest of all Britain  
Principle 8: Policy and Implications for all the UK is our Concern, not just for England, Northern Ireland, Scotland or Wales separately

**PRINCIPLES OF EQUALITY**  
Principle 9: Any Discrimination, including Economic Discrimination, towards a British Citizen based on the Grounds of his or her Place of Residence in the UK shall be Prohibited  
Principle 10: All British citizens must have Access to the Same Top-Rate Welfare Payments and Benefits

**PRINCIPLES OF ECONOMY**  
Principle 11: The UK is a Sharing and Redistributive Tax Union  
Principle 12: Mineral and Energy Resources throughout the UK belong to all British Citizens

**PRINCIPLE OF IDENTITY**
Principle 13: The British Identity requires Political Union

PRINCIPLES OF CONSTITUTIONAL UNITY
Principle 14: Any change to One Part of the United Kingdom has to have Regard to the Whole of the UK and the Whole of the UK has to be Involved
Principle 15: It Shall be Difficult to Break-Up the Country
Principle 16: All Constitutional Matters Regarding the Union of the United Kingdom must be Made by Primary Legislation

PRINCIPLES OF PARLIAMENTARY UNITY
Principle 17: Laws are Made by the British Parliament
Principle 18: The British Parliament has Complete Authority over all its Subsidiary Bodies
Principle 19: The British Parliament has a Responsibility to all the People of Britain to Retain its Complete Authority over all Actions of any Subsidiary Body
Principle 20: Every Law Passed in the British Parliament affects Everyone in the UK
Principle 21: All British Citizens Must have a Say over Governance in all Parts of the UK
Principle 22: Every British MP Represents, and Makes Decisions for, all of Britain
Principle 23: Every MP has a Right to Vote on Everything that comes before the British Parliament
Principle 24: The Constitutional Model must Allow for an MP from Anywhere in the UK to Become Prime Minister

PRINCIPLES OF DEVOLUTION
Principle 25: Devolution is British State Power Exercised by a Subsidiary Body
Principle 26: Devolution must be Consistent with the Maintenance of the UK as a Unitary State
Principle 27: Devolution is a Two-way Process
Principle 28: Devolution is Dangerous to a Unitary State in the presence of a Separatist Movement
Principle 29: Any Devolved Power can and will be Used by a Separatist Administration for a Divisive Purpose to Further its anti-UK Agenda
Principle 30: Scottish Separatism will Never be Appeased

ON WHAT PRINCIPLES ARE THE UK'S DEVOLUTION SETTLEMENTS BASED, OR ON WHAT PRINCIPLES SHOULD THEY BE BASED?

11. Again, we do not use the word 'settlements' since the devolution situations are changing all the time – 'Devolution Reactions', or 'Devolution Instabilities' would be more accurate terms.

12. These devolution situations are not based on any firm principles whatsoever. They are reactionary in nature, thoughtless in character, and heedless of – what we term – the Big Picture of Britain.

13. That is to say, any proposals for devolution (hitherto, and at present) merely react to the power of the Nationalists. They seek to give more powers to them without any thought of where, politically, that will place the Nationalists in a few years; and they do so without any heed to how it will affect the Big Picture of the unity of Britain.

14. The Smith Commission proposals, and the content in the current Scotland Bill, are both perfect examples of this reactionary, thoughtless and heedless approach.

15. Neither Smith nor the Scotland Bill pay any attention to what 'devolution' is even meant to be in theory.
16. Our 'Principles of Devolution' (above) identified 6 Principles upon which Devolution should be based, the most basic of which is Principle 25: 'Devolution is British State Power Exercised by a Subsidiary Body'.

17. That is, the political power should remain entirely with the central British State, albeit exercised at a subsidiary level. That means the British State should retain the power to veto, take back, and even abolish – otherwise we do not have devolution.

18. It should retain these powers because devolution is not the casting-off – the abandonment – of British state power from the centre, and its establishment in a new sovereign body in a new state. In a case where the central power – the British State – abandons its law-making power and its position as the supreme arbiter, and where it no longer retains, even in theory, the power to veto, take back devolved powers, or even to abolish, then we do not have devolution. We have the granting of slow independence – a completely different policy.

19. Elements in the current Scotland Bill amount to a granting of slow independence. For example, making the Scottish Parliament 'permanent' in law, and the idea that the British Parliament should not be able to veto policies of the Scottish Parliament.

20. Why are these things wrong to be included in the Bill? The answer is that the British Parliament must be able to veto devolved policies (and take back powers, and even abolish Holyrood if only in theory) because the British Parliament stands for and represents the entire United Kingdom; and so long as we are in Union then everyone in the UK has a stake in what Holyrood, or any devolved institution may do.

21. For example, if Holyrood does something which prejudices or endangers the rest of the UK, then the rest of the UK must have a say and an ability to stop it, via the British Parliament. If we don’t even believe this, then we may as well just grant independence to Holyrood – because we would already be conceding to it a form of 'slow independence'.

22. It is fair to say that the Nationalists at Holyrood have absolutely no respect for this conception of devolution. But then again, it is not as if any pro-UK politicians are making the case for this either.

WHAT IS THE EFFECT ON THE UNION OF THE ASYMMETRY OF THE DEVOLUTION SETTLEMENT ACROSS THE UK? IS THE IMPACT OF ASYMMETRY AN ISSUE THAT NEEDS TO BE ADDRESSED? IF SO, HOW?

23. Again, we don’t use the word 'settlement' and it seems absurd to use such a word given the obviously unstable, and endlessly destabilising, nature of 'devolution' in the UK.

24. However, to answer the question: It is not the 'asymmetry of the devolution' which is the primary concern. Rather, it is the context and the content of the devolution which is the primary concern – and the resulting attitude of the Nationalists towards the rest of the United Kingdom.

25. Focusing on the 'asymmetry' is missing the fundamental problem, as far as keeping the UK together is concerned.
26. After all, it could be possible to imagine an 'asymmetric' devolutionary arrangement which did not damage the integrity of the UK – if the context of it was not submission to a Nationalist agenda (para 13 above) and the content of it was respectful of the primacy of the British State (para 16 above), and everyone's attitude was supportive of the UK.

27. It is not possible to imagine it at present, though, because devolution has still to be properly understood by our politicians as British State Power Exercised by a Subsidiary Body (para 16 above), rather than as simply a convenient short-term way of appeasing Nationalists by granting them 'slow independence'.

28. How would we address the 'asymmetry' – or rather what would we do to address the fundamental problem with its context and the content in which it is located?

29. The first and best way of dealing with this 'asymmetry' is not to make it worse!

30. More legislative 'devolution' (slow independence) via the present Scotland Bill, will continue to undermine the unionist case for the UK, which depends upon shared political institutions and laws, and the blurring not highlighting of difference. It will continue to make some people in England upset about 'asymmetry', possibly leading to potential crisis.

31. Secondly, we addressed the matter of 'How to Do Devolution Properly' in our article of that name at: http://www.aforceforgood.org.uk/devo/admin

32. We made 4 Recommendations, which we repeat here and which help to address the 'asymmetry' – but which is really the fundamental problem regarding the context and content, and attitude towards the devolution situation:

**Recommendation 1: Do Not Devolve on the Basis of Identity**

33. If legislative powers are devolved on the basis of presumed 'local', 'regional' or 'national' identity, then this can encourage factionalism. It can lay the ground for potential future regionalist or nationalist platforms, and consequently, the break-up of the wider British State.

34. Some people say they want to respect local differences. That seems fair enough. But there is a big difference between respecting local, regional or national social and cultural differences, and highlighting and amplifying those differences. The first can help people to get along, while the second can lead to division.

35. This is especially so when Nationalists are in the ascendant. The separatists will use any powers which they acquire in order to accentuate differences, and make it impossible for them to be reconciled; in order to promote their long term goal of division. There is no power available which they cannot exploit for this end.

**Recommendation 2: Devolve Across Local, Regional and National 'Borders'**

36. Following from Recommendation 1 – that devolution should not be on the basis solely of identity – we should therefore always involve a 'cross-border' element which seeks to bind everyone in common cause.
37. For example, it might involve say, 'the western islands of Scotland and parts of the west coast of Scotland' or 'the southern counties of Scotland and the northern counties of England' ('the Middleland' as it has been called by Rory Stewart MP), or various cities and localities working in partnership throughout the UK. In the latter regard, the British Government's 'City Deal' programme is on the right lines.

Recommendation 3: Relate Everything Back to the Overall Context of 'One UK'

38. We need to keep reminding ourselves of the bigger picture of unity. If devolution is not to degenerate into 'slow independence' and parochial forms of factionalism and nationalism which are destructive to the cohesion of the wider society, then the Big Picture of Britain, and its Unitary (not 'Union') characteristics, must be kept centre stage.

Recommendation 4: Concentrate on Administrative Devolution: Scottish Office to Local Councils (Bypassing Holyrood)

39. Put the emphasis on Administrative Devolution, rather than Legislative Devolution. The former does not threaten the authority of the Unitary State. The latter is a playground for nationalism, separatism and federalism.

40. For example, devolution of powers to Local Councils should be (and always should have been from the start) directly from the British centre. That is, the Scottish Office (representing the British Parliament in Scotland) should have the control and should devolve powers, administratively not legislatively, directly to the Local Councils. This leaves the British Parliament – representative of all the British people – in ultimate control.

41. However, any kind of Legislative Devolution of local powers from the British Parliament, to Holyrood, and then from Holyrood to Local Councils, simply empowers Holyrood – which is to say, the SNP for the foreseeable future.

42. Of course, the Nationalists will howl blue murder at such a recommendation, because it frustrates their total grip on power, but those of us who believe in the UK should be very clear about the democratic reasons for such an arrangement, as well as the constitutional reasons for such a balance.

43. As we said in more detail in our article, 'How to Do Devolution Properly' (para 31 above), this would also have the advantage of building up the Scottish Office again. It would help to put the British Parliament back at the heart of Scottish political life and local affairs. It would help to re-establish the centrality of the wider British Context (para 26 above); and to make relevant once more the rest of the UK, and all its people, to Scotland.

44. In this regard, we used the example of how the devolution of Crown Estate powers – which is proposed in the current Scotland Bill – should instead be devolved administratively to Local Councils, instead of legislatively to Holyrood.

WHAT MIGHT BE THE EFFECT OF DEVOLVING POWERS OVER TAXATION AND WELFARE ON THE ECONOMIC AND SOCIAL UNION WITHIN THE UK? ARE THERE MEASURES THAT SHOULD BE ADOPTED TO ADDRESS THE EFFECTS OF THE DEVOLUTION OF TAX AND WELFARE POWERS?

45. We are wholly opposed to the devolution of taxation and welfare powers, on principle.
46. However, if this is to go ahead, then we believe that there is a way to mitigate the inequality, and potential tax and welfare-envy, which will arise UK-wide as a result.

47. We believe that it could be mitigated by the establishment in UK law of our Principle 9 above: 'Any Discrimination, including Economic Discrimination, towards a British Citizen based on the Grounds of his or her Place of Residence in the UK shall be Prohibited'.

48. We call this the British Equality Principle, or the Non-Discrimination Clause.

49. This Principle means that every British citizen must be treated the same; and regardless of where they move to, or where their main residence is found to be located, should not be disadvantaged economically, or advantaged economically, under any form of state-related payment such as, but not limited to, welfare and benefit payments, student-related payments, or pension payments; and regardless of from whom, or where, the taxes for such payments are raised.

50. Prior to devolution, this Principle used to exist in the UK – without it having to be said! Since devolution, it has become compromised.

51. If Holyrood is to get powers over tax and welfare, then this British Equality Principle will be further compromised.

52. It seems wrong that while Britain will abide by the EU rules on such equality matters, it is prepared to compromise this important general principle in relation to its own citizens, and put at risk our shared sense of social solidarity.

53. So if these substantial tax powers are going to be devolved throughout the UK – and we don’t want them to be but if they are – then one way of mitigating the potential dangers of them, and redeeming, to an extent, their negative consequences upon our social union, would be for the British Government to state that this principle of Non-Discrimination must govern the spending behaviours of the devolved parliaments and assemblies on the matter.

54. We explain our ideas further under Principle 9 at http://www.aforceforgood.org.uk/strategy/firstprins

55. Following from Principle 9, our Principle 10 above states: 'All British citizens must have Access to the Same Top-Rate Welfare Payments and Benefits'.

56. It is not enough to have access to the same basic welfare payments; not if some parts of the United Kingdom can top-up the basic rate to a much higher level! For the principle of non-discrimination to exist, every British citizen has to have access – not to the lowest level, but – to the highest level of any particular welfare payment, regardless of where in the UK they are resident, or where the higher level is located. Otherwise, this is a form of economic discrimination based on residence, which again is contrary to the British Equality Principle.

57. The establishment of a British Equality Principle would go some way to mitigating the negative effects of such devolved measures, as well as reasserting the importance of the shared British identity at the heart of our tax and welfare system.
58. And as per our Principle 11, above: 'The UK is a Sharing and Redistributive Tax Union'. This was one of our key arguments for the Union at the time of the referendum. For this now to be compromised means that we will struggle to make this argument again, if there were ever another referendum.

59. In addition, the establishment of a separate Scottish tax collecting organisation – paid for on the back of the British taxpayer – also means that "Her Majesty's Revenue and Customs" risks being downgraded, replaced and ultimately driven out; thereby reducing and removing yet another British institution in Scotland.

60. We argued effectively against the huge set-up costs of such an unnecessary organisation during the referendum. Now we find that this expenditure is going to be made, after all, and paid for by all the British taxpayers instead – not just the ones in Scotland, as would have been the case under independence. This also removes another argument against separation if there were to be another referendum.

61. In effect, this amounts to the British Government enlisting all the British taxpayers to help build the institutions of a new and potentially separate Scottish state. How the SNP must be laughing!

WHAT PRACTICAL STEPS, BOTH LEGISLATIVE AND NON-LEGISLATIVE, CAN BE TAKEN TO STABILISE OR REINFORCE THE UNION? HOW SHOULD THESE BE IMPLEMENTED?
62. The aim of a Union, legislatively, socially and culturally, is to blur differences, not to highlight them in sharp relief.

63. At present – because legislators are conceiving of the UK as a 'Union State' rather than the Unitary State which it is – all the legislative direction is towards separation. Yet, there is an alternative way. As each day passes, we should be bringing everyone in Scotland, and throughout the UK, closer together. As each day passes, we should not be finding ways to drive ourselves apart, or to accentuate our differences, or create division where none existed before, but we should be finding ways to bind all the British people together in common understanding and cause.

64. What to do? The first requirement is 'Don't Make Matters Worse'. Unfortunately, the present Scotland Bill is an example of something which could not be better designed to make matters worse.

65. While it is not possible to imagine it being ditched – even though the Government has the majority to do that – there are Clauses which could and should easily be dropped, and which would help protect the pro-UK majority.

66. For example, drop the devolution of the British Transport Police. As soon as the Nationalists acquire this power they will abolish 'the British' bit, leading to the death of another British institution in Scotland. They do this as part of their agenda to make the social and cultural struggle harder for pro-UK people in Scotland.

67. Drop any requirement for the British Broadcasting Corporation to answer to Holyrood via Ofcom. It is the long-term aim of the Nationalists to subvert and convert the BBC, through pressure, into a 'Scottish Broadcasting Corporation' answerable to them. Any subservience of
the BBC to the Scottish Nationalists would further damage the social and cultural identity of pro-UK people in Scotland.

68. Drop the devolution of road signs. Road signs are widespread, hugely visible potential political banners. This is why the SNP wants control over them. If it controls this competency, it could make all signs dual-language; brand all signs with 'Scottish Government' logos; invent new road symbols just to be different from English roads; change everything to metres, and possibly kilometres – and even though 'Measurements' are a reserved matter, it will argue (correctly) that it is doing it within a competence which is devolved. This could lead to a separate Highway Code for Scotland; which would lead to a separate Driving Licence for Scotland.

69. We do not exaggerate. We know this because this is what the SNP does! It creates difference for the sake of it in order to create division for its own political ends. Our politicians need to be alert to the cultural danger of the Road Sign Clauses and drop them forthwith. We wrote more on this: http://www.aforceforgood.org.uk/devo/unionvid2

70. Do not make Holyrood 'permanent' in law. As above (paras 19-21 above), that would compromise the idea that the British Parliament is the supreme governing body.

71. Ensure the British Parliament is able to veto Holyrood decisions. This ensures that in theory, at least, the British Parliament remains the governing body and that 'Devolution is British State Power Exercised by a Subsidiary Body'.

72. We've already mentioned the importance of strengthening the Scottish Office by switching some of the legislative devolution in the Scotland Bill, to administrative devolution (paras 39-44 above).

73. The second requirement is to ensure 'ever closer union' legislatively.

74. Just as the EU frames its laws to encourage 'ever closer union' within the EU, it should be a principle and an aim of the British Government at all times, and the administration at Holyrood – when it is under unionist control – to ensure 'ever closer union' within the UK.

75. In this regard, we should establish in law our Principle 27 above that: 'Devolution is a Two-Way Process'. This means it should be considered natural for devolved powers to be moderated, adjusted, rescinded or returned to the British centre, where appropriate. This is in keeping with the idea of the UK as a Unitary State.

76. After all, if we accept that the Union must be maintained, and that the Scottish Parliament is intended to 'strengthen the Union', and if we believe in the principle of 'ever closer union' for the UK, then there should be no reluctance – in principle – to moderate, adjust, rescind or return a devolved competence if that competence is being used in a way which is damaging to our Union. There should be an assumption that it is possible. There should be nothing controversial about that assumption. It should be written into law, and all legislation related to devolution, including the current Scotland Bill, should state this assumption.

77. Other ideas: Establish a UK Constitutional Veto: Safeguard against Future Rogue Laws by an additional Paragraph in the Scotland Act 1998: For example, in order to safeguard against future devolved rogue laws which damage the Union, a further paragraph 'c' should be added to
Section 35 (1) of the Scotland Act 1998 (Power to intervene in certain cases) which should state something along the lines of: "If a Bill contains provisions which the Secretary of State has reasonable grounds to believe would be incompatible with the principle of ever closer union for the United Kingdom, or contrary to the principle that devolution must strengthen the Union, or incompatible with the principles of equality of opportunity and non-discrimination throughout the United Kingdom, he may make an order prohibiting the Presiding Officer from submitting the Bill for Royal Assent."

78. **Establish a Ministry, and Minister of State, for the Union:** To bring everything together we need the British Parliament to set up a specific Ministry, and a UK Minister, for the Union. Its task would be to promote the social and cultural value of the United Kingdom, and to spot and prevent and defeat legislative threats to the Union.

79. **The third requirement is to understand the importance of the social and cultural element of politics.**

80. Some of the Clauses we have highlighted above in the current Scotland Bill (for example, paras 66-72) indicate clearly that the British Government, 'unionist' MPs (and civil servants who come up with this stuff) have absolutely no clue about this vital element of politics. What else explains their willingness to offer up the BBC to SNP oversight, or endanger the British Transport Police (both a form of cultural sacrifice), or the complete absence of any Clause in the Bill which might strengthen the bonds of unity in the UK?

81. Socially and culturally, we made several suggestions in our speech of 18 June 2013, entitled, 'Ever Closer Union: Over 50 Suggestions to Promote the Social Union and the Cultural Value of the United Kingdom'. It can be read here: [http://www.aforceforgood.org.uk/vision/uk12](http://www.aforceforgood.org.uk/vision/uk12)

30 September 2015
Tony Armstrong, Locality—Oral evidence (QQ 211-218)

Transcript to be found under Paul Nowak, Trades Union Congress
This submission is made on an individual basis

I welcome this opportunity to make this written submission to the House of Lords Constitution Committee. I share its concern about the lack of a coherent vision for the Union. My remarks are mainly addressed to the first theme of the Committee’s inquiry: identifying the principles that should underlie the existence and governance of the Union and the exercise of power, both centrally and by the devolved nations. Other scholars have made already important proposals on the second theme, specifying practical steps could be taken to stabilise and strengthen the Union. I only touch briefly on the second theme at the end of this submission consistent with the principles identified.

1 The Union

1.1 How to describe the United Kingdom (UK) has exercised the definitional ingenuity of academics. The term unitary state is no longer fashionable, long since replaced by the more appropriate term, union state. James Mitchell’s imaginative state of unions has found favour recently, a definition which captures the institutional and legal variations in the UK as a consequence of devolution. My preference remains the term multinational state.

1.2 One of the clearest, if venerable, expressions of this multinational Union was by Sir Ernest Barker who, for much of the 20th century, was the official philosopher of the UK. UK multiculturalism for Barker meant a common political identity as well as an acknowledgement of national difference. Multi-national democracies will collapse, Barker thought, unless: ‘as we have somehow managed in our island, such a State can be both multinational and a single nation’. Barker identified the efficient, if paradoxical, secret of multinationalism: On the one hand, political representation at Westminster secured the common interest of its component nations. On the other hand, it was through the accommodation of diverse and distinctive institutions, practices and cultures that national identities were sustained. This is what Barker called the distinctive British ‘mixture of unity and diversity’, one in which each individual nation contributed to collective strength and each nation got more ‘by being included in the wider scope of the United Kingdom’ than by being separate.

1.3 The UK’s capacity to act as a single state despite its multinational composition distinguished it internationally (and this distinctiveness was to become even clearer with the break-up of former communist states, like Yugoslavia or Czechoslovakia, in the 1990s). Nevertheless, describing the UK as a multinational state calls attention to those things which differentiate the parts and this always risks undermining the UK’s capacity to see itself as a whole, something which scholars spotted early. Devolution, of course, has institutionalised and politicised that differentiation of parts. In principle, greater autonomy for the parts need not affect the integrity of the whole. But the politics of national identity can foster multinational fragmentation by promoting only the one narrative of differentiation – unless, that is, a countervailing narrative of commonality can establish a renewed post-devolutionary balance. The Committee is correct to be concerned that there is a present popular sense of differentiation rather than commonality. It is this balance which this Committee is considering, defined as ‘a more stable settlement that will preserve and strengthen the Union as a whole’. It correctly identifies the need to give meaning and coherence to the Union.
2 Principles

2.1 What, then, are the key principles of the Union? In my view a paradoxical term best captures its character. That term is elective affinity, one familiar to students of the German sociologist Max Weber: elective suggests agency and deliberate choice; affinity implies that individuals and nations are related by something other than choice. In short, the component nationalities of the UK elect to stay in constitutional relationship with one another and this relationship exhibits affinities which give continued substance to the term ‘British’. Elective affinity captures well the intersection of self-understanding and self-interest in the history of the Union. It takes the form of shared institutions, formal and informal arrangements, similar policy objectives and common commitments, all of which involve not only self-conscious election or democratic choice but also sentimental or emotional identification.

2.2 I would argue that the recent Scottish referendum was actually a demonstration of elective affinity in practice. The majority who voted ‘no’ to independence elected to remain part of the UK and those who voted ‘yes’ accepted the outcome (at least for the moment). And that choice implies an attendant affinity for the Union. Indeed, I suggest that in this regard the referendum is a good example of UK principles in practice. Its process was agreed formally between the British and Scottish governments; it was legislated for by the Scottish Parliament; and it resulted in an unprecedented high turnout. The outcome on 19th September 2014 represents a positive expression of Scotland’s place in United Kingdom, something unparalleled since 1707 (and never in the era of democratic politics).

2.3 Consent, as Lord Bew remarked recently, was once the territorial principle that dared not speak its name but is now the acknowledged rule of British constitutional procedure. That subsequent events may not have unfolded as supporters of the Union would have expected (or desired) does not deny the operative principle. However, this active consent triggers a new dynamic for change. Negatively, this can be interpreted as the rise and rise of the Scottish National Party (SNP) intent on undoing the Union. Positively, this can be understood as an opportunity to make the Union relevant again to all its citizens.

2.4 The multinational Union can be sustained only on the principle of consent, and that is the best and most durable way of doing so. However, this consent does not entail any fixed notion of what institutions should do or what the relationship between them should be. Doing justice to what is distinctive to and what is common in the UK has always been a delicate enterprise. The historical objective of central government, or Westminster, has been to secure common rights of citizenship within the shared space of the UK, where expressions of national difference need not conflict with the achievement of multinational purpose. The term which emerged during the Scottish referendum to describe this common good was solidarity. And that solidarity involves the very real and immediate issues of politics: who gets what, where, when and how. Devolution, I suggest, is a modification of that fact and not its undoing, despite the rise in support for the SNP.

2.5 To summarise: in 2008, the Prime Minister used the analogy of the UK Chief Rabbi to describe what the UK is not but which it could become if a clear idea of the Union is not articulated and institutionalised. The analogy is with a hotel in which the guests live in different rooms, rarely interact and the hotel administration is merely a useful service provider. That is where nationalist thinking also takes us and invites ‘check out’. What the Prime Minister proposed as an alternative is the idea of the UK as a home with common foundations in which distinctive national identities are
not at odds with but complement a common political allegiance. This means citizenship of a country and not a reservation in a merely temporary political space. The political debate remains between nationalists and those with dual loyalties to both their nation and to the UK.

3 Devolution

3.1 Devolution of power to the Scottish Parliament and to the Welsh and Northern Ireland Assemblies has altered the framework for the negotiation of who gets what, where, when and how. Achieving that purpose now requires more open political debate about the relation between multinational and national priorities. It makes the constitutional process more transparent. Devolved institutions also provide new – but not exclusive – locations for the expression of citizenship: participation in elections, lobbying representatives and identification with new public symbolism. So the political bargaining between devolved institutions and Westminster is much more politicised. Multinational solidarity is qualified by another term: multinational contract. The contractual nature of the UK involves distinctive claims for money and resources by its nations and regions. This can be turned easily into the politics of national and regional grievance, for example over the Barnett Formula and it is this politics of grievance which often hits the headlines. So the UK exhibits, post devolution, a principled political debate between the claims of contract and solidarity.

3.2 Political research has identified another paradox: the devolution paradox. The paradox is that while citizens in Scotland, Wales and, with qualifications, Northern Ireland appreciate the ability of devolved institutions to deliver policy diversity there is also a wish for common standards of public service throughout the UK. If this appears contradictory it provides further social science confirmation of elective affinity in action. Citizens choose difference in particular but claim affinity in general. The Scottish vote last year confirms that paradox, even when pushed to the political limit.

3.3 Devolution in general – and the Scottish Referendum debate in particular – raises another question. What is the relationship between instrumental support for the Union (implying choice, or contract) and allegiance support for the Union (implying affinity, or solidarity)? Some scholars have asked a fundamental question: what is the UK for in the 21st century? For nationalists, of course, the answer is that it serves no purpose. Of course, this question has its flip side: what is national independence for in the 21st century? This question tends not to make the headlines. It is more fundamental.

3.4 Thus, while electing to end political Union, those advocating ‘yes’ in the Scottish Referendum also proposed to maintain other unions which actually assumed cultural affinity throughout the UK. Two of these were given prominence. The first is social union, encompassing what was described in the Referendum campaign as all the distinct national and regional communities in the British Isles based on close social, economic and cultural links and symbolised by Scotland retaining the monarchy. The second is monetary union which is nothing other than the financial cornerstone of UK solidarity (as we can understand better now in the light of Greece’s recent experience of the Euro). The proposed continuity of these unions poses one difficult question for nationalists: ‘If you want unions, why secede from the Union?’ I suggest this is a more difficult question to answer than the question ‘what is the UK for?’ That fact should also inform the Committee’s deliberations.
3.5 It is worth emphasising that point. Robert Hazell has argued consistently that confidence should be one of the principles of the new constitutional order meaning that the Union rests on much broader and firmer foundations than its critics realise. I think he is right.

4 Changing politics

4.1 Until quite recently (at least until the late 1980s), political scientists wrote confidently about Westminster’s unique authority and status. Parliamentary representation at the centre, it was argued, integrated the four nations of the United Kingdom institutionally into the British fifth nation. In politics textbooks that fifth nation normally eclipsed all the others, even England - or to put that otherwise, the politics of England and the politics of fifth nation were often confused. This was the result of UK party competition and common policy programmes. Rose argued persuasively that ‘policy unites what territory divides’, a view we cannot accept so easily today.

4.2 Recently, opinion polls reveal popular disenchantment with processes of decision-making at Westminster which can appear sometimes immune to public influence (for example, talk about the Westminster bubble or the Westminster elite). Support for the traditional UK political parties has also declined along with some of the old certainties which sustained them. It is these changes, as well as the SNP’s success in Scotland, which challenge the integrity of the old fifth nation.

4.3 Vernon Bogdanor captures this new reality well when he argues that the constitutional measures enacted since 1997 have transformed the UK such that the sovereignty of Parliament is slowly being replaced by the sovereignty of a constitution. That indefinite article is quite explicit because its shape is still uncertain. The future of the UK (as it was once said of the European Common Market) is an unknown destination. This is the changed context in which the Committee’s deliberations take place.

5 Practical steps to strengthen the Union

5.1 Embedding devolution into the UK’s constitution has convinced many constitutional scholars and politicians that the time has come for a constitutional convention in order to formalise relationships. Recently, for example, an important report has favoured a written constitution in order to ‘provide clear ground-rules to serve as a framework for our territorial arrangements and to secure their permanence’. As a first step, it also proposed a Charter of Union to ‘lay down the underlying principles of the UK’s territorial constitution’.

5.2 Lord Norton made a similar point recently, arguing for a constitutional convocation as a first step. This would be a taking stock mechanism ‘for looking at our constitution in the round—where we are now, how the different elements fit together, and the constitutional principles that underpin those arrangements’. This convocation would ‘encompass inter-institutional relationships within the United Kingdom, the role of Parliament, the relations between the two Chambers and between Parliament and other organs of the state’ as well as relationships with the European Union. This would also need to consider the English Question but in the context of wider relationships.

5.3 I am persuaded of the value of that approach. Macaulay’s idea of British constitutionalism - nothing of symmetry and much of convenience, never removing an anomaly merely because it was an anomaly – which has served so well in the past, no longer seems fit for purpose.
5.4 Consent for the Union is contingent, not certain. The contingency of that consent impresses many commentators today. In particular, it is important to find some way for everyone in the UK to consent to a possible Charter of Union. The old medieval principle ‘what touches all must be approved by all’ is a good one – and sorely missing in recent and partial referenda. A UK-wide vote on a Charter of Union might reverse the present popular mood that every moment of the devolutionary process is eroding rather than strengthening the Union.

6 Conclusion

6.1 The debate between those who wish to end the Union and those who wish to maintain it comes down to this: between those who believe that national identity and political allegiance should be one and the same and those who believe that distinctive national identities complement a common political allegiance. Recently nationalists have come to believe that the future belongs to them. Perhaps we should heed General de Gaulle’s remark: ‘The future lasts a long time.’ Times do change (think of the oil price) and there is no reason why the Union should not remain our common future.

References

1 James Mitchell, Devolution in the UK, Manchester 2009.
2 Ernest Barker, National Character and the Factors in its Formation, London 1927.
3 Ernest Barker, Britain and the British People, Oxford 1942.
6 David Cameron, ‘Extremism, individual rights and the rule of law in Britain’, speech February 26, 2008
7 Arthur Aughey, Nationalism, Devolution and the Challenge to the United Kingdom State London 2001

7 August 2015
Evidence Session No. 23    Heard in Public    Questions 299 - 304

WEDNESDAY 27 JANUARY 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Professor Arthur Aughey, University of Ulster, Professor Derek Birrell, University of Ulster, and Professor Colin Harvey, Queen’s University, Belfast

Q299 The Chairman: I do not know what the collective noun is for professors; perhaps it is an enlightenment of professors. We are delighted that you have agreed to come to talk to us today. We are engaged in what we acknowledge is a difficult and extensive inquiry into the union and devolution. We are very keen to include all parts of it, and we are grateful to you for coming from Belfast. As I explained outside, the other two sessions are with witnesses who are here anyway, which is the only reason we have not travelled to Belfast. We are very grateful.

You have seen the sort of areas we want to cover in our questions so I will dive straight in. We may change the order of the questions, but please do not be thrown by that. As I said to our last witness, the concept of union is something that resonates for different reasons and in different ways more strongly in Northern Ireland than it probably does in other parts of the United Kingdom. Can you tell me how you see a state of unions as being different in Northern Ireland from the rest of the country? Perhaps you would like to start, Professor Aughey.

Professor Arthur Aughey: Certainly. There is a historical aspect that is rather distinctive from the other nations and regions of the UK. What distinguishes the Northern Ireland case is a question of legitimacy. The legitimacy of Northern Ireland as a part of the union has been challenged at three distinct but interrelated levels: first, politically; secondly, constitutionally; and, thirdly, as we have experienced over the last quarter of a century, violently.

The question of political legitimacy meant that nationalists in Northern Ireland felt excluded from the political institutions, such that we now have in Northern Ireland an attempt to bring those communities together in a form of power-sharing or compulsory coalition that is very distinctive from the system in Scotland, in Wales and certainly in the UK Parliament here. Constitutionally, of
course, Northern Ireland was challenged by the Irish state. Under Articles 2 and 3 of the old 1937 constitution, the Irish state made a territorial claim on the six counties of the north. That has been resolved under the Belfast Agreement; those two articles are now aspirational rather than territorial. What distinguishes Northern Ireland again is that it has not only a bi-communal form of political institutions within, but a bi-national relationship on the island of Ireland. Ever since the Anglo-Irish agreement of November 1985 the Irish Government have had a role to play, at least consultatively, in the politics of Northern Ireland, and that continues today, institutionalised in cross-border co-operation and in the North/South Ministerial Council.

What also distinguishes Northern Ireland in the policies that are pursued there is the legacy of violence and the terrorist campaign. We have had reform of the police and we have had change to the legal system, but we have issues outstanding. A treaty has just been laid before the House—I think it was this week—setting out a way of resolving the legacy issues of violence and historical crimes. That is what distinguishes Northern Ireland itself as an entity within the union, but it is very clear that Westminster remains the sovereign authority and Northern Ireland remains a part of the United Kingdom, albeit a part of the United Kingdom on the basis of consent.

**Professor Derek Birrell:** I would add to that historical viewpoint that the contemporary viewpoint is that the future of the union for Northern Ireland very much rests with the electoral wishes of the people of Northern Ireland, which is in the Good Friday agreement, but that is no different from Scotland. Since the Scottish referendum you could say that the future of the union for Scotland rests with the vote of the Scottish people. Wales is a bit different, of course, where it is not such an issue.

The other point I would make is that, rather than studying the state of the union, I have found it quite helpful to look at Northern Ireland and its Government and governance as part of a system of multilevel governance. There are a number of different levels, including the Irish Republic and the EU dimension, which are important. There are even some external influences from the United States, apart from UK involvement and other internal aspects of governance. I would add those two points.

**Professor Colin Harvey:** I underline the distinctiveness of the arrangements in Northern Ireland. I would be cautious and sceptical about seeing them exclusively through a devolution lens. There is something else going on, and that is important to note for the conversation today. Obviously there is the history and politics of Northern Ireland, as has been mentioned. There is also the legacy of violent conflict, and it is still working its way out of that conflict—it is still a society that is emerging from conflict.

It is important to note that the Belfast/Good Friday Agreement of 1998 and other agreements are not merely internal settlements for Northern Ireland. One of the fascinating dimensions of the Belfast/Good Friday Agreement is the three-stranded approach adopted there—the Northern Ireland internal dimension, the north-south relations and, perhaps interestingly for the conversation today, the British-Irish intergovernmental relationship and the connections between all the democratic entities on these islands.

Obviously the internal Northern Ireland arrangements are distinctive: the power-sharing model; the sense in which, through the Belfast/Good Friday Agreement, the whole arrangement is underpinned by the notion of consent; the self-determination principle that has been mentioned; and the fact that Northern Ireland, historically and now, has to deal with the fact that political unionism is just one particular political position in the context of Northern Ireland. Constitutional arrangements had to be designed in such a way that whatever choice the people make as to their
future, whether they wish to reunite with Ireland or remain within the UK, they have certain rights, and the Government with authority there will act with impartiality.

We have had to face that issue—a strong focus on people and the relationship between peoples across these islands. That is something that could usefully feed into this conversation. I would go even further. Looking again at some of the language in the Belfast/Good Friday Agreement 1998 about relationships across these islands, there are lessons for this conversation today, and in any discussion where we are thinking about negotiating the future of the UK.

I hope I have made it clear that the Irish Government has an important role in relation to the conversation about Northern Ireland, and there is the fact that the British and Irish Governments are co-guarantors for the 1998 Agreement. That brings the Irish Government into the conversation about anything that will impact on what is happening in Northern Ireland, potentially. We have seen that in the last number of years around the debate on the Human Rights Act, for example, and the various participants who have involved themselves in that conversation.

There are two more things. One is the legacy of the conflict, which, as we know, is still a work in progress. There are still mechanisms to be put in place to begin to address that effectively. I end by underlining, in this first response, the fundamental underpinning of human rights and equality throughout the Agreement, as well as the centrality of the European Convention on Human Rights and the Human Rights Act to what has followed in Northern Ireland from 1998.

The Chairman: Thank you very much. That has been a very useful scene-setter. I would like to come back to the union a little later in our discussion, to the extent that there is time to do so. I will move on to one or two of the devolution issues that interest us, and bring in Professor Morgan.

Q300 Lord Morgan: You refer to me as a professor. I was once a principal and the collective term that was commonly used was a “lack of principals”. You have all emphasised, obviously correctly, the historical differences that mark out Northern Ireland in so many fundamental ways. It has emerged throughout our discussions that the starting points for Wales, Scotland, Northern Ireland and indeed, potentially, England are all quite different when we consider this question. However, it has been suggested by many sources, including this Committee, that there should be an attempt to articulate a coherent vision and structure where Northern Ireland would be brought in with the other nations and peoples of these islands. Do you feel it would be possible to give a coherent settlement, or do the historical and other differences within Northern Ireland make that not feasible?

Professor Arthur Aughey: It is perfectly possible and very valuable. I would make the distinction between the notion of a statement of union or a charter of the union. There is a distinction between a question of identity and a question of procedure. If it were the case, as Professor Harvey intimated, that one consequence of such a charter or statute of the union would involve you signing up to be a unionist and that was a denial of your identity, it would not work. For many nationalists the 1973 border poll seemed to be a question of, “Are you going to vote to be British or not?” and the consequence was a boycott of that poll. As has been made very clear since 1998, Northern Ireland, like Scotland and Wales potentially, and even England, are part of the union on the basis of consent. I would see that statement of the principles of the union not being about identity, because under the Belfast or Good Friday agreement of 1998 we can be British or we can be Irish, and some of us may feel British and Irish when the mood suits us. I do not see it as a question of identity but as a question of procedure.

Northern Ireland devolution is enmeshed into the process of governing the UK. I would see some sort of statement, charter or declaration of the union as a way not of establishing administrative
details or identity but of indicating the values of that union—its democratic values and human rights values. It would be about procedures, not identity, such that relationships between the various parts of the union would be conducted on the basis of mutual respect and dignity for those institutions. That would reflect or incorporate some of the language that we find in the Belfast/Good Friday agreement, and in other distinct declarations such as the Edinburgh declaration between the Scottish Government and the UK Government, about mutual respect, open communication and institutional dignity. I would see that declaration or statement of the principles of the union as procedural, not, “This is a statement of our British identity, and if you don’t feel part of it, sorry”.

Professor Derek Birrell: It would have to be handled sensitively and politically. The danger is that it would be seen as strengthening the union and weakening the Irish dimension, so it is a political issue. For the reasons Arthur has given, you would need to avoid a kind of straitjacket. It might cause problems. When dealing with Northern Ireland, you need flexibility to deal with legacy issues that come up: for example, the Stormont agreement and negotiations and so on.

It might be useful with particular reference to intergovernmental relations, which are not really laid down in any kind of statement and have been developing on a bit of an ad hoc basis. Even the formal bodies are not very well codified, like the joint ministerial council or the British-Irish Council. It might also give a clear meaning to devolution. We now have a situation where people are starting to talk about whether city devolution for Manchester and so on is really devolution. It is worth getting devolution down in some sort of statute or statutory guidance.

Professor Colin Harvey: I have three points. First, I preface everything I say by noting the continuing importance of stabilising the distinctive power-sharing arrangements in Northern Ireland. We should frame the conversation in that way. It remains work in progress, as we have seen in the last few years.

The second point is to note that there is a changed constitutional context in the UK, and that changed constitutional context should not necessarily be seen as a threat but perhaps as an opportunity for rethinking, in a more pluralistic way, the nature of constitutionalism in the UK, and therefore the opportunities that might open up for different types of constitutional conversations in the future. My concern would be how something with the title “Charter of the Union” might play out in the distinctive Northern Ireland context I mentioned. There is also the concern that it might be an attempt to revive, or bring about a resurgence of, a very traditional understanding of the unitary state in the UK when real opportunities are emerging for a more pluralistic and different type of constitutional conversation in the UK that we should take the opportunity to pick up on. I have expressed some scepticism about that title, and the concerns that it might raise, in that it might be a step backwards rather than a step forwards.

The third point is around process, and it touches on other questions that you may have. Should we begin to think about constitutional conversations in the UK as intergovernmental discussions, the outcomes of which are not predetermined? In other words, we begin a different type of conversation in the UK, and even around these islands. I am not saying that we are going to draft a charter of the union, but what do we have in common, for example, in relation to issues of human rights and equality? What are the things that we share and can agree on as common principles or common statements? We can then think about what we might want to call it. The new constitutional context in the UK presents opportunities. Yes, there are challenges, but it raises profound questions about processes that are likely to lead to meaningful outcomes in the longer term, processes that stabilise rather than destabilise.
Q301 Lord Lester of Herne Hill: I declare an interest because I have a house in west Cork. I love Northern Ireland. I was an unpaid adjunct professor at University College Cork, so I am quite close to Northern Ireland events.

I am going to be a bit crude, I am afraid. Listening to all three of you, I am interested in getting you to talk about the real context—what you call the Northern Ireland context—and looking at it from the point of view of the people. From the point of view of the people of Northern Ireland, we have a polarised political situation at the moment in which the Government are paralysed by extremism. From the point of view of the citizen, if you are gay and you want to have a marriage in Northern Ireland, you cannot have one; if you are a pregnant woman and want a safe abortion in Northern Ireland, you cannot have one; and if you want the same free speech in Northern Ireland as in England, you do not have it.

There seem to be real problems about identity in Northern Ireland even now, all these years after the Troubles. To avoid complacency when we come to think about the constitutional framework, should we try to think of ways, from the point of view of the people, of producing a better system than we have now?

Professor Derek Birrell: Part of the polarisation is the conflict in identity, which of course is closely related to religious identity. Some of the more conservative attitudes that politicians tend to follow come from basic religious beliefs and religious differences that are seen as important in Northern Ireland. The polarisation appears worse when it is translated into the operations of the devolved Assembly because of the system of vetoes that exists, which means that there are a number of obstacles to a clear vote. There was actually a majority vote in favour of gay marriage, but it was vetoed because of the mechanism that can be used. It was originally built in to give protection to both communities, particularly the minority community. It was originally intended to cover constitutional issues or major political issues, but that was never clarified, so it can be used on any measure that comes before the Stormont Assembly.

It is quite difficult to make progress on that in Northern Ireland. It may be that eventually public opinion will change and therefore the politicians will follow public opinion, but on conservative attitudes on issues such as gay marriage and abortion, and on poor community relations despite many attempts to improve them, it is a slow business. There is no easy answer. It is very difficult to see any major change in the political configuration of the parties that are looking for internal change.

The only other way of altering it is to look at devolved powers. You can ask why abortion and gay rights were devolved matters. It was probably never thought about; that is the way it was in 1921, and it was left. You could interpret it as a UK citizenship matter. The Calman commission looked at the importance of UK citizenship in determining certain basic rights. That was one of the Calman arguments for the union. One way of addressing it would be for a UK Government, if they were brave enough, to say, “Really this is a matter of UK citizenship and maybe international obligations and perceptions”, so you could either exert pressure, or even legislate over the heads of the Northern Ireland Assembly.

Professor Colin Harvey: I have three points. First, the power-sharing model in Northern Ireland has largely been successful. It is stabilising the politics of Northern Ireland and providing a foundation to try to build the new Northern Ireland that so many people want to see. I have a rather different understanding of that model, how it has worked out and its importance, recognising its distinctiveness.
Secondly, it underlines the importance of the Human Rights Act. That is a UK-wide piece of legislation that applies to Northern Ireland, is used in Northern Ireland and has made a difference in Northern Ireland. People are trying to make use of their human rights to change Northern Irish society for the better, including in relation to the appalling treatment of the LGBT community.

On the third point I have to declare an interest. I was a member of the Northern Ireland Human Rights Commission and I was involved with others in proposing to the UK Government a Bill of Rights for Northern Ireland. The mandate for our process was clear that our advice had to supplement the European Convention on Human Rights. We recommended a Bill of Rights that would build on the Human Rights Act, supplement it and go further. To answer the question, that Bill of Rights has not been implemented. It is one of a number of things that remain outstanding from the Belfast/Good Friday Agreement.

There was reference to a charter of the union earlier. There is reference in the Belfast/Good Friday Agreement to the possibility of a charter of rights for the island of Ireland, for example. There is no charter of rights for the island of Ireland as we speak. There is no Bill of Rights for Northern Ireland. Those are the sorts of measures that, if implemented, would assist greatly in creating a rights-based and equality-based society that could only benefit all the people of Northern Ireland.

**Professor Arthur Aughey:** I always remember one of my great intellectual mentors, Michael Oakeshott, saying very mischievously when referring to the Russian revolution that the further away you get from the Russian revolution it is less a new beginning than a modification of Russian circumstances. That became very clear in the 1990s when we saw the sort of Russian state that emerged from the Soviet Union. A lot of things were very familiar. Maybe the illusion of 1998 was that the Belfast Good Friday agreement was a new beginning and that one could read into it a fundamental transformation of Northern Ireland. However, it was really a modification of Northern Ireland’s circumstances such that those profound arguments about identity and belonging did not go away. The conservatism of religious attitudes did not go away but became modified in institutional form, which was power-sharing devolution, north-south relations and the stabilisation of Northern Ireland’s position within the union. When you look at those institutions, I agree with Professor Harvey that the situation has stabilised, and that is a profound blessing of the policy that the two Governments pushed through in 1998.

A colleague of mine, Professor Gormley-Heenan, makes a distinction between power-sharing, which suggests some form of positive engagement of political parties, and power-splitting, which we often see in the way the various ministries in Northern Ireland operate, going on different trajectories without any form of Cabinet collective responsibility. What she said is quite distinctive about Northern Ireland. It is not power-sharing and it is not power-splitting; it is power-snaring. That may address your point about the institutionalisation of vetoes.

I have often thought of a motoring analogy for Northern Ireland. It is almost in political neutral. The engine is revving and there is a lot of activity going on. It is using precious fuel, but in some ways the engine is not engaged and major issues are not addressed within the institutions, so that when you come up against significant problems it is still a case of crisis management. We saw that over the welfare reform issue that had to be addressed through the recent Stormont House agreement.

I declare an interest: when I was a lot younger I was a member of a group called the Campaign for Equal Citizenship, which made the point you mentioned—there were certain rights that, as citizens of the UK, people in Northern Ireland should benefit from. At the time one of them was abortion, but today it would most certainly be gay marriage. Northern Ireland is distinctive not only in the United Kingdom but in the island of Ireland on that issue.
Q302 Baroness Taylor of Bolton: I want to move to a different aspect, although it is not entirely unrelated. Our inquiry is called “The Union and Devolution”. One of the aspects that we are interested in is public perception on the ground of what is happening in the different areas. We have frequently been told that there is lack of clarity and that people do not know what an assembly is responsible for or what central government is responsible for. As you have been explaining, you have extra dimensions in Northern Ireland, with power-sharing and the political situation, which make the situation even more complex. Can you give us an idea of what you think public perception is of clarity? Do the public know who is responsible for what? You mentioned the welfare decisions. How do they resonate with ordinary citizens there, and can more be done to engage ordinary people so that they do not see devolution in terms of history but as the way forward?

Professor Colin Harvey: There is a general problem for politics at the moment, and that question is distinct from the issue of clarity around devolution. Clarity around the devolution arrangements is work in progress across many areas. There is scope for profound confusion among the general public, and even within the various Governments in the UK as well. There is more that could be done to try to explain better what the current nature of the UK actually is. That is part of a general problem of alienation from politics at the moment. That is one part of the picture. In that sense, Northern Ireland is probably no different from other parts of the UK.

More positively in relation to that, there is one thing that I would like to say. I was born in September 1970 in Derry, and people were being killed on the streets in great numbers. I have two daughters, aged six and eight at the moment, and I want them to grow up in a different sort of society from the one I grew up in. I see what has happened since 1998 as progress. It is not perfect; it is flawed in many fundamental ways, but it has had a measure of success in stabilising politics. The positive side of that is that if people are increasingly alienated in Northern Ireland about the ability of their Executive and Government to deliver on socioeconomic issues for the people of Northern Ireland—as I think they are—in a sense that is progress, because the focus is turning to the Executive in Northern Ireland, the Assembly, and what they are doing to deliver for people.

Another positive point is that we have seen a re-energising of politics around constitutionalism in the UK. The Scottish referendum—in scale, extent and participation—is a wonderful example of that. It takes me back to an earlier point. It would really profoundly concern me if the approach to the question you are addressing was seen in some kind of fearful or risky way. There are opportunities around the new politics emerging in the UK. Those opportunities can be taken, but you are right that there is a need for more clarity as to how all the intergovernmental elements relate to each other, and then how they relate to and explain themselves to the general public.

Professor Arthur Aughey: Lord Norton, who is on this Committee, suggested at one point that, rather than a constitutional convention, we should have a constitutional convocation to address those questions of exactly where we are and who does what. That is why there is great value in the investigation that you are engaged in. There is value in trying to think through what a statement or a charter of the union might be, which might address the issues that Professor Harvey mentioned.

In Northern Ireland specifically—perhaps it is the case throughout the UK—it is not just the public’s perception of who does what, where, when and how in our contemporary politics that is confused. During the May general election, I was very much struck by the fact that, in discussions in the local televised forums, those who were engaged in the general election and seeking election to the House of Commons very rarely touched on the issues that they would be responsible for as MPs. The sorts of issues they talked about were the issues being covered by the Northern Ireland Assembly, the Northern Ireland Executive. That certainly is a problem of public perception.
I mentioned that Northern Ireland was in democratic-neutral. The justification for Northern Ireland’s institutions hitherto was not that they actually did anything but that they existed. The profound achievement was that we had institutions where political parties that formerly could not agree on anything at least had the civility to discuss with one another in a parliamentary assembly. Professor Harvey is right: there is a generational limit to the acceptability of that proposition. There are younger generations coming into politics who have no experience of the Troubles and they are asking, “What are you doing for us? What is the purpose of turning out to vote?” What used to distinguish Northern Ireland from other parts of the United Kingdom was the high electoral turnout, but turnout has been dropping in Northern Ireland.

Professor Derek Birrell: I know of only a few small bits of research that have been done in the area about campaigning and people taking complaints. Quite a lot of the confusion arises between local government and the Assembly; it is not so much at the Westminster level. There is evidence that a lot of people take housing problems and issues to local councillors, even though local councils in Northern Ireland are not responsible for housing; it is the Assembly. On the negative side, there is quite a bit of information suggesting that people and even some pressure groups and organisations are not terribly aware. Dealing with the economy is very much a divided responsibility, so it is often unclear whether it is a Westminster or Northern Ireland responsibility.

There are two things to say about complaints and campaigning. People often go to their MP rather than an MLA, but that is largely because MPs are seen as more powerful—whether they are or not, that is the reason. Campaigning and lobbying groups in Northern Ireland find that the Northern Ireland Assembly is very accessible. It is easy to meet people, to arrange meetings, hold lobbies and get the media involved. It functions as a kind of focus for people to bring issues, even though they may not actually know the precise boundaries and powers.

Q303 Lord Brennan: We listen to evidence from time to time about the way in which the union and devolution is working in practice. Some powers are to be transferred, some not to be transferred and some may be the subject of an agreed transfer. The catchphrase that has been used is “draw-down”. Northern Ireland has much more experience historically than Wales and Scotland in recent times in dealing with these things. What lessons do you think your experience has given you that would reflect on our view about draw-down, and in particular the relevant criteria of transparency, accountability and underwriting? Does draw-down mean eventual take-back? How does it all work?

Professor Arthur Aughey: I happily defer on this matter to my colleague Professor Birrell, who has just published an excellent book on multilevel governance. I was reading it on the way over. He is the expert.

Professor Derek Birrell: Northern Ireland makes a unique distinction, which again is purely historical, between excepted services, reserved services and devolved services. There is a kind of three-step involvement. The origins and reasons go back to Irish history. The excepted services were originally to be UK, but the reserved services were to be for an Irish home rule Parliament in Dublin and then they would be devolved as well. That was the origin. Northern Ireland has kept that distinction. The way it is meant to be used today is that there are certain powers that the Secretary of State can use such that reserved powers can be acted on by the devolved Government. Powers can be drawn down or declassified from excepted to reserved, to prepare them for becoming devolved. They have done that recently with Civil Service Commissioners. That was an excepted matter but it has now become a reserved matter and may shortly become devolved.
There is a more general question. Basically there has not been a lot of demand in Northern Ireland for an increase in powers. It is fairly restricted, of course. There is the corporation tax campaign. The law on justice was transferred and that had cross-community support. There is no great demand for an increase in powers, but neither is there any demand for a decrease in powers. The point that is sometimes overlooked, especially by my Scottish colleagues, is that Northern Ireland has more power devolved to it than Scotland has. It has powers over the Civil Service, social security, employment, trade union law and so on, so it is not as important for Northern Ireland to increase its powers. There has not been great demand for more fiscal devolution. I will stop at that point.

The Chairman: Do you wish to add anything, Professor Harvey?

Professor Colin Harvey: Only that it seems from what has happened in Northern Ireland is that the system has generally worked; it has not been a great cause of dispute. Justice and policing were reserved and are now subsequently transferred matters. We have obviously seen what happened around welfare reform recently.

The Chairman: If we wish to pursue this further, perhaps we can come back to Professor Birrell. In the meantime we will move on. Lord Hunt wants to ask a question to take you very briefly out of your comfort zone to England.

Q304 Lord Hunt of Wirral: Yes, it is a very good question. Is it possible to deliver a devolution settlement that both recognises England as a nation and brings power closer to communities or regions within it?

Professor Derek Birrell: I will shortly hand over to Professor Aughey, but I will just say a couple of words. Devolution on the three-country model is probably out for any region of England following the north-east events. Federalism is probably out. You are left with EVEL, which I will leave Professor Aughey to talk about, or the new city devolution. As I mentioned, that has become a kind of government priority. You could possibly see it more as a form of regionalised local administration or local government quango partnerships and so on. Whether it is really devolution as it is understood in Scotland, Wales and Northern Ireland is probably not the case. Given that the idea of setting up parliaments in different regions of England is not very popular, and it seems very complex to set up an English parliament, probably exploring the full capacity of city devolution will remain the route. I will pass the problems of EVEL to Arthur.

Professor Arthur Aughey: I am reminded of George Dangerfield’s famous book, The Damnable Question, which was about Irish home rule. I think England is the damnable question today. We started off by looking at Northern Ireland as the exception, but I think England is the exception. Professor Lord Norton will probably agree that what we have actually seen since 1998 is the textbook integration, if not the political integration, of Northern Ireland into the UK in major textbooks about British politics, because it fits a pattern. It is enmeshed in the new institutional arrangements, albeit reasonably exotically, but certainly it is there. Northern Ireland is now discussed along with Scotland, Wales, England and the United Kingdom.

The damnable question facing England is this. Professor Robert Tombs mentioned it in his recent book on English history. He said that local devolution is not national devolution. From what I remember when I was first a student in the 1970s, it was not called devolution at all; it was called de-concentration—taking powers out of Westminster but not losing control. There is a profound distinction between that form of local government, or recognition of local identity, and the recognition of England as a nation. The two things are not the same. Robert Tombs did not mention it, but if you were to go back to Dicey and his polemic England’s Case Against Home Rule, which
was written in the 1880s—Dicey is in bad odour or bad favour at the moment because he is assumed to be simply a parliamentary supremacist or a Westminster sovereigntist—

**The Chairman**: You are stirring up a hornets’ nest.

**Professor Arthur Aughey**: But Dicey said the same thing. He said that local self-government is not the same as recognising the nation in the form of home rule. Those two things are incommensurate and incompatible. How do we deal with England? I suppose it depends on where you think we are constitutionally at the moment. I am reminded of the old tale of Sir John Cutler’s stockings. It seems to me that devolution has proceeded on the principle of Sir John Cutler’s stockings. He was a member of the City of London and a profound public benefactor, but as many profound public benefactors tend to be he was personally very cheap and mean. He would get his servant Dolly constantly to darn his silk stockings with wool until it came to such a point that the stockings were no longer silk but entirely wool.

It may well be the case—some people have argued it—that the way devolution has proceeded hitherto, with ad hoc darning of the constitutional fabric, means that we have reached a point where we need to recognise that we have a new constitutional arrangement that must be formally recognised. Members of the House of Lords, such as Lord Lexden and Lord Salisbury, now argue that we have to recognise that we now have a new pair of constitutional stockings to acknowledge, and England must be dealt with equally.

**The Chairman**: Before I bring in Professor Harvey, two of my colleagues want to ask supplemternaries: first, Lord Maclennan, and then Lord Lester. We need to be concise because we are short of time.

**Lord Maclennan of Rogart**: Professor Harvey indicated that he was not in favour of a charter of common values or common policies that should be exercised at that level. I find that difficult to understand because it seems to me that, if the people of Northern Ireland want to remain in the United Kingdom, they must have issues in common with the other nations.

**The Chairman**: Before you answer, Professor Harvey, I will bring in Lord Lester and then you can cover both questions.

**Lord Lester of Herne Hill**: I resist the temptation to say something about Dicey in view of the time. This really relates to what Professor Birrell said: federalism is out. Did you mean by that that it is out under the present Government and present circumstances, or that it is out as a matter of principle?

**Professor Derek Birrell**: Not as a matter of principle. Federalism tends to be associated with very large countries. It is in the realm of governmental activity of Canada, Australia and so on. It would be possible to design a federal constitution. You can look at the German one, which is quasi-federal. The Swiss one is kind of federal. I have not really seen any work on trying to apply a federal model to the UK. There are issues about representation in a central parliament and the role of a central parliament and so on. Of course, it would imply a separate parliament for England; it would be hard to imagine federalism without that. It would be possible to look at it, but it would require very careful thinking even to produce potential blueprints for it.

**The Chairman**: Professor Harvey, you have the floor.

**Professor Colin Harvey**: To clarify, the premise of a lot of what I have said today is about not destabilising the distinctive power-sharing arrangements in Northern Ireland. On that basis, I was simply expressing caution and scepticism in relation to the notion of the charter, but I was also asking for reflection, given the new constitutional context in the UK, on procedural and process
issues about how any such discussion would proceed. I hope I have made it clear that we increasingly need to think in terms of intergovernmental conversations for those sorts of important constitutional discussions. It was caution and scepticism on the basis of not wishing to destabilise a power-sharing arrangement in Northern Ireland that is still in a sense bedding down and still trying to balance all those principles noted earlier.

To respond to the question about England, if I may, following a number of commentators I have tried to argue that there are opportunities in the new constitutional pluralism that is emerging in the UK. Devolution in an English context makes perfect sense. Some of the principles, thinking back to the Belfast/Good Friday Agreement, were partnership, equality and mutual respect. A profoundly and deeply unhappy and resentful England is of no use to the other parts of the UK. It is important that England is content with its place in the UK constitution, in whatever way that is worked out. That is an important point.

Speaking as somebody who lives and works in Belfast, I would also like to make the point that English politics is having an enormous impact on the other parts of the UK—Scotland, Northern Ireland and Wales. I mentioned earlier the debate about the Human Rights Act, for example. From the discussions about that, it seems that Scotland, Wales and Northern Ireland feel fairly comfortable with the Human Rights Act and with the European Union. The new constitutional arrangements need to reflect England’s mood and the politics of England, but there needs to be awareness of the impact of English politics on the rest of the UK. We are all acutely aware of the impact.

The Chairman: It is a great shame that the clock is against us, but we have had a fascinating hour with you and we are extremely grateful. There were two or three questions on the union that we did not manage to get back to, but you covered them to a large extent in your supplementary to other questions, so we are very grateful for that. The one I would particularly mention, however, and where we would welcome something in writing from one of you, or all three of you if you feel inclined, is about the separate Civil Service in Northern Ireland and its relations with other devolved parliaments or institutions and with the UK; and whether that inhibits or helps the circumstances of Northern Ireland within the United Kingdom. If any of you feel like putting pen to paper, please do. Have you been delegated, Professor Birrell?

Professor Derek Birrell: A House of Lords report in 2002 described the Northern Ireland Civil Service as “semi-detached”.

The Chairman: We would be very interested to see that from you. Thank you very much indeed. It has been extremely productive for us and we are most grateful to you for coming from Belfast to talk to us.
Q134 The Chairman: Can I thank all four of you for coming? We have an hour for this meeting. As usual, we expect to run out of time. I am sure you understand that, and my colleagues certainly do. I will not bother with introductions. We have seen your CVs and they are all extremely impressive. We are very grateful to you for giving up your time to come and talk to our Committee. You probably know a fair amount about all of my colleagues so I will just press straight on. The basis of our inquiry is about the union and devolution, the relationship between the United Kingdom and its institutions, the devolved areas of the United Kingdom and their institutions, how we can improve them and to what extent we need restate the position of either or both.

The first question I would like to ask you is this. We have heard from some quarters that Scottish politics has become separate from the politics of the rest of the United Kingdom. Do you agree that this is the case? If so, do you think we should try to change it and how would you go about doing it?

Claire Baker MSP: I am not sure that I would accept there is a vast difference between Scottish politics and the rest of the UK, or between our voters. If you look at England as a country, there are regions within England where people vote differently or have different views. I do not think Scotland is that separate. When we look at polling around how people feel about many of the big issues, there is not really much difference between Scotland and England.

I also think that there are political advantages for some parties to exploit what they see as differences between Scottish and English politics. In many ways, Scottish politics fits a current European model of people looking for something different, looking for change and looking for parties that are more anti-establishment and able to express that. English voters have a different set of choices around that, but at the general election, even though we had a Conservative majority Government, the actual polling figures reflect people looking for different types of political parties and different voices. While there are different electoral systems—we have a proportional system and the UK has a majority government system—when you look at how people are voting, I do not
think there is that much difference between what is driving Scottish voters and what is driving other voters across the United Kingdom.

**The Chairman:** Yet every Parliament in the United Kingdom is led by a different party.

**Claire Baker MSP:** Yes. I think people have the same concerns. They end up with different answers to them, but there is commonality in what people value across the United Kingdom. If we are looking at strengthening the union, how people express that commonality is one thing, whether it is around common values for our public services, solidarity or social unity across the United Kingdom.

**Baroness Goldie MSP:** I disagree with the premise that Scottish politics has become separate, but it is probably predicated on, frankly, a party-political perception. The reality is that the dominant political influence in Scotland is the SNP, with a majority in the Scottish Parliament and with all but three Scottish MPs at Westminster. Yet that is a party that does not believe in the United Kingdom and stands in only one part of the United Kingdom to seek election. Interestingly, it also contains supporters and voters who do not believe in separation. To use party-political representation as a barometer is a crude and inaccurate assessment.

I would agree with much of what Claire has said. If you look at some of the social attitude surveys in recent years, the interesting feature has been that, on a broad range of issues, there is not a great deal of difference between what people in Scotland believe and what people in the rest of the United Kingdom believe. I was quite intrigued by something that Professor John Curtice and Rachel Ormston produced back in 2011 in a ScotCen study. It concluded that, “Although Scotland is more social democratic in outlook than England, the differences are modest at best”. I found that an interesting conclusion.

As Claire was saying, there have been numerous pieces of commentary since then. The British Social Attitudes survey showed very closely related views across major issues of policy. It is striking that, in these surveys, the outlier is not Scotland in relation to the rest of the United Kingdom; it is London in relation to the whole of the United Kingdom.

**The Chairman:** A very interesting and very stimulating contribution.

**Maggie Chapman:** I too would agree with quite a lot of what Claire has said. As Annabel mentioned, the social attitudes survey indicates that there is not a huge difference between Scotland and the other nations in what people care about. The basis of politics is maybe not that different, but the way the Scottish people choose to express and choose to act in the culture of politics probably is different. That has been developing over the last few years, primarily around the referendum, but also with other factors.

One thing we see quite clearly is that what people think politics is may be different. The issues are the same, but how that is expressed is different. There is a much higher level of engagement in politics as something that we all do every day. I sense that as being a difference. What we care about may be quite similar, but the participation in politics and the understanding that there is a role for participation on a daily basis across Scotland is probably something that marks us out as different. That is driven by the different political system that we have. Proportional representation enables a much more participative and diverse expression of social democracy to be explored and manifested in day-to-day life. The diversity and relative success of the different political parties in Scotland reflect that attitude.

**Councillor Robert Brown:** I agree with part of what my colleagues have said on this, but I would like to make two or three points. First of all, the first past the post electoral system at the UK level distorts the popular representation across the UK and has a malign influence at the general
election. For example, I personally have a strong criticism of the Prime Minister’s statement, the day after the referendum, about English votes rather than what the future of the union would be. That has led to a kind of politics that has an element of beginning to tear people apart, if we are not very careful. On the one hand, we have the SNP, which is interested in the breaking up of the union, and, on the other hand, we have the Prime Minister from the Conservative Party, which has a strong interest in developing the SNP threat issue. That played into the politics. There is an interrelation between the structures and the way politics is taken forward. I accept what I have said there will be controversial, to a degree, to some of my colleagues, but the facts speak for themselves in that way.

On social attitudes, as has been rightly said, I do not think there is the same element of difference, but we would underestimate change if we did not recognise that there are now a lot of people in Scotland who are obsessed about the constitution, one way or the other. They either want to see change in terms of the break-up of the union or are very strongly against change. For many people, that is becoming the very strong dominant thought in the way they express their votes. That is something to be watched in the future. The issue for us is how we can challenge the diffusive force and concentrate on things that are more coherent and draw the UK together.

The Chairman: I accept what you say about people at the political level thinking much the same about a lot of issues, but there has been a change of mindset in the last few years in the sense of nationhood, illustrated by the fact that, where people used to say they were British and Scottish, they now say they are Scottish and, “Oh, yes, I suppose I am British too”. Do you recognise that distinction that has developed recently?

Baroness Goldie MSP: May I ask: is that a personal, subjective view or is that borne out with evidence?

The Chairman: No, that has been found in opinion polls. You do not think that would be a change.

Baroness Goldie MSP: My colleagues may have a different view, but I have always felt that there was nothing mutually exclusive about being Scottish and British. I am both and I am proud to be both. Scotland, as is the case for Wales, Northern Ireland and England, has different cultures and institutions, if you consider our legal system and the rudiments of our educational system. These were differences recognised by the Act of Union and protected after the Act of Union. If you have these different cultures, traits and characteristics, you are going to have, essentially, the components and characteristics of a different part of the United Kingdom. That is something to celebrate and something of which to be proud. To me, there is absolutely nothing irreconcilable with that situation and being a very proud, firm part of the partnership that is the United Kingdom.

Councillor Robert Brown: It has to be balanced by the way in which the Government or institutions reflect these things. Scottish and British identities have gone in parallel for the best part of the last 300 years, but now they are being presented as opposites: you either choose to be Scottish or choose to be British. The way in which the SNP’s dominance of the political landscape in Scotland has affected that is quite important. How do we move to a position where there is a looser federal union—federation is one of our themes here—and which allows a more diverse, modern and pluralist concept of the United Kingdom to emerge?

Q135 Lord Cullen of Whitekirk: We have heard a certain amount of evidence about the value and benefits of the union. Each of you represents parties that favour the union.

Maggie Chapman: I do not.
Lord Cullen of Whitekirk: I beg your pardon. Can I ask you whether more can be done to project a positive image of the union, at least from a Scottish perspective? Perhaps I am asking that of three of you.

Maggie Chapman: I may have comments on that too.

Claire Baker MSP: At the moment, that is challenging. We have a Conservative Government at a UK level. Given the contrast between that and an SNP Government at a Scottish level, and the voting patterns of the majority of people in Scotland, it is quite difficult in current circumstances to sell that idea. How we do it is to try and rise above party politics and talk about the institutions that create our shared belonging, such as the BBC and the welfare state, and the things that underpin what it is to British.

How do we articulate that? There needs to be recognition, with the establishment of the Scottish Parliament, that people identify more strongly as Scottish. As part of that, if you look at what used to be our traditional ways of expressing ourselves in Scotland, whether through the trade union movement, the churches or civic society, all those institutions have declined in recent years and people look for a way to express who they are. Increasingly, nationalism fills that gap for some people.

How do we establish British identity? British identity is changing. It is not as unified or as homogenous as it used to be. There needs to be recognition that British identity is made up of different nations and that people will have a shared identity. We need to strengthen that feeling, rather than to choose between one and the other.

Baroness Goldie MSP: There is quite a swirling cauldron and it is difficult at times to see beneath the bubbles. Going back—and it is important we do not lose sight of this—to the referendum campaign and trying to identify what it was that persuaded a significant proportion of the electorate to reject independence, my sense was that they saw strength in the partnership of the United Kingdom. The best virtues of partnership are that you share resources, talents and skills, but also that, in times of challenge and risk, you stand together and shoulder that burden together. With the recent severity of both the recession and the bank failures, people were very conscious of that strength of partnership.

Teasing out from that, people also have a sense of social union. You might live in Glasgow, but, if granny lives in Greenwich or cousin Jimmy lives in Grimsby, you want a sense of social union. You want a sense that you could be up here and be Scottish and look after your own domestic issues, but also be part of a whole that had coherence to it. I am almost a bit coy about the use of the word “unionism”, but we should reflect what I feel are the clearly identified strands of being part of a United Kingdom family within that partnership.

Claire makes a good point that there is genuine confusion among many people in Scotland about who does what. What does the Scottish Parliament do? What does Westminster do? If you consider that, at the time of the referendum—and, indeed, Maggie and I served on the Smith Commission—if I remember correctly, nobody was arguing, for example, that we should devolve the state pension.

Maggie Chapman: We did mention it.

Baroness Goldie MSP: Well, maybe you were arguing for it. The broad consensus was that something like the state pension, a fundamental component of welfare provision, was much better being dealt with at a United Kingdom level. There was stability and predictability to it and it
cemented the social union of people moving around the United Kingdom. The same goes for core welfare provision.

Going back to Claire’s point, how do we bring greater visibility to people in Scotland as to what the Scottish Parliament and the Scottish Government do? What is it that, quietly, is being effectively funded and administered by the Westminster Government? I remember, in the early years of the EU, driving in the Western Isles on a beautiful road. The first thing I noticed was a great big sign with the EU symbol that told me that this had been funded by the EU. It was a fantastic road and I felt that was a very effective visual connection between something good that was happening and who had made it possible. We are moving into an age where the Westminster Government, of whatever political hue, should be cognisant of the need to make more visible to the recipients of its services throughout the United Kingdom that it has provided them. Whether it is in an emblematic Union Jack, a logo on letterheads or whatever it may be, I do not know, but something needs to give a visible connection to the provision of service. Despite the new powers coming to the Scottish Parliament, a very significant part of core funding will still come from the United Kingdom Treasury and that will fund essential services in Scotland.

Councillor Robert Brown: Visibility is quite important—

The Chairman: Ms Chapman is entitled to speak, whether or not she agrees with the premise.

Maggie Chapman: I am happy to come in after you.


Maggie Chapman: There are a couple of things here. Claire has already raised the issue of the BBC. One of the perceptions certainly among those who were campaigning for a yes vote during the referendum was that the Better Together campaign failed to articulate positive visions. It was personified in some ways as “Project Fear”. That came across very strongly, rightly or wrongly. Part of the problem was that the way in which the Better Together campaign was set up was for the BBC, and the BBC likes telling us stories about doom and gloom. That is how it works. Being able to articulate the positive case for the union was not easy. The mainstream media was not interested. The message became that the future under Better Together, while better together, was not necessarily going to be that good. I appreciate that is not a fair reflection of what Better Together was trying to do. I opposed it, but that is how a lot of people saw it, even people who ended up voting no.

Claire said that one of the issues is that nationalism fills a gap, in order to deal with some of the issues that Scotland and other parts of the UK are facing. I reject that. I am not a nationalist. I do not count myself as a nationalist. What I saw not being articulated was any sense of collective solidarity or of moving our politics towards a social solidarity model.

We can see that very clearly in how the two Governments have dealt with various issues in the last two years. We have a Westminster Government of which there is a perception that they are breaking up the NHS. We have a Scottish Government determined to try to save the NHS. We have a Westminster Government that have gone down a route of welfare reform that is seen as an individualist approach rather than a more collective approach, securing social welfare across the piece. There is a whole range of other things, such as the cutting of renewable subsidies by the UK Government. Last night, we had Jeremy Corbyn stand up with Nicola Sturgeon to campaign against the Trade Union Bill, so it is not an either/or thing.

It is about how Westminster politics is perceived. It is not a positive image. It is about cuts, austerity, breaking up the NHS and cutting subsidies to things that are potential growth industries
in Scotland. There is a tension there that is very difficult to resolve when it is underpinning the individualist political culture from London.

**Councillor Robert Brown:** I agree with part of that, but it may be overstated from a political perspective, if I can put it that way.

**Baroness Goldie MSP:** Very.

**Maggie Chapman:** Sorry, Annabel.

**Councillor Robert Brown:** There is an issue in terms of presentation. To give you a small example, there was an announcement recently about the compensation to people who were victims of flooding and you would have thought it was for victims in Cumbria. In reality, it was across the UK as a whole. A certain percentage of that went to people in Dumfries and Galloway and the Borders, who had suffered as well. You would not have known that from the news reports. It is an element of how these things are presented. There is a suggestion of good news stories coming from the Scottish Government, which—there are no two ways about it—are very switched on PR-wise, and bad news stories coming from the UK Government. They tend to be about wars, defence cuts or, as you say, welfare reform and things of that kind.

There are much more positive things to be said. Pension reform, for example, has been a big success story of the UK Government, dare I say it, under the coalition period. The story about the UK’s involvement in overseas aid is a big success story, in many ways. We are leading the world with what we are doing in overseas aid. There is a whole series of things to be said about the UK’s contribution, but I do not think you would pick up much of this from the way in which these things are reported. That needs action by the UK Government, not in a clumsy way I hope, but in a sophisticated and sensible way. It needs the ability to project issues where the UK Government have made a positive financial or other contribution.

It is quite important to continue to make the case about the importance of the UK single market, the whole issue of being able to trade across the border without problems. My colleague Willie Rennie in his Hume Institute lecture spoke about the downside of having borders, whether actual or recognised ones, where there are different legislative and other arrangements on either side of the border.

The SNP answer to all this is to transfer power, but that is a misconceived view. The issue is what we do with the powers and how we work together. Much more emphasis on partnership, frankly, would be important. There is a lot of partnership working, even with the SNP Government, but it does not really get publicity. It is the stuff where there is a conflict or dispute that gets publicity. There should be more emphasis in the institutions on partnership working and working towards common objectives on these things as well. Those are probably the main points I want to make. It is mixed up with the politics around it. There are no two ways about that. That is perceived differently in Scotland.

A final point is that there is a national story behind all of this, which needs to be told. The traditional story has been one of wars, the Second World War, solidarity, national institutions and all these kinds of things. That is part of it, but it needs to be a more modernised view of the value of the UK socially, economically, politically, in terms of shared values and, indeed, ownership of the whole thing. There is a sense at the moment of a disconnect with the ownership of the UK project in Scotland, which we have to be able to overcome.

**The Chairman:** Thank you very much. That has been very useful.
Q136 Lord Morgan: There has been a lot of discussion about how you clarify, particularly for the benefit of the people of Scotland, the responsibilities of the Scottish Government and the United Kingdom Government. It seems to me that there are at least three issues. Asymmetry seems to be one. Asymmetry, of its nature, breeds a sort of feeling that you need to catch up, but it also means you have to know where you are in the first place. I would say that the question of reserved powers is another one for which it has not been clear—certainly in Wales, which still does not have reserved powers—what the balance of responsibility is. Perhaps it might be clearer in Scotland.

I am inclined to feel, with some of the things we have heard, that there is also a feeling of extreme national sensibility. There was a lot of flooding in North Wales and Snowdonia, but I do not think we worried about the fact it was all about Cumbria. Perhaps excessive national or nationalistic sensibility confuses or muffles people’s answers.

Councillor Robert Brown: First of all, I made the point earlier that the Liberal Democrats have been strong supporters of the federal approach towards this sort of thing. I think the time has come now that there are two alternatives for the general future structure of the UK: one is independence and one is federalism. Any other concept, frankly, does not now meet the case for the more diverse union we want to have. I hasten to say we are in favour of a federal union and strengthening the UK in that way.

However we do it, the time has now come to move on from the concept of devolution, which is a limited concept anyway. The idea of power coming down from the top rather than power up from the bottom is a bad one. Part of that has to be a separation at Westminster and Whitehall of the functions that are specific to the UK and the functions that are specifically English. The confusion there does not do us any favours.

Lord Morgan: What about the Scotland Office?

Councillor Robert Brown: The Scotland Office is relevant, but it is very small in the overall scheme of things. It is part of the issue, but there is a whole series of other things. Take, for example, EU representation. When UK Ministers, sometimes accompanied by other Ministers, go to Europe to talk about things like agriculture or fishing, these things are almost entirely devolved. Yet we do not have a proper mechanism for identifying a common, federal UK approach, as opposed to the approach of the UK Ministers or the Scottish Ministers. It is not the job of Ministers in that context to put a Scottish line or, indeed, the UK line in a limited sense. It is their job to put a common, agreed position that reflects the interests of the various Administrations around the UK and try to reach a common line, strengthening the influence of each of them by being a UK approach with the clout of the UK Government behind it.

That is just one example, but you could say the same about federal institutions. Are they recognised as such? Are they clarified as separated out? With the Treasury itself, we are moving towards the concept of a more federal approach with a Joint Exchequer Committee, for example, that looks at some of these things. There are issues about golden rules, about how the devolved Administrations deal with borrowing powers and all that sort of thing. There will be the Smith stuff as well. Frankly, though, I do not think it is sorted out. If you have a situation where the UK and English ministries are mixed up, it feeds into the EVEL issue as well, because, unless you can sort out the issues of who deals with what and have proper accountability from that, then you run into all sorts of difficulties there.

Finally, I have two points. There are areas of joint accountability to the UK and Scottish or other Governments. The BBC is part of that, and Ofcom and Ofgem have an aspect of that as well. I do not mean it is the same accountability, but there is a Scottish dimension to that. That is quite important.
to be dealt with. It is what you might call soft power. There are issues of influence in all of that, which affect quite important things. The Scottish economy is integrated with the UK economy, but it has aspects of its own. How does the whole anti-competitive stuff fit into that? There are a number of issues about whether we regard monopolies at a UK level or a Scottish level.

None of this stuff is fed out properly through the current ways of doing these things. If we have sorted out the proper powers of the Scottish Parliament, certainly in terms of substantial powers, then the issue now is one of the proper powers of the UK Parliament and Government, how these are operated and how they interrelate with the English dimension that lies behind some of this.

Maggie Chapman: There are a couple of things in what you said that I might draw out. As I said earlier, there seems to be a different understanding about what our political structures are for, or at least how they are perceived. Certainly for the vast majority of people I speak to, and I realise there is a political colouring to this, the Scottish political system seems to be there for the people. We talk about participatory democracy, about devolving budgets to communities, about communities having control and power over decisions that affect their lives. Contrast that with how the UK Government and UK politics are perceived. It is quite negative: they are not there for us; they are not there for me as an individual; they are there for themselves and playing their own game. That disconnect is a product of a whole range of things. It is not always a fair representation, but that is the perception.

It is not so much about what the different roles are. That question in some ways misunderstands the very fundamental difference in how those two political systems are perceived, understood, realised and experienced on the ground. If the UK Government are about saying, “You have to do this. You have to vote this way; otherwise bad things will happen”, again, it uses a very different type of motivation for engagement and for understanding how we can live, whether that is collectively across the UK or not.

You mentioned federalism and the values of that, but federalism also requires the devolution to those federal areas of finance and power over finance. As you said, the Treasury does not like devolving power; it does not like devolving authority over things. There may be very good reasons for that, but the result is that it is seen as distant, separate and “not for us”. It is not for the people.

Baroness Goldie MSP: Lord Morgan, I think your question was about clarifying the respective roles of the two Governments. It is important to try to put this in some kind of context. Devolution is not yet 20 years old. Everybody thinks we are having to rewrite constitutional methodology, treaties and all the rest of it, but, around the world, many devolved legislatures sit happily with their sub-bodies and people just get on with their respective tasks.

In a sense, distinguishing these two roles is going to become easier. I disagree with much of what Maggie was saying and some of what Robert was saying, but there is a common theme. There is no doubt about it that, in the last eight years in Scotland, the megaphone portrayal of politics has been the SNP, with all the resources of government to do that. That will inevitably present a very partisan view and, understandably, convey certain impressions to a listening audience in Scotland. That is going to change. I got a letter just this week from HMRC informing me about the Scottish rate of income tax, which we are having to deal with from next year onwards. That is just a part of what is now going to confront the Scottish populace in terms of the new powers coming out of the Scotland Bill. In a sense, there will be a helpful clarification to the people of Scotland about what the Scottish Government are responsible for and an argument that that perhaps introduces a new era of realism to politics in Scotland. It will signal very clearly to people in Scotland, whether you
knew it or not, the Scottish Government are responsible for these things and you are going to have to make some choices as a consequence.

As to what the United Kingdom Government do, I have some sympathy with what Maggie and Robert were saying. It goes back to my earlier point about how you associate, physically, tangibly and visibly for the people of Scotland, what the United Kingdom does as part of their lives, whether that is receiving a welfare benefit under Universal Credit, whether it is receiving a state pension, whether it is the very significant contribution to the economy of Scotland of the presence of the defence industry. There is undone work both in terms of structure and process, and in terms of representation of these structures and processes. For example, we have a developing and healthy relationship between the two Governments with Joint Ministerial Committees and other joint meetings that take place. The average person in Scotland has not a clue that any of that is happening. It may be known to the two Governments; it may be known to a group of politicians proximate to the two Governments, but why is it not known to the rest of Scotland? Why do we not say, “These meetings take place, and maybe one took place in London, while the next one will take place in Edinburgh, Inverness or wherever”?

For the sake of the United Kingdom, we need to broaden out these relationships and structures and, if a Westminster department is responsible for delivery of a particular service throughout the United Kingdom, make it visible in Scotland, Wales and Northern Ireland. You can do that. You can also do it in terms of how you represent political activity, not on any party-political basis but, for example, whether you agree or disagree with the base at Faslane, whether you agree with retention of Trident or you want to get rid of Trident, the fact is that, for the moment, that is a very important component of the United Kingdom defence capability and a very important part of the Scottish economy.

The Chancellor came to Scotland some months ago. He went to Faslane and he was pictured making an announcement about investment in Faslane. That was not to do with Trident; it was to do with renovating and refurbishing the infrastructure at Faslane. Whether we have Trident or not, we are going to have submarines and that is going to become their base. Regardless of party politics, that was probably good news for an awful lot of people in Scotland. They probably got that, because they saw news footage and they watched television programmes, but we need to do a lot more of that. That is regardless of which party is in power at Westminster.

_Claire Baker MSP:_ We need to be careful that we are not living in and drawing our conclusions from a political bubble. Some of Maggie’s analysis of where Scottish people are does not recognise that, when Lord Smith completed his report, he made two statements. One was that he was astonished at the lack of knowledge people had of the powers the Scottish Parliament currently has. I think we underestimate that. During the referendum campaign, the yes campaign argued about the NHS and gave the impression that we need more powers over the NHS when it has been devolved since the creation of the Parliament.

We are in a time of flux with the Scotland Act and powers starting to come through, and the additional powers from the Smith Commission. There will be changes over the next few years. I agree with Annabel. When I received my HMRC letter, I thought, “This will sharpen Scotland’s mind about who is responsible for powers”. The greater financial responsibility coming down probably will raise the awareness of who is making the decisions within Scotland.

When it comes to the relationships between the UK and Scottish Government, we had a debate in Parliament about intergovernmental relations a few weeks ago. You can put as many structures in place as you like, but you need the political will and commitment to make that work or it is not
going to work. Things like the Prime Minister coming out on the day after the referendum talking about English votes for English MPs did not help the situation. That was unwise and it did not help if we are looking at a future union.

The Scottish Government have a different agenda in terms of whether they want the UK to work as a model. They are quite clear they support independence. How committed are they to making that relationship work? As I say, you can put many structures in place, but you need political will and commitment on both sides to make intergovernmental relationships successful, and for both Governments to be respectful and supportive of each other in the work they are trying to do.

The Chairman: Thank you very much. Time is moving against us a little. We have four more subjects that we would like to cover and that allows us about five minutes on each, with four of you answering. You can draw your own conclusions. I am sorry; I do not want to press you in any way, because what you have been saying has been extremely interesting and I do not want to inhibit further discussion.

Q137 Lord Judge: What powers need to be retained by the United Kingdom Government if the decision of the Scottish nation in the referendum is to be maintained? May I have only three from each of you, please?

Claire Baker MSP: I will be very brief. Polling consistently shows that people want foreign affairs, defence and the basis of welfare, pensions in particular, to be reserved. There will be, through the Smith Commission, some welfare powers coming to Scotland, which will lead to shared welfare powers, but the fundamentals of our welfare state will be retained. Those are the three things that the majority of people in Scotland see as underpinning the future of the union.

Baroness Goldie MSP: I would agree with that, and add to it macroeconomic policy, which creates stability, and currency. There is support for the common currency.

Maggie Chapman: I am going to deviate slightly and say that, rather than issues, it is about how those things are talked about. Again, it is part of the political culture. Something that is damaging to retaining the union that Scottish people voted for last year is how the UK Government deals with issues that Scotland brings to the table. The political theatre around rejecting the SNP amendments in the Bill’s discussion did damage. As Claire has said, there are specific issues that polling shows people want to remain reserved, but it is about how those issues are dealt with.

Councillor Robert Brown: I do not disagree with that. The core issues are the ones that have been stated. You could add emergency powers to that, because there are the war and peace issues that lie behind this. The UK Government have to have a coherence as well, and that is given to them by these sorts of powers.

The one other thing I would mention, and we might come on to this later, is the need to have some sort of overarching themes and purpose for the UK, as we touched on before. Could that be, for example, common objectives to eliminate poverty or to move towards that? Could there be something in the constitutional arrangements that mentions that sort of thing, for which the UK Government would have a key responsibility?

The Chairman: Thank you very much. That gives us a bit of leeway.

Q138 Lord Hunt of Wirral: This goes back to Ms Baker’s point about welfare. Should there be a minimum level of welfare benefit set across the UK that devolved Governments can then supplement but never reduce? It is all about sharing of risks and benefits.
Claire Baker MSP: That would be an important principle that we would support. If you have a minimum level, it recognises how the welfare system works: that we pool and share resources from across the UK and, regardless of where you live in the UK, you receive that minimum support from the UK Government. I would be very supportive of that. It is an important factor in maintaining the union and people seeing the benefit of being part of that union.

Baroness Goldie MSP: Yes, and that is what was reflected in the Smith agreement and has been translated into the Scotland Bill.

Maggie Chapman: Probably, yes, as we saw through Smith. One thing I would say in addition is that, with that underlying baseline, anything additional needs to come with real power. The really important element here is that Scotland needs to be able to develop its own economy, not a separate economy, but an economy that supports Scottish communities and Scottish people, away from, as Vince Cable used to describe London, that “dark star”. We need an economic system that works in Scotland. One of the things we have seen recently, the removal of renewables infrastructure support, is a huge problem. It is seen as targeting Scotland, because it is one area of the Scottish economy that could be really well developed and it seems as if it has just been taken away.

Councillor Robert Brown: I agree with my two earlier colleagues. I have some sympathy with what you are saying as well. You were straying a bit more into the immediate political issues there, rather than the core powers and the potential for the economy. I think one of your colleagues made the point that people are made redundant as a result of change in the steel industry. You would expect them to have a common entitlement, as a base, being a member of the United Kingdom, across the whole union. That has to be the core thing, with power for the Scottish Government to supplement that. That is important, in the context of their budget.

Q139  Lord Hunt of Wirral: Carrying on with sharing of risks and pooling of resources, a lot of our witnesses have been talking about that “key principle”, as they call it, of the union. Tell me on what basis you think fiscal redistribution should take place. I am intrigued by this letter from HMRC; we must try and get a standard copy of this letter, just to know the impact it is having. How will fiscal redistribution in the UK be affected by the Scottish Parliament’s increasing revenue-raising and spending powers?

Claire Baker MSP: This is a key question in Scotland at the moment. When the Smith Commission reported, they had two principles: that the Scottish Parliament would have greater revenue-raising power, but that Barnett would stay as a system. Obviously, the Scottish Government and the UK Government are in negotiations at the moment over the fiscal framework. Those negotiations are secret, so we are not fully aware of what is being discussed. There is quite a lot of politics outside the negotiations over who is unhappy and who is asking questions, but we would urge the two Governments to stick at the negotiations and come to an agreement.

Nobody denies that it is going to be challenging to get a model that works and both countries feel is fair, but there have been suggestions brought forward by the STUC and by Anton Muscatelli. There is a solution in there, so we would urge the two parties to stay around the negotiating table and come up with a deal that will work in future years.

Baroness Goldie MSP: The increases in devolved tax powers will result in less reliance on the block grant, and that is a policy decision. That does not undermine fiscal redistribution because that will still be, as Claire was saying, a significant component of the Scottish Parliament’s budget and it will continue to be based on the principles underlying the Barnett formula. It is worth remembering
why we have the Barnett formula: basically, it is to remove the annual political horse-trading over budgets. We need a mechanism that avoids that. It is very important to bear that in mind.

The other thing to remember is that it has always been acknowledged that, in Scotland, delivering public services is difficult because of our geography. We have a disproportionate element of remoteness and island populations in relation to the rest of the United Kingdom.

**The Chairman:** There is also density in the central belt.

**Baroness Goldie MSP:** The central belt is very densely populated. We have these particular challenges, which have been recognised in the past by the block grant. We also have in Scotland, undeniably, some very significant levels of need. Fiscal redistribution within the United Kingdom matters greatly. I do not want to be either inimical or provocative, but the significant element in all this is the economy of London and the south-east. That does not affect just Scotland; that affects the whole of the United Kingdom outwith that area.

**Maggie Chapman:** That last point is important. Any kind of fiscal redistribution cannot just be from one centre of financial clout to another. There needs to be serious thinking about how we get that spread throughout the UK. We argued during the Smith process that there is a contradiction in the notion of devolving some fiscal powers to Scotland while retaining Barnett. That contradiction is very difficult to work out. It is giving the Treasury headaches; it is probably giving everybody headaches. I am not sure anybody really knows how that should work.

There are a couple of important things around making sure real revenue-raising power comes with whatever deals are devised. That goes for across the UK, not just for Scotland. We do not want Edinburgh or the central belt to be able to replicate the drain on finance from elsewhere that we see currently happening with London.

**Councillor Robert Brown:** I do not think there is a contradiction between retaining or reducing Barnett and greater fiscal powers for the Scottish Government. That is common sense, to be quite honest. There are a couple of things I would say about that. First, there is an automatic fiscal redistribution though pensions and welfare payments anyway, which I think is one of the purposes of the union.

Secondly, there will be a need, whatever the technical solution to the current financial negotiations is, to review this from time to time, over a reasonably long-term period. The issue and the principle lying behind it is that the Scottish Government should bear the consequences of their actions, good or bad, in terms of what they do on tax, their various new powers and so forth. On the other hand, they should not be landed with the consequences of wider issues that are the responsibility of the UK Government. It is how you work that one through in practice that is part of the issue.

There will be changes in the take of income tax and other tax revenues over time that balance the way it is done. If the UK Government decide to change the balance between direct and indirect taxes, that would have an effect as well. These sorts of things are longer-term issues that have to be kept an eye on. If I may make the point again, a more federal approach to all this has the potential to do something quite useful.

A final point is just on the question of London, which has been touched on. I personally think the whole issue of balance between the politics and the policies of London and the rest of the UK is quite an interesting theme that, under independence, would be quite troublesome. I think there would be a flow of head offices to the rest of the UK in that situation. Under a more federal approach, we could see alliances between different part of the nations and regions of the UK in a
way that would rebalance the politics, and perhaps the economy to some degree, of the United Kingdom. London is a big advantage, but also a great challenge.

Baroness Goldie MSP: For the avoidance of doubt, I am not criticising the success of the London economy. I think it is terrific and I am very glad it is so successful. But it does impel a sensitive assessment of how you deal with the rest of the UK.

The Chairman: To go back to the minimum social welfare contribution, the expectation would normally be that the United Kingdom Parliament decides what that minimum level should be. Do you anticipate an input from the various devolved Administrations in reaching the decision as to what that level should be, and, if so, how do you think that would happen? Is that something you have thought about?

Baroness Goldie MSP: I am not sure I would expect that. Part of the reality of devolution is that devolved Governments recognise their political responsibilities to deal with devolved issues and get on with it. That is absolutely the case with the powers that the Scottish Parliament has at present and the powers that will come. It seems to me that, tacitly, although the Scottish Government would love independence, they have acknowledged that to have this core provision of welfare benefit is not unhelpful. What they definitely wanted were two things: the ability to top these benefits up and the ability to create new benefits in Scotland, if they can afford to do that, and that is another issue altogether.

Given that, in the Scotland Bill, these two powers now exist, the Scottish Government will probably take the view that the core provision is the core provision. We will then get on with adjusting that in Scotland as we think we need to. It is not going to stop the party-political bicker, but that is life.

The Chairman: Is that the general view.

Claire Baker MSP: I would agree with the reality of that, but also recognise that within the UK Parliament everyone is represented. We have Scottish MPs as part of that decision-making.

The Chairman: Absolutely. I was not going to make the point; I am trying to be neutral.

Councillor Robert Brown: The only thing I would add is that there are issues that can overlap. Housing benefit is traditionally one of the more obvious ones, where there is a link with devolved housing policies. Some of the employment stuff is a bit like that as well. There are genuine issues where a partnership approach is called for and, despite the different political institutions, quite often exists in practical terms. I would anticipate that that will continue, whatever the formal structures will be.

Q140 Lord MacGregor of Pulham Market: Is there a better answer to the English question than English votes for English laws?

Baroness Goldie MSP: God knows.

Lord MacGregor of Pulham Market: Well, that is an honest answer.

The Chairman: We asked Ms Hyslop what the answer to the West Lothian question was. She said she was the Member for West Lothian, so she was the answer. Is there anything you would like to add to that?

Claire Baker MSP: I have concerns about the proposal from the UK Government around English votes. It undermines the principle of what an MP’s role is and creates two different tiers of MP. We recognise the need to address the asymmetrical devolution within the UK, but in Scotland we had a successful constitutional convention to look at the difficult issues around this. I do not think anyone
would deny that, at a UK level, there are difficult issues. I would favour a constitutional convention that brings together politicians, people with no politics, civil society, trades union and the church movement to discuss whether there is a desire in England to have change and what that change would look like. Some of the things the Chancellor has been announcing around more powers for local government and strengthening the regions would seem to be part of the solution, rather than just a fairly blunt instrument in the UK Parliament when it comes to what people are able to vote on.

Councillor Robert Brown: The challenge is a number of things. The first is that there is an issue of how exactly England fits into the overall structures here. Increasingly, if I am judging it right, there is a desire in England to have some sense of certain things where there is an English identity and an English decision-making process. That is behind the EVEL thing. At the same time, there is increasing recognition of the advantage, as has been touched on, of devolving power within England to regional-type structures, with city regions and different powers at different levels. How all that works is a matter for England, but we are already seeing a greater degree of cohesion behind the idea of more powers for Yorkshire, perhaps for Cornwall and some of the other units in England as well. That is a matter for the English in itself, but, insofar as it reflects on the constitution of the UK at a national level, it is also a matter for the rest of us too.

I do not think English votes by itself is the answer. That is the big problem. Procedural changes in the Commons and the Lords may be part of the answer at the end of the day, but I do not think it works without a more organised structure. We are now at the point, as a number of your previous witnesses have said, that there has to be a more coherent approach to what the territorial constitution of the UK is going to be. My personal view is that that needs a UK constitutional convention. Ultimately, it needs a written constitution of the UK that defines these sorts of things. It means, as I said before, sorting out the UK and English institutions in London, and it needs a route map for how we are going to take this forward. It is not just the dry writing of constitutions; it is also the spirit behind it, which Claire touched on. You need to have public involvement, interest and support, and how that is brought about and encouraged as part of the debate is a big issue.

Maggie Chapman: I agree with what Claire and Robert have said. There needs to be rejuvenation elsewhere, in a similar way to what has happened in Scotland over the last three or four years. We see that there is a big constitutional question here, but it is not just about English votes for English laws; it is about what that kind of social democracy might actually mean. A convention is one way to start developing those.

I have never lived in England, so this is an outsider’s perspective, but political engagement in England seems to have been quite degraded. There is not a sense of the same kind of participation and engagement that we have developed in Scotland over the last three or four years. There is work to be done across the UK. Robert’s point that this is not just for England is important. It goes way beyond the national boundaries we have in the UK. We need to look within each nation and at how those nations talk to each other.

Lord MacGregor of Pulham Market: The point really is to try to get the balance correct, so that, in England, only English MPs would vote on issues that, in Scotland, only MSPs can vote on. There is a danger that, if that does not happen, we will see an increasing amount of media attention in England on this, if we get to a point where Scottish MPs are influencing issues that English MPs cannot influence at all in Scotland.

Baroness Goldie MSP: On the back of what Lord MacGregor was saying, I have been very clear since the inception of devolution—and this is where I totally disagree with Gordon Brown—that one of
Claire Baker MSP, Labour—Oral evidence (QQ 134-140)

the most disruptive influences on the union, and one of the most irritating facts of life for English voters, is to see MPs from Scotland, who have no electoral responsibility for the issues involved to any voter in Scotland, telling English voters how, for example, their universities will be funded or how their hospitals will be structured. That is a recipe for disaster and that has to be addressed. The pragmatist in me says that it needs to be addressed now.

When you ask the question of whether there is a better answer to the English question than English votes for English laws, I do not know, but I think this is as good as we can get at the moment. It needs to be done, it is important and I think it will dispel what I recognise as a turbulent sentiment running through England that is, above all else, totally unhelpful to the union. As someone who believes firmly in the United Kingdom, I want to see that sentiment dispelled as quickly as possible.

Claire Baker MSP: The other concern I have is that you then create a quasi-English Parliament within the UK Parliament, which is not the UK Parliament’s function. We spoke earlier about how British people with Scottish identity feel. I fear that, if you create a quasi-English Parliament within the UK Parliament, it will make people feel more distant from the UK Parliament. I am not sure what the solution is. I recognise the challenge.

Where there has been debate around what we have responsibility for as devolved powers, such as health and education, is in the fact that UK Parliament decisions often affect budgets of those portfolios. If the budgets are reduced, we face the consequence. It is a very complicated issue. That is why we need a constitutional convention. This is a piecemeal, rushed solution to quite a difficult problem.

The Chairman: Would you accept, Ms Baker, that the anomaly was created when the Scottish Parliament was set up and the power was taken from Scottish MPs at Westminster to take part in the interests of their constituents in Scotland, because those powers have been taken to the Scottish Parliament? Therefore, the concept of two classes of MP was created then and English votes for English laws has come forward as a balancing factor to offset that.

Claire Baker MSP: We have not had a perfect system of devolved Government or creation of Parliaments. With the Scottish Parliament and Welsh devolution, there was a drive within the countries to see those institutions established. They were established, you could argue, without enough thought given to what the impact would be on other parts of the United Kingdom. At that time, there was not the foresight to see where we are now, so maybe there was not a feeling that these problems were going to become more acute. Tam Dalyell always promoted the idea and raised the West Lothian question, but there was not at that time an appetite from either party to deal with it. I recognise that that has changed in recent years.

The Chairman: We could not think what the answer was. That was the trouble.

Lord MacGregor of Pulham Market: The question was: is there another answer to the West Lothian question than English votes for English laws? I quite understand that you may not know what the answer is, but do you recognise that there is going to be a growing issue here that, somehow or other, has to have a solution?

Claire Baker MSP: I think we still do not.

Councillor Robert Brown: It is overstated, if I may say so. Jim Gallagher, when he gave evidence, spoke about the fact that England would usually get its way. England is five-sixths, nine-tenths, or whatever, of the union. Realistically, the idea that England is prejudiced by these arrangements does not stand up to detailed examination. The difficulty with this proposal, though, is not so much
the idea of trying to do something for England, which I do not disagree with it in itself, but the way it was done. Constitutional change has to be done on a broad basis. Done by a Government, apparently in a partisan way, it is a different proposition. However it is done, whether it is a wider UK constitutional convention or some narrow arrangement, we have to try and get a bit more signup to this than we have already.

The final point is that, realistically, the Government are the Government and these proposals are going forward. It remains to be seen how they will work. They may well untangle on the edges, in terms of the disagreements that there will be and the involvement of the Speaker in the thing. I hope I am wrong on that. I want to see the arrangements work, at the end of the day, but there is a big problem if the technicalities are not right.

**The Chairman:** There we must draw a line. Thank you very much indeed to all of you. It has been an extremely interesting and productive session. We are very grateful to you and particularly grateful to you for compressing your replies at one stage when we were running out of time. We have now managed to finish on time. Thank you very much.
I thank the Lords of the Committee for the opportunity to comment. My background is that of a lay person who has researched the constitutional settlement of the Glorious Revolution 1688. I have made a presentation of my findings which has been shown in Westminster and Strasbourg as well as several public meetings. The late Leolin Price CBE QC reviewed my work and kindly wrote this foreword for it:

"I am happy to recommend John Bingley’s paper to all who are interested in the proper functioning of our constitution; in the role and power of our parliament and government; and in our historical protections against abuses of power by government and its servants and by quasi-governmental organisations and their servants.

What John Bingley has written so well and with such learning does not compel the reader to agree with his conclusions but it will make the reader well informed and stimulate serious questions about what ought to be our reaction to all unprincipled proposals to change our constitution and the rights and remedies which are part of our heritage and identity.

Leolin Price CBE QC."

The Late Norris McWhirter said that it was
"I who had laid the fundamental Constitution most clear"

**Response to questions**

I find your position to be entirely at odds with the Constitution of the United Kingdom.

Let me start by addressing Questions 1. and 2.

The essential characteristic of the Union is that it cannot be dissolved without dismantling the kingdom itself:-

The Declaration of Rights commands

"...and that the sole and full exercise of regal power be only in, and executed by the said Prince of Orange, in the names of the said Prince and Princess, during their joint lives; and after their deceases, the said Crown and royal dignity of the said Kingdoms and dominions to be to the heirs of the body of the said Princess; and for default of such issue to the Princess of Anne of Denmark and the heirs of her body; and for default of such issue to the heirs of the body of the said Prince of Orange."

The Act of Settlement transmitted this responsibility and limitation in its entirety to the House of Hanover and thus Windsor as do the Acts of Union 1707 and the oath of office which entrench it and the duty stemming from it.
Therefore, it becomes necessary to analyse the limitations of the Crown to ascertain the boundary of Parliament's power to ensure this is complied with before proceeding any further.

The brief of the consultation has not acknowledged the breaches of the Constitution under which devolution proposals are legally invalid. Therefore I am making no direct comment on some questions, as the importance of what is written below overrides them.

Your Question 9. asks if the current constitution is able to provide a stable foundation for the devolutionary settlement? And what changes might be required.

You appear to be exploring means to effect several Parliaments to come into existence to supplant the Parliament of Great Britain. Or to create potentates within the system of governance.

I believe that technically to peruse this to independence is tantamount to treason. Our constitution does not empower the Crown or its Parliament to destroy or diminish its own omnipotence.

Sir Robert Megarry V-C Manuel V Attorney General 1983 (C.A.)

“As a matter of law the courts of England recognise Parliament as being omnipotent in all save the power to destroy its own omnipotence.”

The sovereignty of parliament cannot extend to breach the limitations of the Crown. The Crown has undertaken to govern reign-long in accordance with the constitutional laws that provide its limitation. That is an entrenched position that cannot be overcome by any parliamentary meddling or devices.

The Crown has undertaken and is bound to use the utmost of its powers to achieve this end. The utmost of the Crown's Powers include the refusal of Royal Assent and force of arms. All officers and Ministers whatsoever are bound to owe true allegiance and to abide by the law. The extant rules of law prohibit devolution of Great Britain. The Crown cannot assent to any diminution thereof and indeed is compelled to refuse all contrary measures by the laws of our constitution.

The Crown is currently legally obliged reign-long to refuse to countenance measures which detract from the "true intent of the enactments that secure the Protestant religion to the throne". The Act of Union with England 1707 ch7 being one such act states:

"..to Establish the Protestant Religion and Presbyterian Church Government within this Kingdom has past in this Session of Parliament an Act entitled Act for securing of the Protestant Religion and Presbyterian Church Government which by the Tenor thereof is appointed to be insert in any Act ratifying the Treaty and expressly declared to be a fundamentall and essentiall Condition of the said Treaty or Union in all time coming."

This text proves that the Act of Union is an enactment securing the Protestant religion to the Crown. It is therefore becomes an obligation upon the Crown to fulfil the true intent of this enactment/treaty reign long to the utmost of the Crown's Powers.

This Act commands and requires:-
That the Two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof and forever after be United into One Kingdom by the Name of Great Britain

That the United Kingdom of Great Britain be Represented by one and the same Parliament to be stiled the Parliament of Great Britain.

Her Majesty took her Accession Declaration Oath on the 8 February 1952. From that moment forward the Act of Union was again re-entrenched reign long. Her Majesty's Coronation Oath has contracted the Crown To Govern only in accordance with the law.

Parliament may not and specifically constitutionally does not hold the power to enact that which might violate the Constitutional contract which limits the Crown.

Should the people of Scotland ask for their independence then the parliament of the United Kingdom would have to consult with the people of Great Britain to discover if it is desired to disband the kingdom. In the unlikely event that such a situation could be brought to exist the Crown would have to Abdicate, its Parliament would cease and a new settlement would need to be found and engaged.

We have a wonderful constitution which must be observed.

I would be pleased to expand upon this as required.
I, ELIZABETH
do solemnly and sincerely in
the presence of God profess,
testify, and declare that I am
a faithful Protestant, and that
I will, according to the true
intent of the enactments
which secure the Protestant
succession to the Throne,
uphold and maintain the
said enactments to the best of
my powers according to law.

2 October 2015
The evidence submitted relates mainly to Northern Ireland but does include comparative material relating to Scotland and Wales.


**Principles underlying The Union and Devolution**

**The Union**

**Q 1.**
The UK has a long history as a unitary state reflected; in a powerful centralised government at Westminster; in mass national political parties and no other form of government between the UK government and local government. Northern Ireland has presented an exception to this pattern, with a form of devolved government from 1921 to 1972 and then from 1999 and with distinctive political parties. Historically Northern Ireland has had a system of devolved government within the Union established as a political solution to the Irish Home Rule crisis but not in recognition of an Ulster nation state, or an Ulster nation.

**Q 2.**
Historically political negotiations and dominant interests have played a more important role in establishing and maintaining the UK union than rational principles. The Commission on Scottish Devolution in 2012 (Calman Commission) presented a rational narrative for maintaining Scotland’s place in the Union. Debates on rational, economic arguments for Northern Ireland remaining in the Union appear to carry little weight in the context of the basic community division between unionists and nationalists based on national identities and religious affiliation. It is, of course, not unusual in Europe to have nation states with major cleavages among the population along lines of ethnicity, language, religion and, particularly in border areas, identification with a neighbouring nation state.

**Devolution**

**Q 3.**
Devolution is a form of government based on the devolution or delegation of executive, legislative and administrative functions from central government along with a significant range of policy responsibilities which means a division of powers with the UK government. Also required is adequate financial capacity and resources for the devolved government.

The original devolution arrangements set up in 1998 the Welsh Assembly Government without powers over primary legislation. The actual system for Scotland and Northern Ireland was closely based on the Northern Ireland model of devolution as described in the Northern Ireland Constitutional Act 1973 and the earlier devolution proposals for Scotland and Wales in 1978. The administrative system created and the range of powers devolved was closely linked to the systems of territorial administration as operated by the Scottish and Welsh Offices prior to devolution and continued the existing structures of administrative devolution in Northern Ireland which had
existed under Direct Rule. The other key principle of devolution related to the financial arrangements. In practice this did not involve new principles but the continuation of the Barnett Formula and its use to fund the devolved administrations. Barnett does incorporate a principle of ensuring a degree of equity in expenditure resources.

Q 4. The example of federalism is usually regarded as more appropriate to very large countries, Australia, USA, Canada or countries with strong political reasons for a weaker central government, for example, Germany and Switzerland. There has been a growth in decentralised governance in Europe on the basis of sub-national forms of devolution and regional government. This is normally a response to ethnic, linguistic and religious differences within states and particularly in some border areas where there are cross border national identities. Decentralisation or devolution has also grown in response to rationales about the advantages of more localised governance and to recognition and support for regional forms of government within the EU.

Implementation

Q 5. The two sets of principles can be said to be imbedded in the original three Acts of 1998 and subsequent amendments. There are three main areas of principles for the working of devolution. Firstly, the division of powers and their development has been covered in the original legislation and subsequent separate Scotland, Wales and Northern Ireland Acts passed at Westminster. There has been little general discussion of principles governing the division of powers or their development. Common themes do arise and at present focus on increasing devolved fiscal responsibilities. Secondly, is the area of inter-governmental cooperation which could cover the role of the territorial Secretaries of State, the JMC, the British-Irish Council, and other quadrilateral or trilateral (three devolved government) forums, and memorandums of understanding referring to such matters as the EU and international relations and inter-departmental relationships. There is no agreed set of principles governing inter-governmental cooperation as a whole. Thirdly, is the financial arrangements where the main issue would revolve around reviewing the principles of the Barnett Formula and the consequences of a new principle of increased fiscal devolution.

Practical Steps to Strengthen the Union

Q 6. In considering the period 1999 to 2015 there are grounds for questioning an assertion that the devolution settlement was asymmetric between Scotland, Northern Ireland and Wales. This view tends to overlook the many similarities in the systems of devolution as they operated and developments which tended to promote symmetry. The main areas of similarity covered: a convergence in devolved powers, especially after the increase in legislative powers for Wales; a similar system of government ministers; a similar model of Parliament/Assemblies; similar processes of legislation, legislative consent motions and scrutiny and inquiries by committee: the use of the Barnett Formula in all three devolved administrations to allocate public expenditure and influence the boundaries of devolved discretion; the similar role of the Secretaries of State and the territorial offices for Scotland, Wales and Northern Ireland; the operation of the central government administration and extensive use of quangos and similar relationships with quangos and local government; participation as equal bodies in intergovernmental relations through the JMC, the British-Irish Council, concordats and other forums.
Similarities in devolved governance has been promoted by four key factors: 1/ the influence of the Westminster model; 2/ the dominance of the UK Government legally and financially; 3/ the extent of policy copying; and, 4/ the emergence of a devolved style of governance, more participative and more joined-up.

There has been a continuing process of an extension of powers although this still leaves some asymmetrical features, the power sharing arrangements in the Northern Ireland Executive, the separate civil service in Northern Ireland and the absence of devolved justice and policing powers in Wales. The future development of devolved powers relates to fiscal devolution of areas of income tax and other taxation including corporation tax and the nature of the partial devolution of social security. At present it is often not realised that Northern Ireland has more devolved powers than Scotland, including the civil service, social security, employment, trade union legislation, and abortion. Such an assessment may require adjustment with greater fiscal devolution to Scotland.

Much recent attention has been given to a strategy in England of bestowing ‘devolution’ on large cities. This does raise a major issue of definition as what is proposed is not devolved legislative and executive government but mainly larger units of local government with some enhancement of existing local government powers particularly related to transportation, planning, economic development and integrated care.

Q 7.
The proposal for partial devolution of taxation for Scotland and Wales along with continuation of Barnett Formula is likely to require a mechanism for some annual discussion with the UK Treasury on allocations, perhaps some form of Exchequer Board on a bilateral basis. There is little demand for tax devolution for Northern Ireland, other than corporation tax. The proposed division of welfare benefits in Scotland raises more difficult issues relating to the need for coordination and cooperation. It also has implications for aspects of other devolved services, including housing and social care. A formal joint coordinating committee from the two administrations may be necessary. In practice welfare benefits are to an extent already divided in Northern Ireland with tax credits being a reserved function while it has proved difficult to secure agreement on Northern Ireland providing a single system of social security, child support and pensions as required by the Northern Ireland Act 1998, section 87, and of the fiscal convention of the total funding of the benefits bill by the UK Treasury. The UK Government may feel obliged to take over social security powers or long term may examine the establishment of a joint social security authority with negotiating powers.

The further devolution of welfare powers is likely to increase policy divergence in the UK and may also increase inequalities and reduces the salience of arguments for maintaining a UK level of equity and sharing of risks to well-being. To some extent, even given a UK national welfare system the devolved administrations can use their current devolved powers to mitigate the impact of welfare reforms and compensate those with reduced benefits through non-cash and even some cash payments, for example, maintaining educational maintenance allowances in Scotland, Wales and Northern Ireland while they were abolished in England.

Q 8.
This is a largely political question with a large political block in two countries not wishing to preserve the Union, the SNP in Scotland and Sinn Fein and the SDLP in Northern Ireland. The
reactions of various political parties to current policy debates suggests a range of issues which may destabilise the Union; the impact of austerity cuts on public services, opposed by almost all the political parties in the devolved countries; the restrictions on MPs from Scotland, Wales and Northern Ireland in the House of Commons and an EU referendum on continuing membership.

Q 9.
Structural change to provide a more stable foundation for the devolution settlement might include the following;

1/ stronger inter-governmental relations with clearer principles and objectives, clear statutory powers and functions, enhanced committee structures, administrative support, and frequency of meetings.

Such measures might apply to the JMC, British-Irish Council, quadrilateral ministerial meetings, a Financial Exchequer Board or Welfare/Social Security joint authority.

2/ Review of mechanisms for operation of Barnett Formula and other features of the Block Grant or for annually managed expenditure, in the light of greater fiscal devolution.

3/ Major constitutional developments and increase in powers has been a process involving detailed inquiries, collection of evidence and reports in relation to the individual devolved systems, usually using independent chairs. What is not so common is wider investigations to cover all three devolved administrations and/or England and the UK dimension.

4/ The issue of restrictions on MPs from non-English constituencies, ‘English votes for English laws’, may undermine a strong foundation for the Union and some of the complex issues involved appear to have received little attention. These include the very large percentage of UK legislation that contains sections applying to Scotland, Wales and Northern Ireland and the impact on other parliamentary procedures, for example, the scope and remit of select committees.
Transcript to be found under Professor Arthur Aughey, University of Ulster
At a recent evidence session because of a shortage of time the chair had asked me to send a response to Question 3.

Additional response is as follows.

Northern Irelands union with the rest of the UK

Q 3. Does the existence of a separate Northern Ireland Civil Service affect its relationship with the UK Government and other devolved administrations?

The Northern Ireland Civil Service has operated as a distinct and independent legal entity from the UK Civil Service. There are some 27,000 NI civil servants compared to some 3,000 UK Home civil servants working in Northern Ireland. The departmental structure in Northern Ireland has continued to be based on the Whitehall model of separate ministerial departments. Whereas Scotland and Wales have adopted a structure they see as more suited to devolved circumstances. With some 32 directorates in Scotland and a more integrated central administration in Wales. Apart from the Office of First Minister and Deputy First Minister each department has a single minister as head, but representing different parties in the power-sharing executive and senior civil servants loyalty is to the minister, not the Head of the Northern Ireland Civil Service. Department’s relationships with Whitehall departments differs according to the subject matter and ministerial influence. The relationship between the Department of Finance and Personnel and the Treasury is important. Other departments may communicate closely at times, for example on welfare reform or agriculture or some health matters. In the case of other departments there is normally little contact, for example, education, local government, environment, or employment. The other factor influencing contact is party political, in that Sinn Fein ministers may have little contact with UK ministers. The Head of the NICS attends the UK Home Civil Service Management Board with the Scottish and Welsh Heads but all have reported at times being treated as a junior partner or as separate and that devolution is not fully understood. The NICS has a tradition of pursuing a policy of parity with the Home Civil Service on issues of pay, grades, diversity, management, e-government and can share in training activities. Northern Ireland has its own Civil Service Commissioners who tend to follow UK practices. Difference in operations can emerge, on policy capacity, performance management, and public scrutiny. A key point is that the NICS does not owe any loyalty or accountability to the UK Home Civil Service and as a Select Committee on the Constitution report on Devolution in 2002 expressed it there was a sense of detachment or semi-detachment in the NICS. In practice the NICS has not acted to realise the full potential of its independent status.

January 2016
Q274 **The Chairman:** Thank you both very much for coming, and for being here punctually to enable us to make a prompt start because we have to try to keep to our programme. We are very grateful to you both for coming to talk to us. We have been gathering a range of opinions from across the spectrum, so to speak—I do not just mean politically; in fact, hardly at all politically—about our inquiry into the union and devolution, which is quite a big, broad and complicated subject on which to reach conclusions. I am sure that you will have things to say to us that we will find enlightening. I start with a general question: what do you think matters to people in Wales about the union and being members of the United Kingdom? Would you like to start, Dr Winckler?

**Dr Victoria Winckler:** The first thing that I would say is that the union, as you are aware, is incredibly long-standing. It is almost something that I think the vast majority of people in Wales take for granted. It is not something that most people stop to contemplate and think about. Given that, the important features are the strong and close relationships between Wales and the rest of the UK—whether those are family and social relationships. There are strong economic relationships as well, although they are different in different parts of Wales. There are strong cultural relationships, although that is quite complex, and, of course, crucially, there is the fiscal relationship, which, I am sure you will ask more about subsequently.

**The Chairman:** We will. We will discuss that as we go along.

**Jessica Blair:** From the IWA’s perspective, we had an online constitutional convention about a year ago and we engaged with 12,000 people across Wales. We asked them: what does the UK mean to do? What matters to you? The things coming out of people’s contributions to that convention were around the welfare state, foreign policy, defence and being part of a safe, secure union, but with the ability for Wales to make its own impact within that union.

**The Chairman:** Do they divide it up into more specific approaches such as the sharing of burdens—the fact that, if there is a big economic setback, the rest of the United Kingdom helps to support whatever expenditure is needed in Wales—or do they not analyse it to that extent?
Jessica Blair: For Wales, since devolution, because of our economic circumstances, it has been very much the role of the union to almost support that in a way due to the Barnett formula. Until now, there has not been much fiscal autonomy or accountability for Wales. I think that, moving forward, it is going to be really interesting to get that accountability and to see how that role changes the perspective of Wales and that of policymakers and people within the country.

The Chairman: Thank you. Let us move on to the more detailed questions.

Q275 Lord Morgan: I am delighted that we have these two organisations represented by their officers. I have been a member of both for many years and they fulfil an enormously valuable role in Wales, where think tanks were not numerous in the past. On the so-called social union, there has been much talk about seeing this as a world in which the risks and the benefits are shared out, and where misfortune in one part of the union is redressed by other parts. This seems to be perhaps complicated now by suggestions that there should be a greater level of fiscal responsibility falling on the devolved Administrations, and perhaps falling on mayors in cities or the heads of regional organisations. Is this a possible problem? Might it reduce equality by affecting the UK-wide distribution of resources?

Dr Victoria Winckler: “Fiscal responsibility” is a somewhat loaded term because it implies that if you do not have a change in arrangements, somehow the current system is irresponsible. We have been looking at the potential for more devolved taxes in Wales and at local taxation. What is clear is that there is a mix of benefits and disadvantages. The benefits, as I am sure you are aware, are increased transparency, the possibility of having a system of incentives and rewards, and giving the responsible body additional tools and levers to achieve the changes that it wants. Equally, as you have identified, there are significant risks. There is the risk of a race to the bottom. There are real risks around redistribution. It also implies that somehow the responsible body has complete control over the economy or whatever area it is attempting to raise revenue from, and that is not the case. A huge element of Wales’s economic fortunes is shaped by UK and, indeed, global forces, as the decisions around Tata Steel have shown in the last few days. Our view is that there is an important role for devolved taxes and that those devolved taxes, and the revenue they raise, should be linked to devolved activities. It is probably the case that certain forms of taxation could be, and indeed should be, regionalised or localised; for example, land-based tax and some housing taxes—I think there is scope for those. But there are other taxes that are central to the social union. These are primarily around income tax, corporation tax and VAT. They are the big earners and they are the ones that provide the coherence to the UK as a whole. If we go down the road of increasing devolved taxes, there are some significant issues around the allocation of block grants. There are some massively complex discussions going on at the moment about how the Barnett formula needs to be tweaked to take account of devolved taxes. In that complexity there is a lot of scope for argument and disagreement and a lot of scope for error, in my view. So I think there is a place for so-called fiscal responsibility, where it is appropriate, but I think that the moves towards devolving big parts of some of the major taxes are, certainly from our point of view, a serious concern in respect of equality.

Jessica Blair: From our perspective—especially in terms of how you reconcile the current block grant funding formula with increased fiscal accountability for Wales—there are real risks that you lock in disadvantage if the role of the union in funding that gap between the two revenues is not thought through properly. We can learn lots of lessons from redistribution formulas used elsewhere. We need time for that to be considered properly. We should not rush into anything with taxation and block grants as we would not like to lock in disadvantage for Wales.
Lord Morgan: We seem to hear rather more apprehension on this point in Wales than we did in Scotland, and that is true of other parts of the country. Do you think that this is a problem of a particularly ominous kind in Wales given that, broadly, the economic bases are poorer in Wales, the value added per person is lower and there are certain sociological problems, such as the population being older?

Jessica Blair: There are a couple of major issues here. There is obviously the economic element—Wales is poorer than Scotland, so no wonder Scotland is more confident in taking up fiscal autonomy because there is obviously a big gap that Wales would have to bridge that they are very concerned about here. But there are other elements around confidence in our devolved Administrations and in our economic base, and unreliability, almost, of our ability to grow. Our GVA has not developed at all since devolution, so there are numerous reasons for Wales to be a little more reserved than Scotland in these terms.

Q276 Lord MacGregor of Pulham Market: Is there scope in this general debate for establishing a minimum level of provision in different areas of public policy which would be set across the UK, and which devolved Governments could supplement but not reduce? I am thinking in particular of welfare, healthcare and those sorts of areas. If so, who should set that minimum level?

Jessica Blair: One thing that we found from the constitutional convention exercise that we held was that there was a real sense among people in Wales that devolution to date had been done with an ad hoc and piecemeal approach, and that there had been very little consideration of the role of the union as a whole and of each part within it—Wales, Scotland, local councils and so on. I think that there should now be a proper national constitutional convention, and a key element of that could be minimum provision. There needs to be a discussion about what makes us part of the union—what is the same in every country, what the minimum provision really is, what should be different and what the benefit to Wales and Scotland of being different in certain areas would be.

Dr Victoria Winckler: The answer depends on the service. There is a very strong case for having a common standard of provision for some aspects of public service, such as state pensions, maternity benefits and so on, but I think that there is scope for other aspects of the welfare state and public services to be devolved. By devolving them, you can get a better fit between the devolved service and the local or national circumstances, and provide an incentive for improving those services in the area concerned.

The question of a common standard would then need to take into account different needs and to have a funding mechanism that matched those needs. Let us take as an example a common standard for healthcare provision. The current Barnett formula is based on a per head allocation with no account of needs, yet Wales has a significantly higher proportion of older people in its population with greater health needs. It would be unfair, in my view, if Wales was expected to meet a particular standard but did not have the funding to match it. There is a need for a common standard—a minimum standard, if you like—that is not so low that it then becomes the norm. Who would decide? I think that it would have to be a combination of those providing the funding and the devolved Administrations because, if they are going to be held accountable for meeting standards, that has to be done by consent. There is likely to be some nervousness in Wales around this sort of approach unless that consent is absolutely central. The nature of the devolution settlement and the nature of all the arguments around the Wales Bill at the moment make many people in Wales a bit sceptical.

Q277 Lord Cullen of Whitekirk: It is said that among members of the public there is a lack of understanding of, or possibly a lack of interest in, the respective responsibilities of the UK
Government on the one hand and the Welsh Government on the other. Would it be beneficial to overcome that lack of understanding and, if so, what practical steps might be taken, and by whom, to put things right?

Dr Victoria Winckler: I think that we could both write a book about all the examples of misunderstanding, whether they are by Radio 4 or the newspapers—I came across one in the New Statesman the other day. The misunderstandings are constant, and the inaccuracy in the vast majority of UK media reporting is then perpetuated by a lack of understanding among the Welsh public and our relatively weak media, which Jess knows more about than I do. It is a major problem. The other side of the coin is that many people in Wales—even people who think they understand devolution—do not understand the key role of the UK Parliament and the UK Government, particularly in deciding the size of Wales’s spending pot and the powers that we do or do not have. There is a massive field of ignorance.

Jessica Blair: A BBC poll last year found that almost half the people in Wales thought that Jeremy Hunt was their Health Minister. There are major consequences from that. We have relatively low standards of voter participation. Our last referendum turnout was very low, and voter turnout was around 42% or 44% for the Assembly elections. It is not brilliant. The two elements of misunderstanding—a lack of clarity and a lack of engagement—mean that we cannot really hold the Assembly or the Government effectively to account, and that has been an inherent problem in Wales. Who is challenging performance? Who is saying at the ballot box every five years that they really have not delivered on healthcare? Who is changing the Government when they are not performing properly? There is not really anyone to hold the Government effectively to account because people are being misinformed by the media, they are misunderstanding a lot of things and they are not engaging with Welsh politics. Addressing all those issues is a real challenge.

Lord Morgan: I cannot recall, but have your two publications tried to assess the nature of this lack of public understanding? Certainly I would be extremely grateful if you informed your readers that Jeremy Hunt is not a Minister in Wales.

Lord Cullen of Whitekirk: If you ever finish that book that you were talking about, please publish it.

The Chairman: You have identified the problem. Is there a solution? Incidentally, the problem is not common only in Wales; it is common in Scotland. Even in England, where there is only one Parliament to contend with, I think that a lot of people do not quite understand the way that things work.

Jessica Blair: One big issue that we have in Wales is that the devolution settlement has been quite piecemeal in approach. It has not really rested on a principle of clarity. You are seeing that now with the new Wales Bill that is coming through. The Secretary of State is talking about clarity being a really key principle within that, but I do not see that that has been realised. The reserved powers approach, as it has been written in the statements in the draft Wales Bill, will not go any way towards addressing that clarity. While you still have unclear, piecemeal approaches to devolution, when even experts are having to debate what is and is not devolved, you cannot really blame the public for not understanding it. A clearer approach to devolution, with a proper charter of the union which recognises the role of each element of it, would be one step. Addressing our media problems, our accountability problems and our engagement problems would all contribute to the same goal.

Lord Cullen of Whitekirk: When you mentioned a charter, were you talking about a charter for the whole of the United Kingdom? After all, what is devolved in one nation is not the same as what is devolved in another, so it would need to take account of both.
Jessica Blair: Yes, but in a way the lack of matching up of different Administrations has been the result of politicking. Wales has less political leverage. Scotland has obviously been afforded more powers because of political leverage. There should be some recognition at a central level of what the union is for, what each part of it is for and what elements should be devolved. Something which engages the public and takes those questions into consideration will be vital.

Q278 Lord Cullen of Whitekirk: One of our witnesses suggested some kind of joint effort by the Governments, putting forward for public information a proper document that is not necessarily a charter but which sets out in clear information what the respective roles or the degree of roles are. Would that be a good idea?

Jessica Blair: I think so. Any charter, or however this would take place, needs to rest upon engagement with the public. It needs to go beyond politics and beyond partisanship, and it needs to be representative of all parts of the UK.

Dr Victoria Winckler: I agree with Jess. I would just stress that the devolution settlement is complex and messy, and even government officials and Ministers are not always clear about what is and is not devolved, so having a simple principled settlement is crucial. We cannot expect people to understand that, for example, bus transport is devolved but speed restrictions and vehicle specifications are not, whereas public assistance for concessionary fares is, and so on. It is just obscure and arcane and people do not understand that. A simple settlement is ingredient number one, backed with a shared understanding that then can be used with a basis for informing the media and commentators. That is very important.

Lord Judge: I understand you both to be saying, in the context of a document or charter, that it would help address the issue of divisions of power and responsibility so the citizen could be better informed by it. What do you say about the possibility of a charter, if we call it that, of the union? I ask the question because we have been told by one witness that such a charter is essential, by another that it is unnecessary, and by another that it is motherhood and apple pie, so we have very varying views on a charter in the second context which I have identified. Do you have views about that which you could share with us?

Dr Victoria Winckler: The devil is always in the detail, is it not?

Lord Judge: I think the devil is getting everybody to agree.

Dr Victoria Winckler: Setting out those principles is very important, whatever you call it—statute, charter, or whatever. As I said earlier, the lack of clarity about those principles has underpinned a lot of the difficulties we have had, particularly in the shift to the reserved powers model. Setting out how the various Governments work together, and in particular stressing transparency and consent, is important. At the moment, different spheres of government perhaps work on different assumptions and understandings. To be honest, I do not know whether a charter or statute would do those things, but it is at least a vehicle or mechanism that might help.

Jessica Blair: I agree. I do not think that there is a one-size-fits-all approach to devolution or trying to reconcile devolution, but any attempt at a holistic thought about the role of the union and its principles—essentially principles of devolution, trying to nail down this idea of subsidiarity in particular—would be vital for us, and a charter might be a good mechanism to do so. However, public engagement is needed on this. I echo Victoria’s comments on the intergovernmental relations and trying to formalise those. At the beginning of devolution for Wales, when parties matched in the Assembly and in Parliament, there were a lot of easy vehicles for discussion to take place. Now, with parties of different colours in all parts of the UK you are seeing some of these
issues start to come out. That is, for example, with the referral of a few pieces of legislation to the Supreme Court, and you are seeing more battles over the Trade Union Bill and the Assembly potentially not passing a legislative consent Motion. There is nothing to state a clear line, so a charter which underpins those clear lines and tries to move some of the jagged edges of devolution away would be a good thing.

Lord Judge: It would be difficult to see how you could have a charter of the second kind that I was referring to, on which you have both kindly answered, which did not have the full consent of all the four nations. However, let us go back to your first charter, on sharing responsibilities and so on. How will that be promulgated so that the BBC and the newspapers in Wales and Scotland will report the facts? Or at least report them more than once.

The Chairman: In a balanced and fair way.

Lord Judge: Or at all. May I just explain why I asked that question? The last thing we should have is a system of Governments issuing this kind of thing, because it so quickly turns to propaganda. How are we going to have it produced and promulgated objectively?

Dr Victoria Winckler: The Institute of Welsh Affairs and ourselves have called for some sort of a UK-wide, independent constitutional convention. The issues that are arising, which you have recognised we are working on, are absolutely fundamental, and things are changing very quickly without people necessarily realising the implications. That might be one of the outputs from such an activity. My view is that members of the public are not terribly excited by academic debates about the constitution. However, they are enormously excited about who takes the decisions about things that affect them in their lives. Therefore any constitutional convention probably should not be called that and would need to link its debates to the real issues that concern people.

Q279 Lord Norton of Louth: To follow on from that, you have been talking about public understanding, but then there is the question of public involvement. You have been talking about it as a process, you want to reach some sort of potential settlement, but a lot of it is about discussions between the different Administrations. To some extent, the public are left out of that, so understanding is about explaining to them what has been decided at a higher level. Are there other mechanisms by which the public can have a more regular involvement, or at least by which the public voice can be heard in the actual process?

Dr Victoria Winckler: The Silk commission tried various approaches and embarked on a major exercise, travelling around Wales. I felt rather sorry for it, because in its early days it got a lot of bad press because of quite poor attendance. However, by the end of its process it was generating quite significant interest and debate. There are some lessons to be drawn from that in that whatever the activity is, it needs to get out there; it needs time, momentum and it needs to engage with people where they are, not expect them to come to you. So successful sessions will be in supermarket car parks, cafes, shopping centres, while a session in a town hall on a wet Wednesday will not be so successful, which is not surprising. Social media is absolutely crucial and the mainstream media has a role to play. Should we have such a convention, it would need to take a 21st-century approach to engagement and learn all the tips.

Jessica Blair: I echo that. Any approach to engaging people politically needs to use a mix of methods. Our constitutional convention took place online, which was great, but there were always people who were excluded from that; we knew that, and that was the big challenge we faced. So we need a mix of methods with learning from, for example, Ireland’s constitutional convention, which engaged real people on these issues and had some success stories.
**Lord Norton of Louth:** Just on that, there is always a danger when you simply invite evidence that you just get the usual suspects. Is it built up from the Silk roadshow, so to speak? I take it from what you are saying that more and more members of the public got involved. In your online convention were you able to map the sort of people who contributed? Did you get a feel of whether it was the public rather than those who already had a view?

**Jessica Blair:** It was definitely the public, but probably more the people who are more prone to be involved in these debates from the public anyway. That is the challenge you will always have. One of the big learning lessons that we took from our convention was that asking complex questions puts people off. You need to break down the questions you ask and make them relevant and interesting to people’s everyday lives.

**Lord Norton of Louth:** Did you find that that worked and that you got more of a response from them?

**Jessica Blair:** Yes. For example, we asked people, “How would you improve the economy?”, but we changed that to “What is your one idea that you would carry out if you were in power to improve the economy?”. We had a couple of hundred responses to that, which ranged from free solar panels for everyone to a metro or looking at transport infrastructure. Asking engaging questions on what are not normally engaging subjects seemed to work.

**Lord Norton of Louth:** And that was a peg on which you could hang other things.

**Jessica Blair:** Yes, exactly.

**The Chairman:** As we came out of the station today, I saw a poster advertising some sort of meeting or debate which related to the way in which government is changing in Scotland. Did any of my colleagues see it and read it properly?

**Lord Judge:** I did. It was called “The Independence Debate”.

**The Chairman:** Yes. I read it very quickly and did not absorb it properly, but I was rather surprised. So perhaps there is some debate going on. To go back to the educational side of it, it is sensitive. You do not want to take politics into a classroom, but surely children are told something about constitutional civic duties and all that sort of stuff at school at certain ages and in fairly carefully monitored circumstances.

**Dr Victoria Winckler:** The Welsh baccalaureate, which is followed by children in secondary school, includes learning about devolution and government in Wales. Certainly for children in south Wales that normally seems to include a mandatory visit to the Senedd, which is extremely important. I am not aware of any evaluation, but I know from personal experience with my children that that was very important to them and they finally understood what my job was.

**The Chairman:** So it may take a generation but it will happen eventually?

**Dr Victoria Winckler:** Absolutely. That is a very specific age group. Among the wider public, there are small elements: the Open University has quite a successful module on contemporary Wales which includes a lot about the devolution settlement, Welsh economic history and so on. That is quite limited—and, of course, adult education is an area where there have been a lot of cutbacks.

**The Chairman:** Would local radio be interested or persuadable to have a five-minute slot twice a week?

**Dr Victoria Winckler:** They might be.
**The Chairman**: They could ask questions to test people’s knowledge. Heavens, they do it about pop songs all the time: can they not do it about the way people are governed?

**Dr Victoria Winckler**: That touches on an issue which I am sure Jess can say a bit more about. There are issues in Wales about the size and coverage of the media and about the direction in which people point their TV aerials.

**Jessica Blair**: There are massive issues in Wales. We released the IWA media audit last November, which looked at different media provision in Wales. A couple of big things that we found were that there have been massive cuts to English-language TV provision in Wales. There has been a huge challenge to Wales reflecting itself back within Wales. Obviously, there is an increasing consumption of both online and print media from the UK within Wales. The *Western Mail*’s distribution, for example, has fallen to about 17,000 a day. If you are talking about people accessing local radio and getting news through that source, you also need to be tackling the more national sources of news that they are getting and making sure that they are also representative and speaking back to and informing people within Wales.

**Dr Victoria Winckler**: To follow on from that, I do not think that those difficulties are a reason not to try. It is very important and there is more that perhaps the Assembly could do to get that message out to Swansea Sound and other local radio stations, and to local newspapers.

**Q280 Lord Morgan**: We have discussed devolution so much in terms of constitutional mechanisms and frameworks, but, as you will both know very well, underlying this as a major context factor is the force of nationality, national identity and nationhood. That is very important in Scotland and in Wales, although in rather different ways, I think, in the two nations. It is complicated in Wales, as you well know, by the fact that 20% of us speak Welsh and 80% do not. How far do you think the aspect of national identity has shaped the way that devolution has developed? In that connection, in trying to understand more deeply and intimately Welsh and Scottish nationhood, would it help us to understand the force of national identity in England?

**Jessica Blair**: I think that national identity had a big part to play in Wales getting devolution in the first place in 1997. I have not seen many studies since then around national identity and devolution. It is one of those big issues that politicians are failing to grapple with in England. English votes for English laws has essentially been a sticking-plaster approach to reconciling that problem. Politicians are shying away from grappling with national identity in English debates. Unless you address this properly, with city regions and devolution to Manchester after it rejected a mayor in a referendum, you will instil grievances.

**Dr Victoria Winckler**: Identity is one of those extremely slippery concepts. I looked this up yesterday: of the population of Wales, only about two-thirds of the people living in Wales identify themselves as Welsh. A proportion think that they are both Welsh and British or some other combination, which is quite interesting. That has other complex overlays with the Welsh language and the often very strong sense of local identity. Those knit together and have shaped devolution—but alongside that I think that there is a strong sense of people wanting devolution because of a sense of injustice and of feeling ignored, neglected and marginalised from the UK, in particular from government decisions, and wanting subsidiarity. Quite where that will take us in Wales and what the implications are for England is not clear. As a first point, there needs to be a lot more discussion and debate. We need to recognise that a lot of people in England see themselves as Cornish, northern, Geordie or whatever, alongside their other identities. Those identities can be very strong.

**Lord Morgan**: One thing that strikes me—I do not know whether you would agree—is that the sense of nation has become a force for greater optimism in Wales since devolution. When I was
younger, the idea of nationhood was often associated with a dying past and a language that was dying, a rugby team that was not as successful as it had been, valleys being drowned, and so on. In the period since devolution, it seems to me that very young people have become associated with national identity. This is perhaps a point that other witnesses have covered.

Dr Victoria Winckler: I quite agree.

Lord Norton of Louth: You talked about the proportion of the population that sees itself as Welsh. Perhaps one should question the proportion who did not. Do you have data on what they did see themselves as?

Dr Victoria Winckler: British.

Lord Norton of Louth: They identified themselves as British.

Jessica Blair: I think the data is from the Moreno question study.

Dr Victoria Winckler: No, the data I quoted is from the census.

The Chairman: Our time with you has flown past, but we have covered the territory we wanted to. You have been extremely informative and very helpful to us, so I am most grateful. Thank you very much for coming in, and we will study the transcript of what you said and learn from it.
Dr Andrew Blick, King’s College London—Written evidence (UDE0029)

Summary

- History has a special value in explaining how present constitutional circumstances in the UK have come about.
- Policy-makers should approach the UK constitution as a multination entity. If their objective is a cohesive state, it must be founded in recognition of the existence of diverse subcomponents, rather than an undifferentiated polity.
- Policy-makers should give serious attention to the contradiction between the principles of, on the one hand, sub-UK autonomy and, on the other hand, supremacy for the UK Parliament. They should decide whether one of the two needs decisively to give way to the other.
- Policy makers should be aware that at present the principles on which the different devolved systems rest are varied. Unless and until a more unified set of values is established, the approach to devolution cannot assume an identical normative framework for each.
- Policy-makers in the UK should be aware that there are examples of federation or quasi-federation in states, especially Spain, that are in some ways comparable to the UK. But the relative size of England is unusual and must be factored into any constitutional model.
- As more powers are devolved, contemporary policy-makers should give special attention to the need to balance variety – which is an inevitable consequence of devolution, and without which devolution would be meaningless – with the guarantee of basic standards. Where, precisely, the line is drawn between the two requirements inevitably has both arbitrary and ideological dimensions to it.
- A model which has gained a growing body of advocates in the UK lately is that of a federal UK. Those who favour a federal system argue it could provide a clearer basis for the UK constitution. It could, they hold, guarantee autonomy to sub-units within the UK, which would become ‘states’, but at the same time bind these components together more clearly at UK level. It would also, supporters of this approach claim, be the best means of extending devolution to the whole of the UK, including England.
- Federalism would pose a challenge to established constitutional understandings in the UK. But it has important cultural roots in the UK. It could be a suitable means of expressing the multination quality of the UK. Moreover, the UK has a powerful intellectual tradition of federalism.
- Past international experience suggests that the introduction of a federal system to the UK may not be an easy task. The construction of a federal UK is not a guaranteed outcome, and could if attempted prove unworkable. Indeed, there are many historic examples internationally of multinational federations that have collapsed or have experienced pronounced, sometimes violent, divisions.
- But while some commentators may seek to use history to close off the federal option, it is better to view the past as a means of providing a wider perspective on the paths available to us. Policy-makers should not necessarily treat examples of federal difficulties as a reason to rule out a federal project for the UK. Such case studies could as easily provide an opportunity to learn by mistakes, and increase the chances of attaining success in a future federal venture.
Introduction

1. History & Policy (H&P) is a UK-wide initiative led from King’s College London and the University of Cambridge. It seeks to bring policy-makers into contact with historical research. The objective of H&P is to provide fresh perspectives on issues of contemporary concern, broadening out debate and expanding the range of options available to policy-makers. This submission forms part of the newly-initiated H&P parliamentary engagement work-stream, under the general heading ‘Democracy in the 21st Century’.

2. History is of exceptional importance to the UK constitution. Famously, the UK lacks a single text of special legal status setting out its core arrangements, or ‘written constitution’, as such a document is commonly known. There has never been a specific moment at which the UK has sought decisively to write down the key values and rules of its system. While all constitutions develop over time, the UK constitution stands out for the extent to which it appears to be an accumulation more than a specific planned construction. For this reason history has a special value in explaining how present constitutional circumstances in the UK have come about.

3. This general principle is clearly apparent when the development of the Union and devolution is considered. This timely Committee inquiry is therefore approached using this particular perspective.

1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

4. A nation state is a country the people of which are bound together by a clear identity, given legal-institutional representation. However, a consideration of UK history suggests that the concept of a modification state is, as a tool of analysis, at least as useful as is the concept of a nation state. The UK came together as a consequence of a series of incorporations of two or more distinct nations, beginning with the absorption of Wales into England in the sixteenth century; followed by the Union between England and Scotland of 1706-1707, then the Union between Ireland and Great Britain of 1800. There was then a partial disintegration, with the formation of the Irish Free State in 1922, leaving six counties in the UK, forming Northern Ireland. At different times, Wales, Scotland, Ireland and Northern Ireland have all had special constitutional arrangements reflecting their distinct status within the UK. These arrangements have included recognition for particularities of language, religion, education, local government, and for different legal systems. Devolution was first used in the UK for Northern Ireland from 1921-1972; and was introduced to Wales, Scotland and Northern Ireland (again) under the Labour government that first took office in 1997.

5. Whether the UK ever fully overcame its internal diversities to establish a clear, unifying, positive, national identity is debatable. Some historians believe that British identity during the eighteenth century was largely founded in hostility towards outside countries such as France and Germany, as opposed to an internally generated sense of cohesion. The incorporation of Ireland was always problematic, partly but not exclusively for religious reasons, and frequently met with resistance, both of political and violent nature. A sense of ‘Britishness’, associated with the global imperial project, gained some viability, but underlying attachment to the sub-UK nations persisted. A ‘UK’ as opposed to ‘British’ identity has never possessed traction. Moreover, the desire to exit the Union altogether has
manifested itself at various points throughout the history of the state, most notably in Ireland, and Scotland.

6. Therefore, devolution in the UK should not be seen primarily as a set of reforms that have challenged the status of a nation state. It is, rather, a change that expresses forces that have existed within the UK from the outset, and which are connected to its multination status. Devolution has, moreover, some precedent in the past constitutional make-up of the UK, which has always reflected divergences in ways that would not generally be associated with the systemic arrangements of a nation state. However, it is possible that devolution has had the effect of intensifying internal national identities within the UK, especially in Scotland, even to the extent of encouraging serious threats to the continuation of the UK in its present form.

7. Policy-makers should, therefore, approach the UK constitution as a multination entity. If their objective is a cohesive state, it must be founded in recognition of the existence of diverse subcomponents, rather than an undifferentiated polity.

2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

8. Historically, a key purpose of the UK was security against external threats through unity. This intention is detectable in the unions of 1706-1707 and 1800. The Union between England and Scotland took place at a time when Louis XIV threatened to achieve dominance on the continental landmass. Great Britain incorporated with Ireland at the time of similar peril emanating from France, this time under the leadership of Napoleon. Another, connected, desire underpinning the Union was preservation of the Protestant succession and the exclusion of Roman Catholics from the throne. These values are surely anachronistic today. Despite the tone of some of the popular press, it is not plausible to regard France as the military enemy it once was, and France has a longstanding alliance with the UK, expressed in agreements such as the Entente Cordiale of 1904. Moreover, while the UK retains religious discrimination in its constitutional arrangements, the issue of the Protestant succession does not generate the sense of urgency it once did. While the monarch must adhere to the established religion, society has moved on in other ways, as indicated by legislation such as the Equality Act 2010, which includes protections against religious discrimination.

9. As already suggested, it is possible to discern another important set of historic values underpinning the Union. They involve the allowance for constitutional diversity reflecting the multination make-up of the state. Indeed, the UK has been an outlier internationally in the extent to which it allows for constitutional differences, for instance through having three different legal systems operating within a single state. These principles remain relevant in the contemporary UK.

10. Running in parallel to this recognition of internal differences, the UK has had another legal and intellectual tradition emphasising the idea of an all-powerful, ‘sovereign’ Parliament. The prominence that the UK (and in particular, England) has attached to this precept has been another way in which it is unusual internationally. The contrasting concepts of multination-hood and parliamentary supremacy are suggestive of a longstanding tension in the key principles of the Union. This conflict persists today. For instance, the present government intends through the Scotland Bill to place the Scottish Parliament and Government on a permanent basis. This provision would recognise that, since devolution, a
lasting change has taken place within the UK constitution. Yet, if the doctrine of parliamentary sovereignty remains valid, then the UK Parliament could abolish the Scottish Parliament and Government through simple majority votes. While Parliament retains an unrestrained power to legislate as it sees fit through regular procedures, other ‘key principles’ lack firm legal meaning.

11. Policy-makers should give serious attention to this contradiction, and consider whether one of the two principles: sub-UK autonomy on the one hand and supremacy for the UK Parliament on the other hand, needs decisively to give way to the other.

3. On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

12. In their foundational principles the UK devolution systems differ from each other. In Scotland, the Claim of Right (1989) suggests that it is for the people of Scotland to determine what their constitutional future should be. A further set of values can be discerned from the ‘Vow’, issued by the then-leaders of the three main pro-Union parties shortly before the Scottish Independence Referendum of 2014. It proposed principles including that the Scottish Parliament should be permanent. The Belfast Agreement of 1998 is the foundation of devolution in Northern Ireland. It too suggests a role for a people in deciding upon their own fate. But in this instance it is a group of people who do not at present reside in a single state: the people of Ireland as a whole. The Agreement provides devolution in Northern Ireland with a unique quality within the UK, in that it forms part of a settlement intended to achieve peace, and resolve disputes by political rather than violent means. Discerning foundational principles for the Welsh system is more difficult. It is probably fair to say that much of the work in this area was carried out after the initial introduction of devolution, through a variety of commissions and other discussions. The system itself has altered substantially in the process.

13. Policy makers should be aware that at present the principles on which the different devolved systems rest are varied. Unless and until a more unified set of values is established, the approach to devolution cannot assume an identical normative framework for each.

4. Are there applicable examples from other countries with multi-level governance structures?

14. One relevant international example that the Committee should take into account is that of Spain. Like the UK it has a multination tradition, upon which there have been historic attempts to superimpose a centralised system. Tensions between the two approaches have led to prolonged violent conflict. Following the Franco dictatorship, Spain sought to move by consensus into a post-authoritarian era through its 1978 constitution. Under this system, it has been possible for different ‘Autonomous Communities’ within Spain to acquire powers transferred from the centre to suit their particular requirements. The precise authorities taken on, and the speed at which this process takes place, can vary on a community-by-community basis. Yet while the example of Spain since 1978 has similarities with the multi-national asymmetry of the UK, there are also clear differences. There is no one nation within Spain that has the equivalent dominance in population size, and associated qualities, that England possesses within the UK. Another distinction is that autonomy is available throughout Spain, while in the UK devolution is not yet possible for most of England.
15. Policy-makers in the UK should be aware that there are examples of federation or quasi-federation in states that are in some ways similar to the UK, but that the relative size of England is unusual and must be factored into any constitutional model.

5. How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

16. During its history, the UK has not had a clear ‘constitutional moment’ leading to an attempt to devise and entrench an express statement of principles and rules, of the kind often found in written constitutions internationally. Any attempt to clarify or reformulate the principles underpinning the UK as a state might require the occurrence of such a ‘moment’, though the circumstances that might lead to it are difficult to predict. It could involve the formation of a constitutional convention of some kind, charged with examining issues of pressing concern to the UK, among which devolution and the future of the Union would be prominent. The convention could consider the various issues raised elsewhere in this submission, including the means of sustaining a multi-nation state, the possibility of a federal UK, and the continued viability of the doctrine of parliamentary sovereignty. It could make recommendations that might then be given statutory or other expression.

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

7. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?

17. To take questions 6 and 7 together, in some ways the UK constitution is moving into unprecedented territory, with the transfer of powers to the devolved institutions that they did not possess before. History may from this perspective seem to be of limited value. However, some examples from the past are instructive. The Northern Ireland Parliament that sat for half a century from the 1920s enjoyed substantial discretion across a variety of policy areas. It is often depicted as having deployed this autonomy in a discriminatory fashion against the Catholic community. This pattern need not replicate, but it is a tendency that policy-makers should keep in mind.

18. There have also been points in the past when local government in the UK enjoyed significantly greater tax-raising powers than it does at present. In this sense there is precedent for sub-UK fiscal autonomy. Moreover, before the development of the welfare state during the course of the twentieth century, social provision (or its absence) was more of a locally determined matter. Once again, views of this method of coverage are often not positive, one criticism being the pronounced variability in standards.

19. Contemporary policy-makers should give special attention to the need to balance variety – which is an inevitable consequence of devolution, and without which devolution would be meaningless – with the guarantee of basic standards. Where, precisely, the line is drawn between the two requirements inevitably has both arbitrary and ideological dimensions to it.
8. **What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?**

9. **Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?**

20. To address questions 8 and 9 together, a model which has gained a growing body of advocates in the UK lately is that of a federal UK. Those who favour a federal system argue it could provide a clearer basis for the UK constitution. It could, they hold, guarantee autonomy to sub-units within the UK, which would become ‘states’, but at the same time bind these components together more clearly at UK level. It would also, supporters of this approach claim, be the best means of extending devolution to the whole of the UK, including England.

21. A federal constitution would imply that the whole of the UK would have an equivalent to devolved government, in contrast to the uneven coverage that prevails at present. Furthermore, power would be shared between the devolved institutions and the UK Parliament. The latter would lose its ‘sovereignty’, and a written constitution would become the ultimate authority within the UK system, in place of the Westminster Parliament.

22. Federalism, therefore, would pose a challenge to established constitutional understandings in the UK. But federalism does in fact have important cultural roots in the UK. It could be a suitable means of expressing the multination quality of the UK. Moreover, the UK has a powerful intellectual tradition of federalism. At the time of the negotiation of the Union between Scotland and England in 1706, some – especially on the Scottish side – favoured the idea of a ‘federal’ Union over the ‘incorporating’ Union that was eventually implemented. (Though at this time the word ‘federal’ referred to a looser conglomeration than it would now.) From the nineteenth century onwards, federalism gained a significant body of advocates and was the subject of much intellectual investigation in the UK. At various points the federal movement has focussed on a variety of possibilities, including imperial federation (in the late nineteenth century), an Atlantic union (especially between the wars), a global system (for significant parts of the twentieth century), or a ‘United States of Europe’ (at various points, most notably in the late 1930s and early 1940s). But a key part of the package has been the idea of an internal federation for the UK. Vital impetus for this concept arose during the late nineteenth century from the desire to resolve the ‘Irish Question’ in a way that avoided a break-up of the UK. Federalism also came to be seen as a means of accommodating the needs of the other Celtic nations of the UK. The idea of a federal UK has grown in currency again in the second decade of the twenty-first century, this time in response to the growing possibility of Scottish independence.

23. The UK has also played a part in influencing and drafting federal constitutions across the world, from the US in 1787 (which arose following a revolution against the Empire, but sought to incorporate English political principles), to Australia (1900), Canada (1867, 1982), India (1949), and post-Second World War West Germany (1949).

24. So why has the UK not yet acquired its own federal constitution? Part of the answer is the size of England, which accounts for more than 80 per cent of the total population of the UK. It is often noted that there is no example of a federal system incorporating a single unit of anything like this relative size and proving successful. Under such an arrangement, the smaller participants can feel threatened and may wish to secede; or the larger component may feel resentful that it is not receiving influence within the system on a scale that reflects its importance and the contribution it is making to the federation.
25. If it is accepted that the size of England is potentially a serious barrier to the formation of a federal UK, any consideration by policy-makers of the possible application of this model to the UK needs to take into account how to handle England. One approach is to incorporate a series of English regions, rather than England as a whole, into a federation. Historically, advocates of a model of this type have included Winston Churchill, who proposed a system along these regional lines, both within government and in public, when he was a Liberal minister early in the second decade of the twentieth century. England may appear to be by tradition indivisible, but in its Anglo-Saxon pre-history it comprised a set of different kingdoms.

26. As this consideration of the possible role of England in a UK federation suggests, past experience suggests that the introduction of a federal system to the UK would not be an easy task. The construction of a federal UK is not a guaranteed outcome, and could if attempted prove unworkable. Indeed, there are many examples of multination federations that have collapsed or have experienced pronounced, sometimes violent, divisions. They include the West Indies (1958-1962), the Soviet Union (1922-1991), Yugoslavia (1918-2003), and Czechoslovakia (1918-1992).

27. But while some commentators may seek to use history to close off the federal option, it is better to view the past as a means of providing a wider perspective on the paths available to us. Policy-makers should not necessarily treat examples of federal difficulties as a reason to rule out a federal project for the UK. Such case studies could as easily provide an opportunity to learn by mistakes, and increase the chances of attaining success in a future federal venture.

28. Closer inspection of ‘failed federations’, for instance, helps demonstrate the many varieties of federalism that exist and the different contexts in which it succeeds or otherwise. It also suggests that definitions of success and of failure can vary. The problems experienced by some of the systems already described may relate to issues not directly arising from the federal models they deployed. Some used authoritarian government, others had pronounced cultural or ethnic divisions, others still had economic deficiencies. It is necessary, therefore, to treat direct comparisons with the UK with caution. Failure in one state should not necessarily prompt pessimism regarding the prospects for a UK federation.

29. Equally, it is important not to assume immediate equivalency when we consider what may be termed ‘federal successes’, such as the United States of America, Germany, or Australia. These countries do not, for instance, have the same multination character as the UK. Moreover, such federations have come about in different circumstances, for instance, as a means of binding together more disparate units (as was the case with the US in 1787), rather than accommodating an increasingly autonomous set of sub-components.

30. Some useful historic comparators include Canada, Belgium and Spain. All are developed economies with pronounced internal distinctions, even divisions, that have adopted, in different ways and at different times, federal approaches. The successes and difficulties associated with these countries offer to policy-makers valuable guidance for an attempt to devise different constitutional and legal structures for the post-devolution UK. The Committee should take them into account as part of its ongoing work in this area.

30 September 2015
Q100 The Chairman: Good morning, Professor Booth. Thank you for coming. You heard a little of our exchanges, and we may follow some of those lines later. Is there anything you would like to say at the beginning by way of introduction?

Professor Philip Booth: Not especially. I am not an expert on the constitution particularly; I am a public policy expert more generally. I came to the conclusion that is discussed in the book *Federal Britain* as a result of analysing this problem from a public policy perspective, almost ruling out every other possibility first and then coming to the conclusion in the book and thinking that it would be very difficult to improve on it. It is something I have thought about over a period of years, and to some extent I got there because I thought that nothing else could work in our current situation—other than Scottish independence, which may or may not happen and of course renders any other discussion moot.

The Chairman: Starting with your ideas about a federal solution for Britain, most of the people we have spoken to think that there is a very basic problem with that concept, namely that England is so large—both in terms of population and wealth—that in the context of looking for a stable situation it seems somewhat of a big barrier to overcome.

Professor Philip Booth: I do not think that is a barrier at all. A very large number of federal Governments around the world have very different situations in relation to the population size of the units within the federal entity. Australia, for example, has some very tiny states and two pretty dominant ones; Switzerland has an incredible variety of population sizes within the cantons; and so on. It depends of course what you compare it with. Even when we had a completely unitary United Kingdom with no Scottish devolution at all, the Scottish National Party used to talk about the Westminster problem, whereby the Westminster Government were essentially controlled by, in those days, the Conservative party, because 85% of seats, or a bit less, were English seats. So any solution other than Scottish independence is going to have the problem, if it is a problem, of a large, dominant part of the United Kingdom that controls a large proportion of parliamentary seats.
The federal solution deals with it rather better. Certainly under my proposals, what would happen is that the federal Government would have responsibility for only a relatively small range of issues where there really was a common interest—border control, defence, foreign policy and so on. Other issues where you might get problems of what economists call rent-seeking—one part of the country trying to enrich itself at the expense of another part of the country or whatever—would be handled by the nation states in any case. So given that I propose that the federal United Kingdom controls things only where there should be a strong common interest, I do not really see that it should be a problem—and if it is a problem, it will be a bigger problem with any other solution.

The Chairman: The United Kingdom Prime Minister would have significantly less power and influence than the English Prime Minister.

Professor Philip Booth: It depends what your main concerns are, I suppose. If your main concerns are security, defence, border control and those sorts of things—the traditional night-watchman functions of government—including relationships with the European Union, and if you believe that they are the primary functions of government, the United Kingdom Prime Minister would be more important than the English Prime Minister. If your main concerns are health, education, welfare, et cetera, the English Prime Minister would have more power than the United Kingdom Prime Minister. But that is a perfectly good and reasonable thing. There should be more decentralisation of these issues.

Q101 Baroness Dean of Thornton-le-Fylde: I have a couple of questions on welfare and I will put them both together. What would be the purpose of the union in a new federal system if you had total devolution of all fiscal policy as such to, in this case, Scotland, but to the other nations, too? Would not the reaction be, “Well, you are giving us all fiscal policy but we are not going to have defence or monetary policy as well”? How would you be able to get agreements that would be long-lasting rather than an Elastoplast that we would then come back to?

Professor Philip Booth: This would be a longer-lasting and more stable solution than any other solution. There is resentment in England about the perceived iniquities of the Barnett formula and so on—whether they are iniquities or not is a different matter. There is resentment in Scotland that it is a relatively small country that could manage an awfully large number of things better if they were devolved, such as welfare. For the vast majority of the union’s existence, the state did not get involved with issues such as welfare, health, education and so on. In so far as it did, they tended to be dealt with at local level or at Scottish and English level separately; Scotland and England developed quite different education systems, as did the Welsh to some extent.

We have this obsession in the UK with everything being identical, the opposite of which is often described using the words “postcode lottery”. We should experiment a bit—indeed, a lot—with allowing not just the nations within the UK but local areas to have wide differences in terms of the approach they take to welfare. They might learn from each other. They might be able to experiment with things. They might be able to develop a policy that is much more appropriate for their local situation than a unified welfare policy across a country of 65 million people.

Baroness Dean of Thornton-le-Fylde: In a nation that has had and used the Barnett formula and claims that it wants to keep the Barnett formula—obviously that has been conceded in the Scotland Bill—if you were talking about full fiscal independence as such, how would you be able to provide for the people of Scotland if the whole fiscal area went to Scotland on an equal basis? Or are you saying that you need to continue with the support that is given at the moment?

Professor Philip Booth: No, I do not think that you should continue with the support that is given at the moment. It has not been at all helpful to Scotland, first, to have this bias in the public spending
formula so that Scotland has become so dependent on the state, or the size of the state. Secondly, Scotland could run a welfare system that is appropriate for Scotland and much more effective than the welfare system determined centrally by the United Kingdom. A lot of countries that are an awful lot smaller than Scotland run welfare states that are appropriate for their needs. They are perhaps more flexible and able to deal with local-level problems more effectively than a welfare state across nearly 70 million people.

Baroness Dean of Thornton-le-Fylde: Let us take the health service. Are you saying that the health service should, under your proposals, be totally funded from within Scotland?

Professor Philip Booth: Yes.

Q102 Lord Lester of Herne Hill: The other countries to which you have just referred all have constitutions that guarantee basic rights of citizenship and fundamental rights quite irrespective of what treaties may say. So they all have domestic guarantees. As I understand your position, you do not mind at all the idea of devolving human rights and fundamental rights on a broad scale, provided it satisfies the European Convention on Human Rights. Is that your position?

Professor Philip Booth: It is. I cannot say that I have thought about every possible nook and cranny and potential variation and anomaly within that position, but my broad position is yes. Assuming the UK remains a member of the European Union and a signatory to the European Convention on Human Rights, it would in effect provide the human rights framework for the UK as a whole. When it came to other things, and I have listed one or two of them in the paper, such as abortion, euthanasia, marriage and that type of thing, they could be dealt with at national level. Indeed, in some of these examples, that is already the case. I think I am right in saying that Scotland for a long time—I am not sure whether it still does—had separate marriage legislation from England and Wales. Northern Ireland still has different abortion legislation, which is widely supported by the people of Northern Ireland. In England and Wales, it is different from Northern Ireland and there is more support for a different position in England and Wales. In a lot of federal systems, the United States being one example and Australia in regard to some of these issues being another, these things are determined below national level. I do not think there is any reason why that should not be the case with regard to the UK, particularly given Scotland’s separate legal traditions.

Lord Lester of Herne Hill: In the other federal systems—the United States, Canada or Germany, for example—their courts, among others, apply federal standards; there are certain basic rights of citizenship that cannot be eroded by the states or the provinces. I am not clear at all about your position on that. Are you relying only upon the EU laws and the European convention to limit what may be done under your scheme, or are you advocating some kind of Bill of Rights and Freedoms that would guarantee the basic rights of citizens wherever they happened to be within the United Kingdom?

Professor Philip Booth: Whether you have a Bill of Rights is a separate issue, which it is important to discuss regardless of whether or not you move to a federal system. Currently, basic rights in the UK are largely determined under the Human Rights Act and the various conventions that we have signed. There are other aspects of legislation, some of which are already devolved—I think abortion is in the process of being devolved to Scotland—where you do not need uniform approaches across the whole of the United Kingdom. The experience of other countries, and the UK in the past, demonstrates that. If we moved from the approach of integrating European law and European human rights into our own legal system to have an entirely separate Bill of Rights, it would make sense for that to apply across the UK, but it ought to deal with the things that are currently dealt
with by the European convention rather than things such as what marriage laws should be or what the law relating to euthanasia or abortion should be.

**Lord Lester of Herne Hill:** Could I follow that up? Does it not trouble you, for example, that a gay couple in Northern Ireland cannot have a marriage, which they could have in the rest of the United Kingdom, or that a publisher in London publishing newspapers has to comply with a Defamation Act in England and Wales but not in Northern Ireland, which has an antique common-law system? Those kinds of examples are ones that people like me keep quoting. What I am interested in is whether they trouble you or not.

**Professor Philip Booth:** No, they do not trouble me at all. They currently exist and there are some proposals to remove those differences. It does not trouble me. In principle, I believe in legal competition, and that as a result of that legal competition you protect liberties rather better than you do if you have a unitary system where the same policy applies absolutely everywhere and it cannot be changed gradually, one place at a time.

**Q103 Lord Norton of Louth:** I want to tease out some of your views on the existing situation. You expressed them in your article but this is giving you a chance to tease them out a little, particularly what you see at present with the problems of the West Lothian question for devolution and the union. Essentially, you are arguing that it creates instability.

**Professor Philip Booth:** Yes. It has created an unsustainable situation, which is why there is the English votes for English laws proposal. I am not sure whether it has been entirely passed or not. The whole situation is rather confusing, as I might be able to express in a moment. I do not think you can continue with a situation where 18% of Members of Parliament are elected by nations with devolution and where those Members of Parliament come to Westminster and are able to vote on issues that do not affect their constituents at all. Something is going to crumble somewhere. It has to be dealt with by a lasting, sustainable and watertight solution. As I mentioned in the paper, there were even rumblings of problems when the Ulster Unionists were able to scupper legislation that Harold Wilson wanted to put through when he had a tiny majority.

**Lord Norton of Louth:** Yes. So your view would be that the only way to answer the West Lothian question properly is that either we would have to revert to a unitary state or, at the other end, go towards a federal system—that is the only way one could properly answer the question.

**Professor Philip Booth:** Or have Scottish independence.

**Lord Norton of Louth:** Yes. But until one moves to that, however, your point is that it is going to be inherently unstable.

**Professor Philip Booth:** Yes. You have to find a mechanism whereby Members of Parliament who represent constituencies that the issues do not affect do not vote on those issues. English votes for English laws is one way of trying to deal with that, but I do not think that it is stable and I do not think that it will work.

**Lord Norton of Louth:** There is an alternative view. I do not know whether you heard Alun Evans before you. One of the proposals he put forward is an alternative to English votes for English laws, which is the Northern Ireland solution, if you like. You reduce the number of Members from Scotland so that at least it means each Member is the same when they are deciding matters. Would that not be something that might provide a solution?

**Professor Philip Booth:** It might do and it might work, but if it works it will work only as a result of luck. Northern Ireland has a population of about 1.5 million and at the moment only 18 MPs—of
course, that was 12 in the past when they had a devolved Assembly—so it is really rather unlikely that the Northern Irish MPs would crucially affect an important vote in the United Kingdom Parliament. This could work two ways. Imagine that there was a vote to go to war, which is not inconceivable at the moment, and Scottish MPs were underrepresented and the UK Parliament voted to go to war. The other possibility is that there is a vote on a major issue to do with health reform, where the reform is undermined as a result of the campaigning of Scottish MPs. That actually happened under the last Labour Government and Gordon Brown watered down the proposal, even though the proposal would not have affected the Scottish Members at all. England did not get what it wanted as a result of the action of the Scottish MPs. So this could work in both directions. If it happens with a crucial issue, especially where Scottish Members are unrepresented and it relates to something like going to war, there will be a constitutional crisis. It will not be stable.

**Lord Norton of Louth:** Would you regard that, from your point of view, as unstable and as bad as English votes for English laws?

**Professor Philip Booth:** English votes for English laws has different problems. We will not really understand the extent to which those problems turn out to be realistic and practical issues rather than theoretical problems until it is tried. The problem with English votes for English laws is that you will potentially have a UK Government elected of one colour; they do not have a majority in England but all the Ministers are appointed by the UK Government, which then cannot pass legislation in relation to certain things (such as health and education). As I said earlier, people have different priorities for different things, but health, education, welfare and these types of things are regarded as very important. Of course, welfare is not devolved, but health and education are regarded as very important. That Government may not be able to pass legislation on those issues. Furthermore, all these issues have fiscal consequences, and that raises the question of exactly when English votes for English laws should apply. You also create two categories of MP. And, also, when a Government has a majority in the United Kingdom but not in England, what is to stop them simply repealing English votes for English laws? It was easy to pass; it will be easy to repeal. The irony for the Conservative Party might be that it has passed legislation that marginally affects things while it is in government itself and then is repealed when it hopes that it will work.

**Lord Norton of Louth:** The whole point of the West Lothian question is premised on the fact that there are two classes of MPs already. What about the argument that in fact very few Bills will be certified under the provision of English votes for English laws, so it might not be that disruptive or that unstable in the way you are suggesting?

**Professor Philip Booth:** It will either be disruptive or it will not achieve what it is meant to achieve. It cannot resolve the West Lothian question and not be disruptive; let us put it that way.

**Lord Norton of Louth:** It could achieve what it is meant to. People in England could feel that at least if it is exclusive to England it will be decided on, or at least there will be a veto, by English Members. At least that is fair, if needed, even if it is not much used.

**Professor Philip Booth:** It might be. That would depend upon sentiment rather than rational analysis, which is why it is possible that English votes for English laws might be okay, but I can see a large number of minefields in front of it. Potentially, I do not think that it is stable.

**Lord Lester of Herne Hill:** If Edmund Burke was sitting here listening to you, I wonder whether he would be arguing for Parliament itself to be a collegiate, cohesive institution and against the idea of cutting it up into different national, racial, ethnic, linguistic or anything else you like sections. Is your view that we should aspire as a United Kingdom Parliament to that kind of notion, or that we
should really be dividing up into different parts of the United Kingdom in the way that we organise Parliament?

**Professor Philip Booth:** No, I do not think so. I think we should have one Parliament for a federal UK, which would be much more Burkean in the way it operated because it would be responsible for a much smaller range of issues: the sorts of issues that were considered by Parliament when Burke was around, such as defence, foreign policy, basic liberties and that type of thing. Other issues, which may be quite vital to the population but are of less profound importance, certainly as far as Burke was concerned, would then be handled at national Parliament level. I have also suggested of course that these functions are radically decentralised and radically localised, as they were when Burke was around. So it would raise the status of Parliament once again to a body that met to discuss crucial issues of national security, the defence of the realm and the control of borders. It would return us to those sorts of days.

**Lord Lester of Herne Hill:** But not social welfare and human rights.

**Professor Philip Booth:** From the early 19th century to the early 20th century, the national Parliament had very little role in social welfare. The solutions that developed were either community-based solutions or local solutions. They were not nationally legislated solutions.

**Lord Lester of Herne Hill:** Some of us might think that we have made some progress in the 20th and 21st centuries.

**Professor Philip Booth:** You might think so, but when we operate things such as welfare, health and education in such a centralised way across a country of 65 million people, as I keep saying in the book, we are really rather an outlier in those terms, especially with regard to the revenue that is raised by subnational levels of government.

**Q104 The Chairman:** I want to ask you about decentralisation. That seems to be the logical next area to talk about. Do you think it is important that we should have some symmetry in the provisions that are made? I am not sure whether you are familiar with what the Government have been proposing. Everybody has heard about the northern powerhouse—

**Professor Philip Booth:** City deals and so on.

**The Chairman:** Indeed, and the Cities and Local Government Devolution Bill. Do you think that these are helpful or are they going to create difficulties? Do you think we can have a patchwork, or will that create different problems?

**Professor Philip Booth:** I think that potentially it will create problems. I will not say that they are necessarily a bad thing, but it is not nearly as good an approach as having a radical programme of decentralisation, especially in terms of tax raising and revenue raising. We really are an extreme outlier when it comes to the proportion of revenue raised by subnational government, especially as far as large countries are concerned. It is arguable in some cases whether city deals actually lead to decentralisation or to a greater degree of centralisation. Many of them involve combining local authorities that will suck up powers from lower levels of local government to higher levels of local government. Some of them involve regulating things that were previously not regulated, especially in the area of transport. You may think that is a good thing or a bad thing, but it does not involve decentralisation.

My other concern is that it tends to create what economists call the potential for rent-seeking. In other words, if there is a powerful interest group—it might be a combination of business and political interests in Manchester, say—and an action by the Government might be influenced by the
existence of marginal seats or whatever in the relevant region, you are potentially getting an unhealthy relationship between local authority bureaucrats in some large cities and the Government, where certain things are done for one locality, one city, at the discretion of the Government and they are not done elsewhere. The only way you will get things done or get powers for your city devolved from the Government is if you make a big fuss about it. I would rather have a big government programme of decentralisation down to local government.

**The Chairman:** With some consistency across the board.

**Professor Philip Booth:** Yes. I have suggested, for example, that pensions policy would be handled at nation-state level. Health and education would be financed at nation-state level, but we need a much more decentralised system of provision, and working-age welfare would be financed at nation-state level but managed by local government.

**The Chairman:** That is the principle of subsidiarity.

**Professor Philip Booth:** Exactly, yes.

**The Chairman:** Do you think that should take into account or override a principle of efficiency? If it is more effective or more efficient to provide on a larger scale, should you be pushing in that direction or should you accept that you do it at as low a scale as possible, regardless of cost, if that allows the principle of subsidiarity?

**Professor Philip Booth:** There are a lot of advantages to localisation and the ability to experiment using local knowledge, adapting the system for the needs of the local area and so on. The only reason for centralisation is where you get the potential for one area of government or one local authority area to predate on another area—in other words, do something that imposes costs on another area. If it is simply an issue of efficiency, there is no reason at all why local authorities cannot combine together to create an efficient scale. That is already done to some extent in London in relation to the administration and management of services. It is done in Buckinghamshire in relation to the fire service. It would almost certainly happen in relation to policing, if that was decentralised to local authority level. If it is simply a question of efficiency, the smaller units have an incentive to combine with other smaller units and it would be in everybody’s interest to do that. You do not have to have that dictated by central government.

**The Chairman:** If there are no other points anybody wishes to raise, I will thank you very much indeed for coming.

**Professor Philip Booth:** It was a pleasure.
BACKGROUND

1. The British Academy is the UK’s national academy for the humanities and social sciences, operating as a Fellowship of more than 1,000 of the world’s most eminent scholars in the humanities and social sciences, elected for their outstanding research. The Academy funds research across the UK and in other parts of the world, in disciplines ranging from archaeology to economics, from psychology to history, and from literature to law – producing knowledge, insights and ideas that help us to address the great challenges of our time. The Academy seeks to increase public understanding of how all these subjects contribute to our economic, social, cultural and individual well-being.

2. The British Academy welcomes the opportunity to contribute to this very timely inquiry. There are already divergences emerging between the views of the Scottish Government and the UK Government – e.g. the Scottish Government wishing to ban GMOs which is not in line with the view of the UK Government. Further issues might arise if, for example, more welfare benefits were devolved to Scotland due to different attitudes on immigrants’ access to welfare benefits. A better understanding is needed of the significance of these differences in views and how they might be responded to – if that is felt necessary. This inquiry is an important contribution to developing that understanding. There is also a number of EU dimensions to the intra-UK constitutional set of questions as made clear in the comments below. The BA could provide further remarks on these matters should the Committee wish to pursue these.

3. This inquiry does not directly touch on devolution within England, including questions around the Northern Powerhouse proposals, questions of representation of rural areas, and the issue of the powers of city Mayors. There are indeed many questions to be addressed that cannot be covered by this inquiry. To this end the British Academy is establishing a series of ‘constitutional conversations’ to address these kinds of issues. The further question is whether a full constitutional convention is required.

4. The British Academy takes no position on the best form of constitutional arrangements for the countries of the United Kingdom, which range from a unitary state through devolution and federalism to the creation of independent states in one or more of the territories of the present UK. The Academy’s answers to the Committee’s questions assume that the UK will remain a state offering devolved powers to parliaments in some or all of its territories, but it expresses no opinion on whether that should be the goal of policymakers.

IS THE UK’S CURRENT CONSTITUTIONAL AND LEGAL FRAMEWORK ABLE TO PROVIDE A STABLE FOUNDATION FOR THE DEVOLUTION SETTLEMENT?
5. It seems unlikely. At the time of preparing this response, the Scotland Bill is in Parliament. The First Minister of Northern Ireland has resigned. The Wales Act 2014 enables certain tax powers to be devolved to the National Assembly, but the devolution is only in its early stages. Government proposals for ‘English Votes on English Laws (EVEL)’ were unveiled soon after the current Parliament opened, and were speedily revised in response to criticisms. Experts including Sir William McKay and Michael Clancy (see evidence session, HC Scottish Affairs Committee, 08.09.2015), remain dubious about the Government’s proposals, notably as to the workability of the proposed system of Speaker’s certification of bills and clauses. Others have challenged their applicability to income tax.

6. For the sake of argument, we might assume that the Scotland Bill is enacted in its current form; that the devolved institutions in Northern Ireland resume their functioning and the frozen offer of powers over Corporation Tax in NI is unfrozen; that all the tax and other powers in the Wales Act 2014 come into effect; and that an EVEL scheme that overcomes the technical objections of Sir William and others is implemented. Would that package then comprise a stable devolution settlement?

7. Again, this seems unlikely. The tax powers and spending responsibilities of each devolved parliament differ, and there are different levels of ambition in terms of obtaining broader tax powers. There will remain substantial vertical fiscal imbalance (VFI), such that the spending powers of each devolved parliament exceed its taxing powers, which entails the continuation of transfers from UK funds to cover the differences in spending. This is not to imply that VFI is in principle bad, as it is in fact common worldwide.

8. Constitutionally, the permanence of each of the three parliaments is increasingly being accepted (see, e.g., Scotland Bill clauses 1 and 2). The statutes still contain statements of (Westminster) parliamentary sovereignty, e.g., Scotland Act 1998 s.28, as prospectively amended by Scotland Bill 2015 cl. 2). However, these statements are likely to have little or no practical effect in future. The consequence is that, constitutionally, the UK appears to be heading towards asymmetrical federalism, in which definitive proposals for the governance of England have not yet been proposed. As mentioned above, this inquiry does not directly address the questions relating to devolution within England.

WHAT ARE THE KEY PRINCIPLES UNDERLYING THE UNION?

9. The Union of 1707 did not create a unitary state. It expressly reserved certain Scottish institutions as ‘for all time coming’ unalterable. As Lord Cooper observed, obiter, in 1953, ‘The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law’ (MacCormick v. Lord Advocate [1953] SC 396, at 411). Other constitutionalists have doubted whether Lord Cooper’s obiter statement has any practical effect. But certain Scottish institutions remained entrenched from 1707 to 1998, and have been more deeply entrenched since then.
10. Northern Ireland is what remains from the Union of 1800. Here, too, some matters may be regarded as entrenched, such as the status of NI as part of the United Kingdom unless the people of NI decide otherwise (Northern Ireland Constitution Act 1973; Northern Ireland Act 1998.) The NI settlement is also entrenched in an international agreement deposited at the UN. But the Northern Ireland Assembly has not exhibited the durability of the Scottish or Welsh parliaments.

11. The UK Parliament has accepted that the Union is dissoluble; for instance in the Northern Ireland Act 1998 s.1, and in accepting that if the 2014 referendum had resulted in a majority in favour of Scottish independence, Scotland would leave the Union. This distinguishes the UK from most, if not all, federal countries which prioritise the unity of the state.

12. Since the Old Age Pensions and National Insurance Acts of 1908 and 1911, a key principle underlying the Union has become one of social insurance: viz., that tax and benefit rates are uniform throughout the UK, such that people in a territory that has hit hard times, or individuals who have hit hard times, are protected by the funds available to the whole UK, rather than only the part of it where they live.

ON WHAT PRINCIPLES ARE THE UK’S DEVOLUTION SETTLEMENTS BASED, OR ON WHAT PRINCIPLES SHOULD THEY BE BASED?

13. Each of them has been territory-specific. The principles of the devolution settlement for Scotland were laid out in 1707. They were amended in the Scotland Act 1998, which largely implemented the recommendations of the privately-commissioned Scottish Constitutional Convention of 1988-95. Its recommendations were in fact exceeded significantly by the 1998 Act, notably in specifying reserved and not devolved powers. They were amended again in the Scotland Act 2012, following the recommendations of the Calman Commission. The current Scotland bill would implement the recommendations of the Smith Commission.

14. Proposals for devolution to Wales have tended to follow those to Scotland, but to be less extensive at each iteration. The Wales Acts of 1998, 2006, and 2014 have progressively expanded the powers and constitutional status of the National Assembly. However, Welsh powers now are still considerably less than Scotland received in 1999.

15. The Northern Ireland Assembly is the outcome of many years of joint attempts with the Irish Government to build consensual institutions there, beginning with the Sunningdale Agreement in 1973 and culminating in the Belfast (‘Good Friday’) Agreement of 1998, which was endorsed by referendums in both Northern Ireland and the Republic. Constitutionally therefore, power-sharing is entrenched. The requirement for cross-community agreement on government formation is not replicated in any other part of the UK. As a consociational settlement it requires a super-majority of votes in the assembly, it is liable to stall, as at the time of preparing this evidence. Also, proposals that may have majority assent (such as same-sex marriage) may not achieve the required supermajorities in the Assembly.
16. England has always been the residual, with the government and Parliament of the UK also comprising the government and parliament of England. For 180 years from 1707, this can perhaps be put down to neglect or confusion, with English politicians and jurists being unaware that the Acts of 1707 and 1800 had created a union state with three legal jurisdictions. However, the intractable questions of representation and finance now known, for shorthand, as the ‘West Lothian Question’ and the ‘Barnett Formula’ emerged from W.E. Gladstone’s first Government of Ireland Bill in 1886, and have not gone away. Westminster neglect of territory was also down to the two-party GB system and the absence of a significant territorial presence in Westminster after 1922.

17. The present government’s commitment to ‘English votes on English laws’ has wide popular support. Yet it is proving difficult to implement (see above). There are two classes of solution. One is to alter parliamentary standing orders in such a way that a majority of English votes, as well as a majority of the whole House, is required for certain classes of legislation. The other is to reduce the numbers, but not the relative powers, of MPs from the non-English parts of the UK. Some people have argued that EVEL should have been introduced through legislation, c.f. the Parliament Acts. There is a new issue stemming from the Scotland Act 2012 and, especially, the new bill, English Votes for English Taxes (EVET). This is even more difficult than EVEL and has been given almost no serious attention – it was not part of the remit of Mackay because it did not arise then.

18. The former class of solution is being pursued in this Parliament. There remain many loose ends. One of them is that a procedure for Lords voting on bills, clauses, and statutory instruments under the negative and affirmative procedures has not been proposed or decided.

WHAT IS THE EFFECT ON THE UNION OF THE ASYMMETRY OF THE DEVOLUTION SETTLEMENT ACROSS THE UK? IS THE IMPACT OF ASYMMETRY AN ISSUE THAT NEEDS TO BE ADDRESSED? IF SO, HOW?

19. It could be argued that the UK has survived as an asymmetric union since 1707, and that problems of asymmetry have rarely occurred. When correctly characterised, the ‘West Lothian Question’ refers to legislation that applies only to one part of the UK being imposed on that part by legislators outside it, or legislation for only that part being blocked by a majority of legislators outside it. Instances include the Patronage Act 1711 and the Scottish Poll Tax legislation in 1987 (Scotland); numerous Irish coercion acts in the late 19th century (Ireland); the blocking of the Welsh Church Act until 1920 (Wales); the Prayer Book votes in 1927 and 1928, and votes on foundation hospitals and student fees in 2004 (England).

20. So long as the UK Parliament respects its promises not to legislate on devolved matters, the West Lothian Question can now only affect England. Normally, as in the current Parliament, the party forming a majority in the UK also has a majority in England, and therefore the West Lothian Question can arise only when the governing party is divided.
21. Whether the asymmetry needs to be addressed is therefore a matter of political judgment, on which the Academy takes no position.

WHAT MIGHT BE THE EFFECT OF DEVOLVING POWERS OVER TAXATION AND WELFARE ON THE ECONOMIC AND SOCIAL UNION WITHIN THE UK? ARE THERE MEASURES THAT SHOULD BE ADOPTED TO ADDRESS THE EFFECTS OF THE DEVOLUTION OF TAX AND WELFARE POWERS?

22. This issue currently affects Scotland and Northern Ireland, but touches Wales only to a limited extent.

23. The Scotland Bill devolves a set of welfare powers to the Scottish Parliament, and simultaneously enlarges the suite of taxes devolved or assigned to the Scottish Parliament. It has been calculated that, when the Bill is enacted, the Scottish Parliament will be responsible for some 60% of public expenditure in Scotland. In terms of the proportion of tax revenue for which the Scottish Parliament is responsible (which stands at around 40%), it is important to distinguish between devolved taxes for which the Scottish Parliament would be ‘responsible’ and assigned VAT. Some of the most important fiscal issues are not in the Bill as they are non-statutory. These included the fiscal framework, the calculation of the remaining block grant (Barnett) and the formula for calculating the assigned share of VAT. These will formally be decided unilaterally by Treasury, a very unfederal feature. In practice, they will be negotiated in private between the governments, with a lack of transparency and accountability. Many voices have argued for an impartial body of some sort, at least to run the figures.

24. The only easy way to align these numbers would be to devolve, or share, National Insurance contributions in Scotland. This would either delink contributions from benefits, or delink rates in Scotland from rates in the rest of the UK, or both. Under the Smith Commission / Scotland Bill proposals, Scotland has powers to top up benefits but not to reduce them. However, its diminishing reliance on Barnett transfers means that a fiscal crunch is likely in the current Parliament. In fact, many people argue that National Insurance is a tax, albeit a non-progressiv e one. The devolution of all of income tax means that there will be no UK income tax (the only really progressive tax). It is worth noting that Switzerland, as the most decentralised federal state, still retains some proportion of income tax at the centre.

25. One way out of these paradoxes and contradictions is to make National Insurance and welfare benefits a shared function. Details of this might not be easy to work out and the sharing would be asymmetric – apart from wholly devolved matters, the Scottish Government could add but not subtract. Inevitably the two governments would have to develop cooperation in this area. Sharing this function might not reduce VFI to zero. In addition, there is the question of whether National Insurance and state pensions are in some sense essential to the social union.
26. In Northern Ireland, welfare has always been nominally devolved. In practice, rates have always tracked GB rates and the government of Northern Ireland has always sought supplementary funding in order to pay them. The breakdown of this system is one of the factors precipitating the current crisis of the Assembly.

27. The devolution of tax powers enables devolved administrations to maintain different policies from one another and from England. This is often benign (as, for example, in relation to indoor smoking, where regulations that were seen to work gradually spread to cover the whole UK). It could be malignant if it led to mutually destructive tax competition. Proposals to devolve Corporation Tax in Northern Ireland, currently suspended, could be an example of the difficulty of devolving tax powers.

28. A further complication is the second ‘no detriment’ principle from the Smith Commission: viz., that ‘Where either the UK or the Scottish Governments makes policy decisions that affect the tax receipts or expenditure of the other, the decision-making government will either reimburse the other if there is an additional cost, or receive a transfer from the other if there is a saving’. As the UK Government is approximately ten times larger than the Scottish Government, there are concerns that this principle might be unworkable when either government makes a policy change of any substance. There does not seem to be anything similar to the second no detriment clause elsewhere in the world. There seems to be a consensus emerging that is must be defined very narrowly but even then, it would be odd for the Treasury to be the sole judge in the issue.

WHAT PRACTICAL STEPS, BOTH LEGISLATIVE AND NON-LEGISLATIVE, CAN BE TAKEN TO STABILISE OR REINFORCE THE UNION? HOW SHOULD THESE BE IMPLEMENTED?

29. If policymakers wish to stabilise or reinforce the Union, the best general advice to them is to bear the Union consequences in mind whenever they propose legislation or executive action. Two prominent current examples are Government proposals to repeal or amend the Human Rights Act 1998 (HRA 1998) and to hold a referendum on UK membership of the European Union.

30. Because the Convention Rights in the HRA 1998 is embedded in the constitutional statutes creating the three devolved assemblies, there is a strong argument that repeal or replacement of the convention rights requires a Legislative Consent motion from each of them (see, e.g., evidence from Professor Aileen McHarg and Andrew Tickell, Scottish Parliament Devolution Committee, 10.09.2015). If the result of the EU referendum involves majorities for ‘leave’ in some territories of the UK and for ‘remain’ in others, then the West Lothian issues discussed above will become particularly prominent.

2 October 2015
Councillor Robert Brown, Liberal Democrats—Oral evidence (QQ 134-140)

Transcript to be found under Claire Baker MSP, Labour
Dear Lord Lang

The Union and Devolution

I welcome the opportunity to contribute to your inquiry on the Union and devolution. As Presiding Officer, my views and priorities are not party political, but driven by the long term needs of the Assembly as a strong, accessible, forward-looking democratic institution and a legislature that delivers effectively for the people of Wales.

First of all I would like to express my wholehearted agreement with the view in your report on proposals for further devolution to Scotland,¹ that a stable constitutional basis for devolution requires a coherent vision for the future of the Union. I believe that the current proposals for further devolution across the UK do not offer a stable and sustainable settlement for all parts of the Union, or for the Union itself as an entity.

Our constitution is developing in a piecemeal fashion and the approach to devolution to date involves ‘looking through the wrong end of the telescope’². The focus has been on what the devolved institutions can be permitted to do, rather than considering the wider impact on, and purpose of, the Union.

Our national governance should be, above all, clear and understandable – not just for politicians, civil servants and the legal profession – but for the people. This is a fundamental principle of democracy – the people should be able to understand easily who makes the laws by which they live. Yet the asymmetry of the devolution settlements across the UK leaves me concerned about the clarity, transparency and understanding of the nature of the different settlements, the role of Parliament and the purpose of the Union.

The forthcoming Wales Bill provides an immediate focus for those issues in terms of devolution in Wales. However, there also needs to be much wider debate and consultation so that all parts of the UK have an opportunity to shape a stable and sustainable constitutional arrangement that works for all parts of the Union, and for the Union itself.

Is the UK’s current constitutional and legal framework able to provide a stable foundation for the devolution settlement?

I have significant concerns about the piecemeal fashion in which our constitution is developing.

² As stated by Emyr Lewis in evidence to Constitutional And Legislative Affairs Committee, RoP 22 June 2015
New devolution and constitutional arrangements for Scotland are being negotiated in parallel to future devolution for Wales. A form of devolution in England is happening at a remarkable rate. Given this state of flux, and without a clear constitutional framework encompassing all the constituent nations of the Union, it is impossible to determine what the overall outcome, or impact on the wider Union will be. This is not a satisfactory way of proceeding and is unlikely to leave a stable or sustainable foundation.

I am also concerned that the provisions in the Scotland Bill currently going through Parliament are likely to set a precedent for the Wales Bill, which is expected to be published in draft in the next few weeks. Although there are some areas of commonality, I do not consider this appropriate as a general approach. The Assembly has not been consulted on these provisions and was not involved in developing them.

The Scotland Bill contains two provisions which highlight the difficulty of entrenching significant constitutional change in an individual Act of Parliament, rather than a broader settlement. The provisions I have in mind relate to the permanence of the Scottish Parliament and the provision of a statutory footing for the legislative consent process. As your Committee identified in its previous report, such clauses are of little or no value legally, even if the political signal is worthy, because of the overriding doctrine of the sovereignty of the UK Parliament.

I also have a particular concern about proposals to move the Welsh settlement to a reserved powers model in the forthcoming Wales Bill. I have long been an advocate of such a move. The current Welsh settlement is unclear and gives rise to a democratic deficit, as the population struggle to understand who to hold accountable, and who to lobby for change – the Assembly and Welsh Government, or Parliament and the UK Government. It also causes problems in terms of lack of stability and workability. As you will be well aware, Assembly Bills have been referred three times to the Supreme Court by the UK Government or Counsel General, in only four years of the current settlement. In itself, this is evidence of the weakness of our constitutional framework. We need a settlement that does not rely frequently on the courts for interpretation.

A move to reserved powers will improve the Welsh settlement only if it achieves three objectives: clarity, workability and no roll-back of the current competence. The forthcoming Bill presents a prime opportunity to achieve those goals by considering what should fundamentally be reserved to the centre and what, therefore, should be devolved. That opportunity should not be missed.

However, if there is no fundamental organising principle to the design of the reserved powers model, then these criteria are unlikely to be achieved. This position was echoed by the Assembly’s

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Constitutional and Legislative Affairs Committee during their recent consideration of the proposals for further devolution. 4

If, instead, the approach taken is a piecemeal consideration of what powers Whitehall departments consider to be appropriate for devolution then the resulting settlement would be a backward step for the Assembly and would undoubtedly need revisiting in the near future. It would not provide the ‘clear devolution settlement for Wales which stands the test of time’ referred to in the Secretary of State’s foreword to the Powers for a Purpose Command Paper. 5

The efforts of the Secretary of State for Wales to gain consensus on the recommendations for devolution through the St David’s Day process, and the forthcoming Wales Bill, were laudable. However, I fear that a pragmatic approach to achieving political support in the short-term will come at the cost of a principled approach to considering further devolution more widely.

The creation of a reserved powers model for Wales may at first appear to be straightforward, as the devolution settlements for Scotland and Northern Ireland have been operating on such a model since 1999. However, unlike Scotland and Northern Ireland, Wales forms a single legal jurisdiction with England. This engenders different and complex challenges in creating a workable settlement, in which both of the legislatures operating in the territory can pass holistic, effective, enforceable legislation, without having inappropriate effects on people or institutions across the border. Creation of a separate Welsh jurisdiction could remove, at a stroke, much of this complexity. Independent legal experts have shown how this could be achieved without the expense and red tape of separate court systems, separate legal qualifications, or devolution of policing, prisons, etc. 6 I would urge the Committee to look at this work. The jurisdiction is not a sacred cow, to be kept alive at any cost in terms of legal complexity and uncertainty, with their attendant burdens on individuals, public authorities and business. 7

The recent proposals to create a special Parliamentary process for English Votes for English Laws also demonstrate a lack of understanding, in Whitehall, of the complexities of the devolved settlements. As I highlighted in my recent correspondence to Speaker Bercow and in evidence to the House of Commons Procedure Committee,8 the proposals raise a number of concerns relating to the role of the Speaker and the relationship between the Assembly and the House of Commons.

4 National Assembly for Wales, Constitutional and Legislative Affairs Committee, The UK Government’s Proposals for Further Devolution to Wales, July 2015
5 Wales Office, Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales, February 2015
6 As discussed in the recent report by Wales Governance Centre and UCL Constitution Unit, Delivering a Reserved Powers Model of Devolution for Wales, September 2015
7 The complexities of creating a reserved powers model in a single jurisdiction have also been raised by Constitutional and Legislative Affairs Committee, The UK Government’s Proposals for Further Devolution to Wales, July 2015 and in the recent report by Wales Governance Centre and UCL constitution Unit, Delivering a Reserved Powers Model of Devolution for Wales, September 2015
8 HoC, Procedure Committee, Letter to the Chair and memorandum from the Presiding Officer of the National Assembly for Wales, August 2015
It is not clear how the “English Votes” process will relate to the well-recognised process for seeking legislative consent from the Assembly (and the other devolved legislatures) where Parliament is considering a Bill on a devolved matter. The proposals also fail to recognise the complexities of determining legislative competence under the Welsh settlement as it currently stands, let alone under the three different devolution settlements. In itself, this again illustrates the importance of clarifying the constitutional settlements in each of our constituent nations and across the Union as a whole.

**Principles underlying the Union and devolution**

In my view, the fundamental organising principle for the devolved settlements should be subsidiarity: the centre should reserve to itself only what cannot be effectively done at a devolved level. Too often our focus is on the principle of parliamentary sovereignty as our organising principle, a concept which will appear increasingly inappropriate in a devolved UK where devolved institutions enjoy equal standing and equivalent powers, albeit in more limited fields.

In evidence to the Assembly’s Constitutional and Legislative Affairs Committee, I have stressed that the absence of such an organising principle to justify reservations makes interpretation of the settlement problematic.\(^9\)

The Commission on Devolution in Wales (the *Silk Commission*), set up by the UK Government, spent much time and effort reviewing the powers of the National Assembly, and in their second report recommended modifications to the constitutional arrangements which would enable the UK Parliament and National Assembly to better serve the people of Wales.\(^10\)

In doing so, they developed a set of principles to be used to test any proposed changes to the devolution settlement – in contrast to the ‘reactive and piecemeal’ approach to devolution taken to date. Subsidiarity was one of those principles. The others – which I also applaud - were: accountability, clarity, coherence, collaboration, efficiency, equity, stability, and localism. I believe that the UK Government should give serious consideration to those principles, with subsidiarity in prime position, in developing the Wales Bill.

In summary, I firmly believe that Wales, and indeed all the constituent nations, should be treated with parity of respect and consulted on an equal basis, allowing for the different requirements of each.

**Practical steps to strengthen the Union**

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\(^9\) National Assembly for Wales, Constitutional and legislative Affairs Committee, UK Government’s proposals for further devolution to Wales, *Evidence from the Presiding Officer of the Assembly*, June 2015

\(^10\) Commission on Devolution in Wales, Empowerment and Responsibility: Legislative powers to Strengthen Wales, March 2014
A coherent pan-UK approach is required. We must aim, therefore, for genuine joint discussion, to which all four nations of the Union contribute on an equal footing.

The existing devolution settlements for Northern Ireland, Scotland and Wales are very different, and it is not easy to see a rational basis for all of those differences. Although I would not expect full co-ordination of the devolution settlements, recognising that different nations move at different paces and the appetite for devolution within each may differ, I do believe that it would be appropriate, fair and clearer if the model for devolution had a degree of consistency. This could be achieved, as I have indicated, if the principle of subsidiarity was used to draw up a list of matters that should, fundamentally, be reserved to the Union, with other matters being regarded as “devolvable” subject to agreement between the centre and the devolved authorities. This is akin to the present model of devolution in Northern Ireland, albeit that I would argue that not all matters reserved in that settlement need to be so, applying the subsidiarity principle.

So, alongside the current proposals for constitutional change, I believe all constituent nations need to come to the table to develop an agreed constitutional framework. Such a framework could recognise areas of commonality and difference, and consider the impact of devolution on the Union as a whole. It would also enable us to move beyond the current focus on process and Whitehall-driven administrative preference to a more principled, stable solution.

Any debate on the future constitution of the UK should include representatives of the devolved legislatures, recognising the role their Speakers and Presiding Officers have as guardians of the institutions of democracy. Therefore, I believe that it is essential – and urgent – to agree a mechanism to enable inter-parliamentary, not merely inter-governmental, discussion and collaboration on constitutional matters.

Key issues that I would urge us as parliamentarians to address are:

- improved understanding and appreciation of the challenges of devolution and the role of parliaments/assemblies;
- greater engagement of the legislatures in constitutional matters;
- applying the subsidiarity principle;
- putting legislative consent procedures on a consistent and equal footing;
- the question of English devolution;
- the funding of constituent nations of the Union; and
- the consolidation of our statute books – to improve the accessibility of the law and understanding of the settlements and existing/future legislation in each nation.
And finally, I wish to reiterate that an immediate practical step for Wales would be a new Wales Act which delivers a clear, workable, principles-based approach to determining a reserved powers model for the Assembly in Wales. This should include addressing anomalies in the Welsh constitutional settlement such as general transfer, of all remaining UK Ministerial powers in areas of Assembly competence, to the Welsh Ministers.

I trust that you will find this a useful contribution to your work. If you require further information I would be pleased to assist.

Yours sincerely

Dame Rosemary Butler AM
Presiding Officer

2 October 2015
My suggestions for reform would be as follows:

1) Abolish the House of Lords

2) Reduce the size of the House of Commons to 2/3 of its current number

3) Introduce proper Regional Government

4) Form a peer or oversight body drawn from the regions (via Regional Government)

5) Form a body to look solely at outward facing strategic issues affecting all countries within the UK.

6) Limit the powers of Prime Minister, particularly those concerning war & armed conflict.

7) Devolve tax raising powers to the various all countries within the UK & abolish the Barnett formula.

October 2015
The Chairman: Good morning and welcome to our witnesses. You have both had distinguished careers in various specialised walks of life and so you brought a fairly broad approach to the work with which you were entrusted on developing devolution, in Wales and Scotland respectively. We are very interested to hear from you as to the kind of thinking behind that development and, possibly, how you think it now fits into the overall picture. In particular, as you are aware, our inquiry is looking at the union and devolution. We are very interested in the relationship with the union and any detriment that may have applied in either one direction or another. Perhaps I can start the questions by asking how you approached the task of establishing what principles should underpin the devolution of powers in Scotland and Wales. In particular, what principle did you apply to maintaining a strong union, to which you both committed in the papers that you produced? Would you like to start, Sir Paul?

Sir Paul Silk: We had the advantage of going second, of course, so we had the report from Sir Kenneth Calman and his commission to look at so far as our principles were concerned. But in developing a set of principles we had slightly different sets for our first report, which was about fiscal matters, and our second report, which was about wider legislative matters. Essentially, we tested our own views against those of witnesses and against our public engagement sessions. That was how we came up with the principles which we articulated. I should say that our commission, unlike Sir Kenneth’s, also contained a member from Plaid Cymru, so we never avowedly said that it was a unionist document. Clearly, had we done that, we would have lost the support of one of the members of the commission. You will not find anything in our report that is avowedly in support of the union.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

The Chairman: I see. Sir Kenneth?

Sir Kenneth Calman: Thank you very much indeed. It is a pleasure to be here. This is an important part of the way in which the commission’s work has developed over the years, as it happens. The title of our report referred to “serving the people of Scotland better” and was to “continue to secure the position of Scotland” within the UK. When the commission was being set up it was discussed in the Scottish Parliament, where it was raised that the report should include independence. That was turned down by the Scottish Parliament and therefore we did not discuss it. I suspect that that would not be the case now, but it certainly was in 2007. One of the interesting bits in the report is a sentence saying, “The UK now has a territorial constitution”, and that it needed “to be more fully and clearly set out”. I had forgotten that we had written that.

We looked at principles. When we set up a series of sub-groups, the first was on principles. It included things such as the success of devolution, reserved and devolved functions, economic, social and political unions, et cetera, and strengthening co-operation—but the constitution and its relevance only briefly. That has probably become more relevant now that we have had a referendum which said that it would be right to stay within the union. That may well colour some of the discussion.

The Chairman: Do you feel that the legislation that followed your report met your principles and requirements? I know that some of the more exciting parts of your proposals have not yet come into force, which is extraordinary after so many years, but in practice do you feel that you are still on course, as you see it?

Sir Kenneth Calman: Yes, I think so. We always felt that this was not necessarily the last review of devolution and that further things would happen. What it did was to bring three political parties together to find a number of things in common, and then to find the mechanism of going through two Parliaments and coming up with an Act, which was quite helpful to do.

The Chairman: Thank you.

Q19 Baroness Taylor of Bolton: Just a thought on what you said. You mentioned that you did not look at independence because the Scottish Parliament at that time did not put it in the remit. We have been told that part of the problem is that no one has made the case for the union and therefore, in a sense, nobody is quite sure what we are talking about. On the other side, people are saying that the actual consequences of independence have not been thought through. Would it have put everybody in a stronger position if you had been able to look at the full picture—the consequences of independence and the actual nature of the union—rather than just the technicalities of what could be devolved successfully?

Sir Kenneth Calman: The answer to that is yes. That is why the commission had a relatively small number of things which it wanted taken forward in terms of devolution. The Smith commission has taken that further. It is all bits and pieces here and there and it could do with something coming together. That was the point I was making about the referendum. Having a referendum that said “We would like to remain part of the UK” would be the starting point for really looking at the constitution, because you still need to say why being in a union is better than not being in a union.

The Chairman: Could I follow that up? I have here the opening chapter of The Future of Scottish Devolution within the Union: A First Report, of December 2008. In its paragraph 4.25, you talk about “preserving the integrity of the UK”. The last sentence in that paragraph says: “Scotland also benefits from strong and effective defence and foreign policies and a sense of belonging to a United Kingdom”. Now, the unionist parties in Scotland have all but been wiped out in Parliament. I cannot
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

speak for the Scottish Parliament yet; who knows what will happen there next year? But does that give you a sense that perhaps you got the balance wrong or do you think, “Nothing to do with me, guv”?

Sir Kenneth Calman: I do not think that we necessarily got the balance wrong but things have changed. That is why your point is particularly important. This is the opportunity to rethink things: what does the union brings to Scotland and, indeed, what does Scotland bring to the union? That is the opportunity.

The Chairman: Sir Paul, if you were doing your work now, would you do it slightly differently in the present environment?

Sir Paul Silk: The political circumstances of Wales are clearly very different from those of Scotland. That, I think, is the reason why Plaid Cymru was prepared to be a member of our commission, whereas the SNP was not prepared to be a member of Sir Kenneth’s. I suspect that it would not have been sensible for us to look at whether Wales would be better or not as an independent country. That really is not on the political agenda, even for Plaid Cymru, so some of the issues that might have been looked at in the Scottish context on the benefits of the union might not have been so sensibly looked at by us. I echo what I think Sir Kenneth’s implication was: that it is high time that a wider look was taken at the constitution, which clearly this Committee is doing.

Q20 Lord Morgan: Bore da i’r ddau. We were asking about the legislation that followed your reports and is scheduled to follow them. I presume that you have seen the draft Wales Bill, which has occasioned some controversy already about the extent of reserved powers to be vested in the Assembly. Do you feel that the Bill broadly reflects the proposals of your commission?

Sir Paul Silk: As you know, Lord Morgan, it is a very long Bill. I have glanced at it but I have not read and properly understood it. In fact, if I could be presumptuous enough to say this, it would be very desirable if this Committee were to do some pre-legislative scrutiny of some of the issues that the Bill raises. The Bill does not reflect what we recommended, so clearly there is an element of disappointment. For example, our principles led us to conclude that the devolution of many aspects of policing to Wales was desirable. That was not contained in the St David’s Day agreement and is not contained in the Bill, so in that sense there is a disappointment about some of the elements of the Bill so far as what is reserved and what is not. There are other issues as well which I think we are more aware of since our commission reported. What might the consequences be—I am not a lawyer—through retaining the civil law and criminal law as a non-devolved matter, but not inhibiting the National Assembly from legislating in areas where it has responsibility, which might involve criminal law penalties or alterations in aspects of the civil law? That very important issue has been raised by academic lawyers and is exactly the sort of thing which I imagine this Committee would have a powerful opinion upon.

Lord Morgan: Are you sympathetic to that kind of argument about Welsh legal separatism, as a matter of interest?

Sir Paul Silk: I am not sympathetic personally, nor was the commission, to the idea that there should be an entirely separate legal profession or—a separate system of courts and of their administration. But the argument has been put recently, and I can see some attraction in it, that you do not have to set up a whole separate system like that to have some de facto separation between the systems of justice in Wales and England.

The Chairman: On the question of looking at legislation, we do not normally get involved in pre-legislative scrutiny. Other parts of the system do, but we do not. I will bring in Lord Cullen, if I may.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

Q21 Lord Cullen of Whitekirk: I would like to ask you about the principles that would be applicable to proposals for future devolution including, for example, to other parts of the United Kingdom. That may raise a number of questions of principle, one of which perhaps is whether what is proposed, so far as it goes, would affect some essential aspect of the union. In other words, would it be destructive of the union in some important respect? Others may be of a more practical nature. For example, might one apply some criteria as to whether the proposal is workable or would in fact involve some failure to apply reasonable economy or resources? Do you see what should be the way ahead, if one is thinking about what criteria to apply to any future proposals for devolution?

Sir Paul Silk: Do you mean devolution inside England or further devolution inside Wales?

Lord Cullen of Whitekirk: It could be one or the other—inside England or further, so far as Scotland is concerned. I am asking much more generally.

Sir Kenneth Calman: My brief response is that a constitution is a means, not an end. The key issue is: what is the end? That is the principle which we could usefully discuss. Is England part of the devolution process or is it not? The city regions and other regions may well wish to be part of that, in which case it changes the way in which you can think about the union itself—and whether something like federalism would or would not work.

Lord Cullen of Whitekirk: But if you follow the popular will so far, you may get to the point where you endanger the union itself and produce something that simply does not make much sense. So how do you avoid these things happening?

Sir Kenneth Calman: That returns to the principle and is the bit that needs to be discussed first, rather than setting up a convention or a commission. It would be appropriate to say to a group like this: what really matters in the union? Many of the things will be reserved matters—what is reserved and what is not—and once that is clear, the next issue is: how far can the rest of it be devolved down? Having lived in the north-east of England for nine years, I am very sympathetic to the issues that there are up there, which are similar to those of Lanarkshire and Glasgow. I am slightly disappointed that they do not have the kind of resources to change things in the ways that Scotland could. If we were able to open that discussion about principles in the first instance, without setting up some major convention, that might allow us to answer your question. Answering it is actually quite difficult and would need quite a lot of people to talk about it.

Q22 Lord Norton of Louth: Can I turn to public understanding and address what might be the benefits of greater public understanding of the union, as well as the devolution settlement? Is there a danger that we are now focusing so much on the different parts and how they are governed that, by drilling down to detail, we are losing sight of the concept of the union itself and the benefits that might derive from it?

Sir Kenneth Calman: The answer to that is yes. One of the points that we made in our earlier documents, and indeed that you made in the questions that came through to us, is that the whole thing is confused. If you stopped somebody on the street and said, “Give me the relationship between what the UK does and what you do, and would like to do”, it would be very complicated. Indeed, we made the point that governance was now a multi-layered concept without any real sense coming in throughout it. That would be another major issue for any subsequent discussion. It is confused and, for those of us who have been part of it, it becomes quite difficult. I could not answer questions on Wales easily, for example—and why should I, easily? But I do not think I could because I am not close enough. Your average person in the street will have difficulty with it, which is why it needs clarifying. That is the purpose of it.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

Sir Paul Silk: There is an enormous degree of misconception in Wales about who has responsibility for what. I am absolutely sure that there is very little conception in many parts of England about the devolution settlement so far as it affects Wales. I do not want to tread into areas of Scotland that I do not know about, but I suspect that it was only the referendum that excited interest in England about devolution in Scotland.

Lord Norton of Louth: Do your answers not emphasise the point about the difficulties of discussing the union as a union? The point that you just made, Sir Paul, is to do with what has been delivered in a particular part, or how it relates to another part, rather than standing back and thinking about the union as a union, and what it delivers. If we take it that it would be valuable for people to at least address what the benefits may be of the union, the question is: how then do we get from here to there? Do you have any views on how we should go about it?

Sir Paul Silk: I certainly think, from the perspective of Wales, that there is a lot that can be done to emphasise some of the benefits that Wales brings to the union. People tend to see it as Wales taking from the union and not giving things, but I believe that, for example, the Armed Forces recruit a higher proportion of their numbers inside Wales than they do inside England. That is surely a benefit that Wales brings to the union. I do not want to tread into areas of sport too much, but we have achieved quite a lot across the sporting agenda, as well as in the cultural agenda. We provide three of the best national parks in the United Kingdom. These sorts of things, which we bring as benefits to the union, are not emphasised enough inside Wales and not projected well enough outside it.

Lord Norton of Louth: Who should be doing the emphasising?

Sir Paul Silk: That must be a job for the United Kingdom Government, must it not? The United Kingdom Government must have the responsibility for promoting the benefits of the union, involving all four parts of it.

Lord Norton of Louth: Because that is essentially a top-down approach—it is the responsibility of the United Kingdom Government—is there any scope for it being, in effect, bottom-up within the different parts of the United Kingdom itself?

Sir Kenneth Calman: That is an interesting question. What does Scotland bring to the union? We have some of those things. Research in medicine and science is a very important part of what we bring to the union and, if we were out of it, we would lose a great deal of the long-term funding. That was one of the points made by our own commission. It would be a very interesting exercise to get a group of people to write down the benefits to the UK of Scotland, Wales and Northern Ireland, because they are there and have to be there, otherwise it is just a top-down approach again. One thing that came through quickly in our commission was that people quite liked devolution. I was not very sure whether they would but it was actually quite positive. They said: “It’s helped us. It’s been nice. We can do things locally that we could not before”. But then you need the feedback on what we are doing for the union as a whole to be very positive.

The Chairman: If I may interject, you talked about the resounding success of devolution. I think you must have been talking administratively, where success was obvious and inescapable, because it was the same people in the same office administering the same things. Only the people voting for it and legislating on it were different.

Sir Kenneth Calman: No, I was meaning it slightly differently. Maybe I did not phrase it particularly well. When the Scottish Parliament came into being, there was some doubt as to whether it would add anything to Scotland, so I was meaning that rather than devolution itself. But that Parliament got some additional powers and we found that people, from farmers to whoever, found that
helpful. There was somebody they could talk to within the Scottish Parliament who had a responsibility for things. That very positive part of it came out quite quickly in the initial evidence that we took. We asked: “Is it worth having a Scottish Parliament?” They answered yes.

The Chairman: It was a matter of geography, because they had Members of Parliament for Scottish constituencies; it was just that they came to Westminster to do the work, although in the Scottish Grand Committee we spent quite a lot of time in Scotland.

Sir Kenneth Calman: You are absolutely right, but it gave them a feeling that it was closer to home and that therefore it was easier to get an answer from somebody.

Q23 Baroness Dean of Thornton-le-Fylde: Good morning. Sir Kenneth, in your 2008 report you said, “Devolution and the Union are two sides of the same coin”. I just wondered whether you would write that today, given the way in which things have moved on. You then go on to stress subsidiarity and talk about political and economic union, protection of fundamental rights and so on. Is there a point at which a political union has any kind of role in the absence of economic and social union? If you do not have the three together, what is the point of having a political union?

Sir Kenneth Calman: One thing that we wanted to emphasise was that the social, political and economic unions were fundamental to having a UK. If you took them all away—if you gave Scotland all the economic levers to pull and you said, for example, “You can run your own social services; why don’t you do all that?”—you would have to ask whether it was worth being part of a union. We were trying to reserve enough within the context of the UK to make sure that people felt that it was important to be part of both. A lot of people will say, “I’m definitely a Scot and I’ve always been a Scot, but I want to be part of the UK because it has given us more”. If you took it the other way round—what has the UK given to Scotland and what has Scotland given to the UK?—you could draw up quite a nice list of things saying that it is valuable for both groups to have a union, linked into a strong Scotland, Wales and Northern Ireland.

Baroness Dean of Thornton-le-Fylde: Just to come back on that point of subsidiarity, you are not looking at subsidiarity being the substantial or whole devolution of the economic or social.

Sir Kenneth Calman: Yes. If you look at the Smith commission’s recommendations, they go further than ours did—quite properly. I think that Lord Smith did a remarkable job getting all these things together in such a short time. The further you go down that road, the further you go away from a union, which is why I think it needs to be taken very carefully. If you do it with one country and not another country and have differences between Scotland and Wales, it is obvious that there is a difference, so why do we not go the whole hog and become independent?

Baroness Dean of Thornton-le-Fylde: Can I pick up on that point about doing it in one country and not the other? On asymmetry, does it make any sense to have these differing models for each of the nations within the UK, particularly when England has 85% of the population?

Sir Kenneth Calman: I do not think that it does. That is why, having lived in the north-east of England for a period and looked at the problems there—and what a lovely part of the world it is—and given that it was not part of this, I think that England should be very much involved.

Sir Paul Silk: I think that there can be justifications for asymmetry. As I mentioned, we recommended that policing should be devolved to Wales, but I can see that there is a perfectly tenable argument, which is what the St David’s Day agreement contained, that these things should not be devolved and that it is more efficient to have policing delivered on an England and Wales model, with the responsibilities lying with the Home Office rather than the Welsh Government. I
can understand that symmetry between Wales and Scotland can arguably not be the desirable outcome.

**Q24 Lord Judge**: We speak about devolution in relation to Scotland and Wales, but nobody ever speaks about it in relation to England. There are obvious reasons why not, but does not the question arise for consideration?

**Sir Paul Silk**: It most certainly does. The current Bill is called the Cities and Local Government Devolution Bill, so devolution is talked about, but in a different context in relation to England—not in the context of legislative devolution, which is what we are used to in Scotland, Wales and Northern Ireland. Obviously, the north-east rejected the idea of an assembly some years ago and, until there is a will for legislative devolution inside England, I cannot see any sense in imposing or trying to impose any sort of legislative devolution on parts of England. Whether the desire for legislative devolution will follow from the administrative devolution that is happening now is an interesting and open question.

**Sir Kenneth Calman**: I sympathise with what Sir Paul said. England is right at the heart of this. It needs to make up its mind whether it wants to have bits devolved and what those will be—some things might be more easily done than others—to give the kind of rationale that exists in Scotland. I think that England needs to have that discussion. In a sense I would welcome it, because it seems to me that it would make running other parts of the UK slightly easier if there was a broader way—whether you call it “federalism” or not does not matter—of putting things together. I think that is an important question.

**Q25 The Chairman**: Do you think there is a leapfrog component in this? For example, Wales has had less devolution than Scotland but is perhaps now catching up. Wales was not really keen on devolution in the first place—only 25% of the electorate voted for it—whereas in Scotland a lot of froth had been whipped up in various ways that I will not go into and therefore there was a ready market for it. Do you think that this is a problem or do you think that each country will find a settled area where it is comfortable within the union?

**Sir Kenneth Calman**: I begin where I started a minute or two ago. When the Scottish Parliament was created, the question was whether it would be worthwhile or not and whether it would help Scotland. The commission that I chaired found, as we listened to the evidence, that it had done. Giving it a little bit of extra power has made a bit of difference and I think that, if the Smith commission follows through, then it will also do that. One thing that I do not think we have been good at is learning from each other from what goes on. If you devolve something, we should have a report-back to the UK saying, “This is a really good thing to do, so why don’t you all do it?” I was thinking recently of plastic bags. We have had an 80% reduction in plastic bag use in Scotland; England has just begun this process. If there are good things that happen, we should make changes across the UK. There needs to be a UK forum to which you can bring good things that have made changes, so that other people can take them further.

**The Chairman**: I will resist the temptation to press you on university fees, Sir Kenneth.

**Sir Kenneth Calman**: Thank you.

**The Chairman**: Sir Paul, I was wondering about the leapfrog element and whether there is a comfortable settling point, which need not be the same everywhere but can match comfortable local needs.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

**Sir Paul Silk**: The comfortable settling point is what we aspired to achieve in our work and I think it is what the Government aspire to achieve in the way they have produced the Wales Bill, although, if you listened to what the First Minister of Wales said yesterday, you would think that they had not arrived at a comfortable settling point yet. So I see that we are not in a position at present in Wales where we can feel that we have come to a stasis from which we do not have to move any further forward. I rather regret that, because I think that we have in Wales spent rather too much time looking at constitutional issues—this Wales Bill that has just been introduced will be the fifth articulation of constitutional change in Wales. I think that a lot of people in Wales are tired of the constitutional debate and would much prefer to have debates about outcomes in health and economic development and all those sorts of thing that matter much more.

**The Chairman**: Perhaps you should send some Welshmen up to Scotland to spread the word. I fear that devolution has been demand-led so much that, instead of satisfying a demand, it generates further demand. Do you feel that that is the case, Sir Kenneth?

**Sir Kenneth Calman**: Yes, I think that that is right and, particularly with the current composition of the Scottish Parliament, it will not stop; it will continue. I thought that the commission that I chaired got it about right, but it was quite clear that, for many, things needed to go further than that and now it is very much further than that and it will not stop until it is something called independence.

**Lord Cullen of Whitekirk**: Is there a need for the public to be shown that the system that has been arrived at already is a logical point at which to stop, so that there is something about it that commends itself to the public and they do not want any more than that, short of independence? Is there a difficulty in getting that across and creating a public understanding of what is enough, or does one simply rely on exhaustion?

**Sir Kenneth Calman**: I think that returns to an earlier question about explaining what the UK is, what Parliaments do, and how much of the work a nation like Scotland can do itself. There is a big need to articulate that properly.

**Sir Paul Silk**: In the case of Wales—I would say this, wouldn’t I?—the recommendations that our commission made could have produced that. That they have been whittled back means that there will always be those who say, “Look, there’s that gap, which you should be filling”.

**Lord Cullen of Whitekirk**: Another slice, please.

**Sir Paul Silk**: Yes, so I do think the fact that our whole package has not been adopted leaves that bit of room, which is going to be contested for some time.

**Q26 Lord Maclennan of Rogart**: What input from the wider public did you have in your commissions? The background to the Calman commission was a convention, but you did not have that in Wales. It was a very long period in Scotland before this public interest was put together. I just wonder whether top-down settlements are really going to reflect the views of members of the public. How do you get across to members of the public the different possibilities for and the different interests in union and devolution?

**Sir Paul Silk**: We endeavoured to do as much as we could to involve the public throughout Wales, and indeed just across the border, in our work. In the second part of our work, we had something like 200 submissions, so quite a lot of civil society organisations and individuals sent in their views to us. We had public meetings of different sorts, engagement sessions, throughout the country. To be frank, sometimes the turnout for some of those meetings was very disappointing. We also tried to use social media and all the other ways in which one can engage with members of the public.
Was it as effective as we had hoped it might have been? No. That is a dilemma that we faced frequently and discussed frequently and could find no better solution than what we tried to do.

**Lord Maclellan of Rogart:** How would you propose that you consider the future in involving the public? It seems to me that we could lose out if we do not engage the public with information and their views.

**Sir Paul Silk:** I am sure that is correct. It is a very different sort of country, but Iceland had a convention of 1,000 citizens looking at the Icelandic constitution, which then produced reports that went to a more specialised group of experts for consideration when they were looking at changing the Icelandic constitution. I know that that sort of idea has been canvassed—having some sort of random selection of a group of citizens who could look at what they want out of the constitution. I am not sure whether that is effective. It might be worth trying. It certainly might be worth seeing whether the Icelanders thought that it was successful. I think there was something similar in Ireland, when it looked at some of the changes that it made to its constitution, and in New Zealand. So there are examples elsewhere in the world of this type of thing being done.

**Lord Maclellan of Rogart:** We have not had much discussion with the public of the virtues of the union. How do we get that message across?

**Sir Kenneth Calman:** My own commission had quite a lot of public meetings—from Shetland down to Newcastle, as it happens. One of the keys was the publishing of the interim report, which said, “Here are the 10 themes that we are thinking about just now. If you have anything you want to say, let us know”. We got a lot of information in widely across Scotland, and we could not have done it in any other way. Involving the public is critical. How do you do that? I think there are different ways. The question returns to what we have discussed before: what is the case for the union? I do not think it has been articulated well enough. It is still “them at Westminster”, as opposed to, “Westminster is here to help you”. That might be a slightly negative thing to say in Scotland at the moment, but we need to do that. We need to show that there is something worthwhile; not only does Scotland have something worthwhile to contribute to the UK Parliament and the UK generally, but that is what the UK is for. If you were take this to another level and set up some kind of commission, convention or whatever it would be, a lot of that would have to be done before it had even got near the commission, so that you had some idea of what the principles were, how you were going to communicate, and what the state of the union was. Those are all questions that have been asked for quite a long time, but I do not think that we have them in a comfortable form that I could put on to three PowerPoint slides and tell you what they are.

Q27 **Lord Morgan:** On the public reception of the devolution proposals, both your committees made broadly similar proposals for fiscal devolution and a local income tax and so on, but the reception in Scotland and Wales has been very different. In Scotland, they were greeted very enthusiastically, and many people asked for more—even for complete fiscal devolution. In Wales, there has been a good deal of apprehension and fear that it might reduce the public funding of Wales and its infrastructure. Does that present a difficulty in having a national British-wide view of devolution?

**Sir Paul Silk:** As you are very well aware, Wales is poorer than Scotland, and I think that is the basis for the concern that many people have in Wales about the devolution of income tax to Wales. We concluded that whereas in Scotland the first referendum had endorsed the principle of tax-varying powers for the Scottish Parliament, that had not happened in Wales, so we felt—and this was supported by both the Conservative Party and the Labour Party, and endorsed by the whole commission—that there should be a referendum in Wales before income tax powers are devolved.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

to Wales. They are there in the Wales Act 2014, but you are right to say that it is some way off before the referendum is triggered and those powers are used in Wales. However, we felt strongly, as I think Sir Kenneth’s commission felt, that it was important that the responsibility that goes with the raising of revenue should be something for which the Welsh Government should have responsibility. It is tied in with our accountability principle, so personally I would welcome, and do not feel frightened about, the prospect of income tax powers being devolved in the way which is legislated for in the 2014 Act.

Q28 Baroness Taylor of Bolton: That leads on to the area that I want to ask about, even though in a sense I am going back to the social solidarity point and making the case for the union that we talked about earlier. It is the aspect of actual delivery of welfare services that affect individual people and that might well be a way in which they see whether they have a stake in the union. There has been some devolution of health, and care for the elderly has changed in different places, but I wonder to what extent you think that diversity in the actual provision of welfare could undermine the social solidarity that we are talking about? There has been a suggestion that if you have devolved Assemblies and Parliaments you can have a UK-wide minimum guarantee and there can be top-ups. Sir Kenneth, you were talking earlier about the north-east and Lanarkshire and some of the similarities there, and we have heard a lot about those in recent days with the problems of the steel industry. If we get a differentiated system of welfare benefits, of welfare delivery, is that going to lead to a diminution of the social solidarity that we think is quite important if you are making the case for the union?

Sir Kenneth Calman: The answer is that it might, but it does not have to. Scotland has had its own health service since 1948, and it has managed it slightly differently all along, with different benefits and different things going on, but it is still seen as part of a UK-wide service. The young lady from Glasgow with Ebola is in London at the moment, and certainly in the north of England, Newcastle was a tremendous source of referral for UK wideheart transplants for a while, and was seen very much as part of that. The trouble is that it could go further. There is a debate about how much privatisation should go on within the health service—I use the health service as an example—and whether that diminishes the social structure and the union. I think the answer is yes, it could. But, again, I make the point I made earlier that we should be able to learn from that. If Scotland does it differently and does it better, maybe somebody else should pick it up. If England is doing it differently, maybe we should take that on. There needs to be a place where that learning is shared, so that we do not diminish the links between the two countries.

Baroness Taylor of Bolton: Should that place be the ministerial committees that are supposed to consolidate something like this?

Sir Kenneth Calman: It should probably be that. There should be a place where it is said, “We’ve done really well on this. Look at our results—areн’t they great? Why are you not doing it? Can you not change?” That might help significantly. An interesting issue at the moment would be abortion, which will be devolved to Scotland. It will be interesting to see whether that changes in any way and the consequences of that. It does not need to diminish the social structure or cohesion between two or more countries, but it could if managed inappropriately.

Sir Paul Silk: I entirely agree with Sir Kenneth about the desirability of having a place where what is done in Wales is compared to what is done in Scotland, Northern Ireland and England, and about spreading best practice. But it is difficult and, to get back to your original question, it tends to undermine solidarity when there is a perception of different outcomes inside one country as
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

opposed to another. As you may know, there is no Cancer Drugs Fund in Wales. That is something which people—

Baroness Taylor of Bolton: Notice.

Sir Paul Silk: Yes, notice. But perhaps they do not notice that there has been investment in early years, which is intended to prevent ill-health later on in life. Some of the headline bad consequences outshine some of the things that are more difficult to highlight in that way.

Q29 The Chairman: I just want to develop the issue of taxation, because of the initial arrangements whereby the Parliament had responsibility for doing things but no responsibility for raising the money to pay for them. In your inquiry, Sir Kenneth, you started the ball rolling on taxation. It has not really come into force yet, except at the margins, but it is coming in and more is on the way through the Scotland Bill. Do both of you think that there is an optimal level at which the proportion of public expenditure that is devolved should stop and, if so, what is that level?

Sir Kenneth Calman: I think Sir Paul could answer that question better than I can.

Sir Paul Silk: I am not sure. The level of public expenditure for which the Welsh Government are in one way directly or indirectly responsible, at least when we did our work, is about half of public expenditure in Wales. On how much revenue they should raise themselves inside Wales, we were clear that it should be a substantial amount—and a tax which everyone paid in Wales, and noticed that they paid. That was so they could be aware that this money was being taken out of their pockets to pay for the services that the Welsh Government had responsibility for delivering. I do not think that we came up with an optimum percentage but we certainly felt that it should not just be about peripheral taxes such as aggregates duty and landfill tax, or stamp duty/land tax, which is more substantial. The tax that we had to conclude, for various reasons, should be shared between the UK and the Welsh Government was income tax. Obviously, things have moved on a lot since Lord Smith’s report in Scotland and a very different sort of taxation devolution is proposed for Scotland now.

Sir Kenneth Calman: The question was really about the optimal level. I do not know what that would be but, when we made our provision, it was partly to ensure that the system worked. It was, in a sense, devolved to HMRC to do it in Scotland: could we be sure that the person who lived in London but worked in Scotland would pay the tax in the right place? That was a small thing but it was quite important that we got it right. Once you got it right, you could extend it further. The Scottish Government would take it to 100% and there would be independence. Others would take it to less than that, but I am not sure what the optimal level would be.

Q30 Lord Judge: I want to return to the absence of public knowledge of many of these issues. Would there be any merit in a charter of the union to address public knowledge or, quite separately, structural issues? I will follow that up by asking: if not, why not? And, if so, what should the charter of the union include? That way I can get all my questions in, but the first is: is there merit in having a charter of the union, on any basis?

Sir Kenneth Calman: The Bingham Centre looked at that and I think the answer is yes. It would make the discussions easier about who does what and how you and we all benefit out of it. That would be very helpful because, without that communication, the average citizen is left wondering: “Who does what for me now? It’s Westminster’s fault, anyway”. It is easy to put it the wrong way so, yes, there is a need for that. It should be done by people from each of the countries being part of it so that you can see overall what really matters to the citizen of Britain.
Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution—Oral evidence (QQ 18-31)

**Sir Paul Silk:** I agree with that. The charter being proposed by the Bingham Centre is very attractive. I am sure that changes could be made to it. I think its proposal was that it should be enacted, and therefore that there would be a requirement on all parties to abide by it in future. I do not know whether that would be easy for the courts to interpret.

**Lord Judge:** Can we go back to pre-legislation? That would be an extraordinarily interesting time for us all—just in the creation of a charter of the union to which most people, at any rate, could give their assent. What would you have included in it? Would you have the specifics about the health service and funding, or would it be much more general and be a series of assertions of *motherhood and apple pie*?

**Sir Paul Silk:** The Bingham report could, I suppose, be characterised as *motherhood and apple pie*, but I am not sure whether—

**Lord Judge:** You have characterised it in that way; I have not.

**Sir Paul Silk:** I said that it could be characterised in that way, but perhaps sometimes it is worth setting out those sorts of principles, although they might be motherhood and apple pie, so that everybody in future feels that they should abide by them. One principle that particularly chimes with me is its final principle about comity between the different parts of the United Kingdom and their Administrations. We emphasised that a lot in our second report. If that principle were set out in something like a charter, it would help to achieve that principle in the future.

**Sir Kenneth Calman:** Let us take one issue, health, and what happens if you try to be too specific about it. It changes so quickly with a new drug or a new test that you cannot say, “We must provide the following”, because it might change. How would you write down the paragraph about health and health services? That is quite difficult to do without constraining the thing that you really want to open up, but it would be helpful to put the detail on it. That is why I think charters are a means to an end. It is the end that is important and, if I take the health service, the end is likely to change. When a new drug comes or a special new diagnostic test is only available elsewhere, it would be asked: “Why are we not getting it? It’s up to us to get it”. But that means that the citizens of the country should have access to whatever the new thing is. To write that into the proposition would be too difficult.

**Lord Morgan:** I might receive a one-word answer, but I wonder whether you feel that a charter of union should not only deal with what we have been discussing, intergovernmental arrangements within the union, but suggest what it means to be British.

**Sir Kenneth Calman:** That seems a good point, as it is part of the end. What does it mean to be a citizen of this country and what are our values?

**Lord Morgan:** That seems to be what has been missing in the discussions about the union. What values do we have in common as four nations?

**Sir Kenneth Calman:** That is why I have found this discussion very helpful. I can see a group beginning to look at a range of these issues—articulating and communicating them, and seeing if people want to be part of it.

**The Chairman:** Lady Taylor?

**Baroness Taylor of Bolton:** I think that we have dealt with the question of a convention or commission, because you said earlier that the framework and guidance should be there, so we do not need to go into that any further.
Q31 **The Chairman**: Okay. Let me give our witnesses one chance for an open question. Is there anything we have not asked you that you are longing to share with us?

**Sir Kenneth Calman**: The only thing is this, which I may not have mentioned clearly enough. The referendum in Scotland was an important part of what happened recently. It said that the majority of people wanted to stay part of the union. That provides an opportunity for a group like this, or others, to build on that and say, “If that’s what you want, this is how good the union is. This is what it does for you; this is what devolution has done for you”. It should be put in that kind of broader context, rather than saying, “Well, that’s a referendum over and we have nothing else to talk about now”.

**Sir Paul Silk**: One thing that we have not mentioned but which our commission was very interested in was some sort of what I call an umpiring function between the UK Government and the Welsh Government—and by extension, obviously, between the Scottish and Northern Ireland Governments and the UK Government—so that disputes are resolved in some more objective way. One of our recommendations was that there should be a statutory code of practice for intergovernmental relations. That was accepted in the St David’s Day agreement but does not appear in the Wales Bill. I hope that your Committee might think about that issue of how disputes are fairly adjudicated between the two Governments.

**The Chairman**: You have struck a rich vein there. We had prepared and published a report on intergovernmental relations, which we regard as very important both in their own right and as part of the bigger picture that we are now addressing. We are expecting a reply from the Government soon-ish, and I hope that change will flow from that, but you are absolutely right.

Can I bring this to an end now? We have used the time very profitably and I am most grateful to you both for coming to share your experience and perspective on these difficult issues. We shall study what you have said carefully and I hope that, in due course, we produce a report where you will not only recognise your opinions but welcome them. Thank you very much.
Campaign for a Cornish Assembly—Oral evidence (QQ 115-122)

Transcript to be found under Campaign for an English Parliament
The UK Government’s drivers for devolution are both economic growth and public service reform. In Cornwall we have embraced this but must not forget that the long held support for devolution to Cornwall is born from a strong identity and being a functional economic area. There has been an historic lack of fair funding and a feeling of distance deprivation – that our particular needs are not taken into account because of the distance from central Government decision taking. Our geographic position means that we have particularly strong natural resources that could be utilised for renewable energy and driving an economy with different foundations to the rest of the country but this has been frustrated by central Government policy. Our strong culture and heritage plays an important part in the Cornwall brand and our global recognition.

The Cornish Constitutional Convention usually describes the need for devolution in terms of being a functional economic area with a strong regional identity and that devolution to Cornwall could provide a model for other rural and peripheral areas. However, in some States, national identity is a key driver regarding devolved constitutional settlements. Given the questioning that arose at the witness session we feel it is important to state that Cornwall is a nation. This is evident through the Constitutional status of the Duchy of Cornwall. One aspect of this is, as put by House of Lords researcher Mr Kevin Cahill; "The Crown is not the only absolute owner of land in the United Kingdom. In 1855 the High Court ruled that: ‘the whole territorial interest and dominion of the Crown in and over the entire county of Cornwall, is vested in the Duke of Cornwall’. So Cornwall is a separate Kingdom." Cornwall’s position is evident through the Government’s recognition of the Cornish as a national minority under the Council of Europe’s Framework Convention for the Protection of National Minorities. It is also evidenced by the recognition from others, such as Cornwall being the lead nation at the Lorient Inter-Celtic Festival in 2015. There is much other evidence that we can bring forward if there is an interest in this.

In terms of Cornwall’s regional distinctiveness this has long been recognised, for example, the Kilbrandon Commission noted that Cornwall had a special identity and Lord Whitty stated, "Cornwall is a special case ... and perhaps deserves special status and special respect." (Hansard, 21 Mar 2001 : Column 1465-1466)

With regard to our identity, we wish to see the devolution of culture, heritage and the Cornish language because of its value to our residents and the Cornwall brand. For example, the Cornish language, as the bedrock of our distinctive and unique identity, underpins and shapes the creative and cultural sector, which is a key part of the Local Enterprise Partnerships Strategic Economic Plan. This is a sector which has doubled in size in the last ten years with employment increasing by 83.5% between 1997 - 2013.

The IPPR spoke of size in regard to the success of devolution. There is much evidence that the success of regions is more to do with being a functional economic area and the investment of social capital by residents due to shared identity. The Cornish Constitutional Convention has a longstanding commitment to asymmetrical devolution. Both identity and economic functionality are the key elements that drive a successful region: population size internationally illustrates that there are successful devolved nations and regions which are smaller than Cornwall.
Asymmetry is already a principle that has been established. Scotland and Wales are nations of different population sizes, London is a city region with a population bigger than both of them and Northern Ireland is different again. In terms of the British Isles, the Isle of Man and the Channel Islands have their own particular Constitutional settlements. Therefore, the evolution of a federal structure within the UK is required and already suggested by what has happened before.

The statistical separation of Cornwall and Devon with Cornwall and the Isles of Scilly becoming a NUTS 2 region has enabled significant economic funding to be directed to Cornwall. There was, and continues to be, substantial economic divergence between Cornwall and Devon, let alone the wider south-west. This separation resulted in the previously masked poor economic performance of Cornwall being revealed and measurable. The Cornwall Operational Programmes allowed the development of a bespoke strategy to invest in creating new building blocks for the economy, bringing forward unique and innovative projects such as the Combined Universities in Cornwall and the broadband access project “actnow”. The 2014-2020 European Structural Funds is over 600million Euros. Delegation of strategic decision making responsibilities, granted through the Cornwall Deal, by giving Intermediary Body Status will drive higher performance through better local knowledge, support the delivery of the EU’s simplification agenda and provide a joined up approach to investment leading to higher outputs and results.

There are a number of areas where the Cornish Constitutional Convention would wish to see further devolution, the detail of this can be found in our publications or we are happy to provide further evidence.

With regards to fiscal devolution, “It is vital to give real economic power to the regions to enable them to improve economic prosperity” (Cabinet Office, Your Region, Your Choice 2002). Given Cornwall’s economic profile with a prominence of micro businesses the financial benefits to be achieved from the devolution of business rates does not provide the same incentive for economic growth as it does in other areas. We would welcome a greater retention of tax take within Cornwall. Given the current Government’s position, schemes such as retention of uplift in income tax or stamp duty or VAT would seem reasonable propositions, incentivising economic growth. The Cornish Constitutional Convention would wish to see the demerger of Devon and Cornwall Police. By creating a Cornwall Constabulary more responsive to local issues we could ensure that financial and farming crime is dealt with more efficiently. Recently the House of Commons Devolution Select Committee (10th November 2015) discussed that Mayors and Police and Crime Commissioners could be seen as an unnecessary further tier of governance. We would propose a combined Emergency Services for Cornwall, incorporating Police, Fire, Ambulance and Coastguard, which would not only be run more efficiently but would be more responsive to local need. In part, this stems from the success of the Transformation Challenge Award funding to integrate blue light services at the Hayle Tri-Service Station.

In response to the question of an English Parliament I will bring to your attention this quote from the Local Government Association report English Devolution: Local Solutions for a Successful Nation; “establishing another national Parliament is not the answer, for it misses a fundamental point and would let slip a golden opportunity. What people want is for more decisions about their futures to be made by those who live and work in their communities. Recent public opinion polling found that in every part of the country eight out of ten people of those surveyed supported giving more decision-making powers on issues such as tax, education and policing to local areas.”
In conclusion, Cornwall is a positive area making partnerships locally (such as with the Plymouth City Deal) and internationally (through organisations such as the Conference for Peripheral Maritime regions). There is compelling evidence that taking decisions closer to the people affected leads to better outcomes and saves the taxpayer money. Power should be transferred in such a way that decisions can be taken as close to residents as possible. Cornwall has already started on its devolution journey and the residents of Cornwall are keen for further devolution. Given the opportunity, Cornwall can provide a vibrant and successful example of devolution. Give Cornwall the powers and we will deliver, for Cornwall and for the United Kingdom.

December 2015
SUMMARY

1.1 The United Kingdom of Great Britain and Northern Ireland (UK) is a relatively young union of ancient nations. The affairs of all parts were closely linked until devolution. Then Scotland, Wales and Northern Ireland were recognised constitutionally and politically. England was not. The CEP believes that in the absence of separately mandated representatives (as exist in rest of the UK) to speak for England's needs, England has been sidelined in debates concerning the effects of devolution on the Constitution. The CEP is of the opinion that to maintain any form of union a new Act of Union, appropriate for the 21st Century, is necessary in which England, as an ancient unity, is represented politically and constitutionally.

INTRODUCTION

2.1 The CEP was established in 1998 in response to the Devolution Acts of that year, which put England at a serious political and constitutional disadvantage. Scotland and Wales were recognised as nations within the UK with their own devolved administrations. Northern Ireland was similarly distinctly recognised. Unlike Scotland and Wales, England was denied national recognition politically and constitutionally being referred to as the regions of Britain. The people of England were denied the right to express their will through their own parliament. The CEP campaigns for an English Parliament that will represent all those for whom England is their chosen or inherited home.

2.2 The CEP is not linked to any political party but is a cross party organisation that seeks to influence and inform. An English Parliament cannot come about without the agreement of the Houses of Parliament. The CEP’s role is to work with academics, business groups, trades unions, think tanks, the media and the public to create the conditions where politicians are convinced that there is no alternative.

2.3 The CEP has given written and oral evidence to the McKay Commission on the Consequences of Devolution for the House of Commons, the House of Lords Select Committee on the implications of Scottish independence for the rest of the UK, the Calman Commission and in 2009 the Justice Committee, a select committee of the Justice Department. The session title was Devolution: a decade on, which focussed on “The English Question”.

SUBMISSION

3.1 Background:

3.1.1 The UK is not a federal union but is essentially a series of unions. The first union came into existence in 1536 when England incorporated Wales into the ‘One Realm’. It was the ‘One Realm’ that enacted the Act of Union of 1707, that together with the Kingdom of Scotland formed the ‘United Kingdom of Great Britain’. The 1801 union with Ireland was later dissolved, leaving the Province of Northern Ireland as a member of the UK.
4. Principles underlying the Union and devolution

a) The Union

4.1 What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

4.1.1 "Unionism is also about the maintenance of nationhood and autonomy within the union" [3]. That applies as much to England as to any other country.

4.1.2 The CEP believes that the essential characteristics of a nation state should be:

- Run on democratic principles
- Equal nations in equality of relationship to each other and to the central government
- Universal suffrage and equal franchise.
- Equal governance and common citizenship
- Equality under the Constitution
- No legislation without representation,
- No taxation without representation
- Equal representation internally and externally
- A social and fiscal union
- A common market

4.1.3 These fundamental principles should not be different for a state in which power is devolved otherwise some citizens will have fewer rights than others thus denying them full citizenship.

4.2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

4.2.1 Historically the key principles underlying the Union were political and economic; internally, for the advantage of the governing elite; externally, to present a united front to any enemy. Together with the union of crowns and economic factors this was the precipitating factor for the 1707 union with Scotland.

4.2.2 These principles remain although altered in form. The governing elite may be elected in part, but their concerns tend to be that of their party and there is a only veneer of democracy. The only principle that seems unique is the role of the monarchy.

Democratic Principles:

4.2.3 Democracy is a system of government by all the eligible members of a state, typically through elected representatives. The Oxford English Dictionary states that it is a social state in which all have equal rights.

4.2.4 The 1707 Act of Union states in article IV that "all the subjects of the United Kingdom of Great Britain shall have full communication of all other rights, privileges, and advantages which do or may belong to the subjects of either kingdom" and in Article VI, "all parts of the United Kingdom shall have the same allowances, encouragements and drawbacks". That is no longer the case.

4.2.5 Devolution/decentralisation within England is not national devolution as granted to Wales and Scotland, nor should it be so regarded. The people of England do not enjoy the same rights as the other nations of the UK. Concern has been expressed in "The UK’s Changing Union-Towards a New Union 2015"[4] and in the UK government that the UK is very close to radical dismemberment.

4.2.6 If the dismemberment of that "young"[i] union is of concern why is not the proposed dismemberment of that ancient country, England? Regionalisation was overwhelmingly rejected in the northeast of England. The single ‘region’ promoted by the then government as a return to the Greater London Authority does not have the powers of primary legislation that are fundamental to
the Scottish Parliament and Welsh and Northern Irish Assemblies. Moreover the imposition of the system of elected mayors in the Cities and Local Government Devolution Bill, when they were rejected in 10 out of 12 cities by the electorate of England, flies in the face of democratic choice.

4.2.7 The UK can therefore no longer be regarded as a democracy. In 1998 the CEP’s farsighted founders realised that the Devolution Acts then passing through Parliament would profoundly destabilise and alter the constitution of the UK to the detriment of the people of England.

4.2.8 Of the 17 opinion polls recorded by the CEP since 1999 all have shown consistently that a majority in England are dissatisfied with current undemocratic and asymmetric devolution. The trend is towards an increasing consciousness of the detriment England experiences and for a separate solution.

b) Devolution

4.3 On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

4.3.1 The principle for the devolution to Scotland and Wales was on the basis of their nationhood. In the Preface to the Scotland Devolution Bill, (http://www.parliament.uk/Commons/lib/research/rp98/RP98-001.PDF) the then British Prime Minister, wrote, “Scotland is a proud, historic nation”. Paragraphs 1.15 and 5.4 of the Wales Devolution White Paper entitled ‘A Voice for Wales’ exhorts the Assembly as "the forum for the nation".

4.3.2 Separate governance for Northern Ireland has a longer and more sensitive history. It seems clear that the agreement to devolve power to Scotland and Wales was based on the naive and arrogant assumption that, in gratitude, they would vote in a certain way in perpetuity. An assumption that has notably been proved wrong.

4.3.3 The process of devolution must inevitably run its course as there is no politically acceptable reversal. The goal must be to equalise the UK nations so that they are in equality with each other and to central government.

4.3.4 The original principles of the union were to promote and underpin social and economic cohesion. The Constitution, individual rights and the rule of law, European and foreign policy, security and defence must be maintained by a new union appropriate for the 21st century - namely a federal union of equal parties. Currently the principles of a nation state listed above have been denied to England.

4.3.5 Some of the areas which have adversely impacted on England, a nation that is unequal to the rest of the UK as a consequence of devolution, are the weakening of the economic, social and constitutional union and of individual rights. These are as follows:

Universal suffrage and equal franchise/common citizenship.

4.3.6 Currently the citizens of Wales, Scotland and Northern Ireland have a double franchise, the ability to vote in UK elections and for their own devolved legislatures. In England we have only one; for the UK Parliament.

4.3.7 Since the devolution Acts of 1998 there have been two classes of MPs in the House of Commons (The West Lothian Question WLQ).

a) Those who are unaccountable to any of the English electorate but can debate, vote on and influence domestic matters for England.

b) Those who are accountable to the electorate they represent in these matters.

This disparity did not, apparently, occasion the vehemence that is currently levied against the feeble proposal of English Votes for English Laws.
4.3.8 Attempts to answer the WLQ simply tinker with procedures in the House of Commons. The CEP profoundly regrets that Harriet Baldwin’s Territorial Extent Bill was killed by the former government. It would seem that such a study would be the first step in assigning legislation that affects England alone. Even if the extent of legislation is made clear the problem remains of the accountability of those who vote for it.

4.3.9 Of equal concern is the parallel issue in the House of Lords. The devolved Assemblies/Parliament are unicameral. No primary legislation from them is revised, reviewed, debated or voted on by the Upper House. However all legislation relating to domestic matters in England passes through the Upper House which contains members from across the UK.

Unrepresentative Governance:

4.3.10 The introduction of university top-up tuition fees to England was passed by 5 votes, 46 Scottish MPs voted with the then government. (http://news.bbc.co.uk/1/hi/scotland/3432767.stm). At this time the Labour controlled Scottish Parliament decided against tuition fees in Scotland.

4.3.11 The banning of foxhunting in England was forced through the Commons by the Speaker Michael Martin (a Scottish MP) when he invoked the Parliament Act.

4.3.12 The 41 whipped Labour MPs for Scottish and Welsh constituencies swung the vote for the UK government’s policy for foundation hospitals in England (http://news.bbc.co.uk/1/hi/scotland/3054562.stm), which was passed by a majority of 35. This proposal had already been discarded by the Scottish Executive, which consisted of members of the Scottish parliament (MSPs) from that very same Labour party. Almost the last action of the Brown administration was to call in his Scottish vote to defeat an amendment (blocking a 3rd runway at Heathrow) that was supported by the English MPs.

4.3.13 Whether or not one agrees with these laws one has to question how they can be imposed democratically by MPs whose constituents are not affected by them.

4.3.14 In addition to UK MPs from the devolved regions we also have a few UK MPs who are also members of their own devolved legislatures voting on laws that affect the people of England. As “no man can serve two masters” (Matthew 6:24), these UK MPs may be tempted to vote in such a way as to advantage their own devolved constituencies at the expense of England. Indeed one of their arguments against banning the votes of these UK MPs is that what is imposed on England may affect their national interests. The only example that can be elicited to illustrate this concern is the working of the Barnett formula whereby the more money spent in England guarantees more money to be allocated to the devolved regions (http://news.bbc.co.uk/1/hi/scotland/3054562.stm).

4.3.15 Currently such MPs and Lords have voted to obstruct the Government’s proposal to introduce Evel, a manifesto promise, and also against the Government’s Cities and Regions Bill which clearly only affects England.

4.3.16 In order to redress this imbalance it would be necessary to have representatives for England sitting in the devolved administrations assessing how their legislation affects England. A case in point follows.

Unrepresentative Ministerial Office:

4.3.17 When John Reid and Alistair Darling were, respectively, Secretary of State for Health and Secretary of State for Transport their duties related to England only. They did not have to answer to their own or to any English constituents as such matter are devolved to the Scottish Parliament. There is no procedure in place, or proposed, to prevent such undemocratic appointments being repeated.

Unrepresentative Legislation:
4.3.18 Article 11 of "The Tweed Regulation Order 2007" made by the Scottish Executive creates an offence that applies to the River Till, which is entirely within England.

4.3.19 The Scottish Executive is empowered to make laws binding on the people of England although we have no representatives there. Those affected cannot make representations to their UK MPs as they have no say in the Scottish Parliament.

4.3.20 This undemocratic situation has now been brought into sharp focus because according to The National (a Scottish newspaper) reporting in August 2015, "Politicians in England have accused the Scottish Government of mounting a “cross-border raid” on their finances over plans to change the law relating to the River Tweed. That would ensure that all tax raised will go to the Scottish government although one third is raised in England and currently spent by the River Tweed Commission on both sides of the border.

4.3.21 Defenders of the status quo refer to the administration by the UK Government of the Scottish part of the River Esk as being the equivalent. However the regulations of the Esk are made by the UK (not English) parliament in which the Scots have representation.

Unrepresentative Taxation

4.3.22 Regulations to UK laws are directed at England without oversight of anyone mandated to represent England.

4.3.23 The UK government issued the Workplace Parking (England) Regulations Statutory Instrument 2009/2085 of the Transport Act 2000 (http://www.opsi.gov.uk/si/si2009/uksi_20092085_en_1) This authorises cash strapped English local authorities, underfunded by the UK government, to require places of employment to buy licences for employees to park on their premises. Nottingham installed this levy and its proposed introduction in Bristol caused uproar. This allows a levy to be imposed solely on English companies and employees.

4.3.24 A UK government made it possible for local taxes to increase even more with charges for rubbish collection and congestion charging (turned down in Edinburgh by a referendum).

Selective Asset Stripping

4.3.25 The UK’s budget deficit remains staggering. One of the means by which the UK Government attempts to address this deficit is by stripping England of its assets. A former UK Government announced its intention to sell off English assets such as the Channel tunnel rail link, the bridge and tunnel crossing over the Thames at Dartford, the government’s 32% stake in the uranium processing company Urenco (in England), the student loan book (mostly needed by students from England), the Meteorological Office (located in England), the Royal Mint (Wales) and the betting company Tote (located in England) (http://www.wigantoday.net/wigannews/Fears-for-650-jobs-at.3687385.jp) and the port of Dover (http://www.dailymail.co.uk/news/article-1249194/Dover-symbol-British-sovereignty-sold-French-help-reduce-debt.html) forcing the English citizens of Dover to try to raise enough money to buy their own port!

4.3.26 In 2010 the UK Government proposed the sales of English forests and woodlands to raise. Fortunately this proposal was dropped in the face of massive opposition

4.3.27 The UK government could not sell assets in Scotland, Wales and Northern Ireland as ownership of them has been transferred to the devolved administration. The funds, only raised in England, were for the benefit of the whole of the UK, despite no contribution being required from three parts of it. The UK Government controls England’s assets but no-one is mandated to protect English interests.
Unequal Funding
4.3.28 Yearly, England is consistently underfunded by the UK Government in matters that are devolved. For example in 2013-2014 total expenditure per head on services in England was £8,678 whereas the UK average was £8,936. These figures include expenditure on health, welfare, education, housing, community protection, environmental protection, transport, agriculture and fisheries, economic development and employment policies.
4.3.29 Each person in England was effectively deprived of £258 compared with the rest of the UK. The current UK government has no intention of making any changes to the Barnett formula despite the fact that the population parameters on which is was based, over three decades ago, have changed. Scotland gets 10% of UK spend whilst now having only 8% of the population.
4.3.30 The UK treasury gets representations from the devolved administrations and from their respective secretaries of state. No-one to represent England’s interests there.

Unequal Representation
4.3.31 According to memoranda of understanding the UK government represents England in international affairs. However, recently, an SNP member of the Scottish Executive was appointed to represent the UK and therefore England in the EU on fisheries. The Institute for Government at the Economic and Social Research Council Centre on Constitutional Change in its 2015 paper "Governing in an ever looser union" advocates "a more permissive attitude to allowing devolved ministers to speak for the UK". This contravenes Article III of the Act of Union which states "the UK will be represented by one Parliament". Can anyone truthfully imagine that, for example, a Scottish Nationalist member of the Scottish Executive will represent England’s best interests or anyone representing other selective interests in the rest of the UK? This leads to the English question: Who speaks for England?
4.3.32 In addition English interests are, apparently, represented by the UK representatives to the British/Irish council. Those representatives at the time of enquiring were the Secretary of State for Northern Ireland and the Deputy Prime Minister. Will either of those representatives support English interests if they do not coincide with their primary roles? Even the Bailiwick of Jersey sends a representative.
4.3.33 In addition the devolved governments have offices in Brussels from which to lobby and influence the EU. England has no such collective voice.
4.3.34 If these anomalies to the democratic function are not addressed there will be no constitutional or political cohesion in the UK.

4.4. Are there applicable examples from other countries with multi-level governance structures?
4.4.1 Federal structures such as the United States, Australia and Canada have been successful. They are bicameral and have components of greatly differing size. In the UK a federal structure would have one nation, England, being greater than the sum of the other participants. The CEP recognises this but proposes a solution that does not involve the dismemberment of England, which would be fiercely opposed and ultimately unsuccessful.
4.4.2 The CEP does not oppose subsidiarity in principle within all parts of the UK but does oppose this being represented as devolution for England. Equal representation is vital for the health of the union and also reciprocity, particularly in the restoration of a bicameral system for all parts. The CEP believes that there should be an overarching UK government dealing with reserved matters.

Implementation
4.5 How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

4.5.1 It is possible to maintain both a Union and national devolution within that union. A federal union of equals that are in equality to the overarching UK Government is essential.

Practical steps to strengthen the Union

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

6.1 The impact of asymmetry has led to the call for English Votes for English Laws (EVEL). The CEP was always aware of the flaws in this policy\(^5\). Arguably a commitment to establishing EVEL gained the Conservative party many votes in the last general election. Indeed opinion polls since 1998 show that the English public perceive this as a fair way forward without extra politicians and layers of bureaucracy in England. Devolution is the transference of power, decentralisation is the transference of function, therefore what is currently proposed for English local government, what has been afforded to Greater London, is decentralisation and will have no effect on the underlying undemocratic nature of national representation. It will not stem the calls for national representation for England.

6.2 The proposed further powers to Scotland will make the fragmentation of the UK more likely with all the problems associated with the identity of the bank of last resort, foreign policy, especially membership of the EU and defence. Wales and Northern Ireland are less devolved than Scotland and neither seem to have the same appetite, at present, for such devolution as to make them virtually independent. Indeed Northern Ireland has fundamental political reasons for maintaining membership of the UK. It should be noted that the UK is a voluntary union \(^3\) and all members are free to leave. While there is no general appetite within England for independence this may change as many who are politically aware are despairing of a fair deal.

7. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?

7.1 Devolving powers of taxation from the UK government to local administrations, whether Parliaments, Assemblies or other institutions would ensure that poorer parts of the UK would become even poorer and the richer, richer. It would destroy social and economic cohesion. In addition the bank of last resort would be funded by the richer parts of the UK without any power of oversight. Similarly welfare powers rely heavily on the resources available to fund them.

8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

8.1 Lord Salisbury proposed a solution that would be fair to all parts of the United Kingdom. This is to create a federal union whereby the House of Commons would be the English parliament and the House of Lords would be replaced by an elected chamber for the entire United Kingdom. The prime minister and leading cabinet members would sit there, and it would deal with such federal matters as defence and foreign policy. Welsh, Scottish and Northern Irish parliaments would have equal powers to the English parliament. No new parliament-house would be created, and the total number of members would be reduced (as would expenses)
9. **Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?**

9.1 Clearly the above examples illustrate the disparity of governance and representation within the UK as currently constituted, which has contributed to the current instability. It takes a leap of the imagination to believe that exhortations to put the good of the union over partisan interests will have any effect. Legislative measures must be put in place to define the limit of responsibility of the devolved administrations and to ensure that the people of England are equally represented and enfranchised. Only in this way can there be thorough representation of all interested parties in policy-making at all levels of government in the UK.

10 **Recommendation**

10.1 The stated policy of the CEP is a Parliament for England with at least the same powers as those of Scotland. Some say that people in England are not clamouring for an English Parliament and so it can be denied them. However most people are aware of the inequity of the WLQ and support the Government’s manifesto.

10.2 There are "Several lucid accounts exist of why the UK should embrace federalism"\(^{(1,6)}\)

Moreover, it is wrong to assume that an English parliament would necessarily be dominated by one party. Of the 15 general elections since the last war 13 election results in England mirror those of the whole of the UK. Of those 13 six returned a Labour majority in England and the UK as a whole. Only those in 1964 and February 1974 returned a Conservative majority in England but a Labour majority in the UK. In 1964 there was a very slim majority in the UK for Labour and in 1974 there was a hung Parliament.

10.3 It is also wrong to assert that an English first minister would be more powerful than the UK prime minister. Firstly their functions would be different and secondly a Union parliament reflecting the whole of the UK politically would prevent an overbearing presence of an English first minister.

10.4 Reform of the House of Lords has been mooted for many years but there has been no coherent plan to do so. The general opinion is that there are too many members. "A reconstituted second chamber might provide a more effective binding together of the constituent nations at the political centre of the union"\(^{(1)}\).

10.5 The purpose of the second chamber would be twofold to deal with reserved matters and to revise and vote on primary legislation from the devolved administrations\(^{(1)}\). It should also have strong ties to the British nation.

10.6 Whereas it is claimed\(^{(3)}\) that the directly elected Australian senate represents the people of the states who vote on party lines and not the states themselves, the CEP sees this as an advantage in the UK situation. For instance in the 2015 general election the percentage of votes cast were:

- Conservative 36.9,
- Labour 30.4,
- UKIP12.6,
- LD 7.9,
- SNP 4.7,
- Green 3.8.

Assuming a Senate of 200 then proportionally there would be about 75 Conservative senators, 61 Labour, 25 UKIP, 16 LIB DEM, 10 SNP, 8 Green and 4/5 from Northern Ireland. Since there is no strong nationalist party in England and the senators would most likely vote along party lines, as the Lords do now, England would not predominate.

11 **References**


2. The Constitutional Case for an English Parliament, published by the CEP 200)

3. Devolution and the Future of the Union, Robert Hazell 2015, The Constitution Unit, Department of Political Science, University College London.
4. "The UK’s Changing Union-Towards a New Union 2015" Wales Governance Centre at Cardiff University
6. Devolution in the UK by Tom Waterhouse then a National Council member of the CEP, published by the CEP in 2007

September 2015
Evidence Session No. 7

WEDNESDAY 25 NOVEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth

Examination of Witnesses

Scilla Cullen, Campaign for an English Parliament, and Julian German, Campaign for a Cornish Assembly

Q115 The Chairman: Can I welcome both of you? I am glad that you were able to hear the tail-end of Mr Cox’s evidence. He represented the IPPR in the north of England and had some very interesting insights. We are glad to be able to talk to you, Ms Cullen, as the chair of the Campaign for an English Parliament, and to you, Mr German, as the chair of the Campaign for a Cornish Assembly. I would like to dive straight into the first question. Ms Cullen, what powers do you envisage for the new parliament that you contemplate?

Scilla Cullen: The CEP policy has always been that the powers of an English parliament should be the same as those of Scotland—no more and no less. That is quite a simple concept. That would be over domestic matters that are now devolved to Scotland, domestic matters alone: the matters—health, education and other things—that are most important to the individual member of the public.

The Chairman: Nevertheless, you say in your evidence that devolving powers of taxation, which is about to happen in a very large-scale way in Scotland, “would ensure that poorer parts of the UK would become even poorer and the richer, richer”. Is that a problem?

Scilla Cullen: I saw that in relation to the current Cities and Local Government Devolution Bill, because that is where taxation is devolved to large cities. We have just heard that that sucks people in from rural areas, which tend to be poor. An English parliament would be able to lobby for appropriate funding from the British Government. It cannot do that now, because there is nobody to speak for England. As we all know, the Barnett formula ensures that every person in England is underfunded in those very important domestic matters. I do not really wish to speak on the devolution of taxation powers as such, although it appears that that is in train to Scotland. That
brings rather worrying consequences about how major responsibilities of the UK Government would be funded, but that is something for them to decide.

The Chairman: Before I move to Mr German on the same question, what is the rationale for the powers that you envisage? Why do you think that England needs identical powers to Scotland?

Scilla Cullen: There are a number of reasons, which I brought forward in my submission: equality of franchise—we do not have an equal franchise; and equality of representation, both internally, within the UK Government, and externally, in the European Union. Scotland and Wales have offices in Europe and sit on various committees. They also sit on the British-Irish Council, where England has no representation. I will qualify that. Some years ago, I inquired how England was represented on the council. I was informed that we were represented by the Secretary of State for Northern Ireland and the Deputy Prime Minister, Nick Clegg. The idea that the needs and requirements of England would be at the top of their minds takes a leap of the imagination. It is all those kinds of things, particularly lobbying for appropriate funding. There are anomalies in legislation, which I have brought forward in my submission, particularly in the borders areas, near the Tweed and so on. At the moment, we simply do not have representation. We have no voice. It is instructive to look at the *Encyclopaedia Britannica* definition of England, which states merely that it is a geographical area. That is not what I feel.

The Chairman: We will be able to develop aspects of that as the questioning proceeds. Mr German, what powers do you envisage for your Cornish assembly? Again, what is the rationale for that?

Julian German: Thank you. Please excuse me if I make any faux pas. I am not used to this forum, so I am not aware of all the protocols.

The Chairman: You may relax. We are broadcasting, but please relax.

Julian German: I will start by saying that we perceive Cornwall as a distinctive region. We are happy for England to decide what it wants to do, but we see Cornwall as a discrete territory. We are very keen to see a direct relationship with the UK Government and not to introduce another tier of governance into that equation.

As regards the powers we have looked at, the Cornish Constitutional Convention was formed in 2000. We were responding to the then Government’s view of regions. As regards our positioning, we co-commissioned with the South-West Constitutional Convention a piece of work to look at the relationship between those two bodies—whether the south-west region made sense or whether Cornwall made sense as a region. That was undertaken for us by UCL and was co-commissioned. Its findings were that Cornwall made sense as a regional entity. At that point, we were looking at the powers put forward by the Government. As pragmatic as the British constitution is, we have seen the development of devolution powers in the devolved bodies, so our thinking has evolved with that. For example, we have seen Wales request further powers that make good economic and political sense. We have followed that trajectory in our thinking.

The Chairman: Thank you very much. Let us open up these subjects.

Q116 Lord Maclennan of Rogart: Mr German, how would you see the distribution of powers between a Cornish regional assembly and an English parliament? Do you support the concept of an English parliament?

Julian German: I support what the people of England want. Speaking for Cornwall, we would like our own regional assembly, with a direct relationship with the UK Government. If England has regional assemblies, city deals or an English parliament, we see that as a matter for England.
Cornwall and the people of Cornwall have had significant input into this. During the campaign around the Labour Government proposals in 2001, we collected over 10% of the electorate’s signatures in support of a Cornish assembly, because that is what we were told would trigger a referendum. We have had Mori polling and Beaufort polling showing significant support for a Cornish assembly.

**Lord Maclellan of Rogart**: Do you see where the fiscal powers would lie? Would they lie with the English parliament or with the Cornish assembly?

**Julian German**: I am afraid that I do not accept the premise, so we will not get very far with the English parliament concept in terms of the relationship between Cornwall and the UK Government. I do not think that any political party is interested in another tier of governance. We very much see this as a direct relationship, as Wales has with the UK Government.

We are very interested in fiscal devolution. We have some devolution, through the Cornwall deal. We proposed more devolution than we received, through the Case for Cornwall. There were certainly fiscal elements to that. We are one of the poor regions we were talking about in the last session. We believe that the evidence shows that fiscal devolution really helps to drive the economy. For the electorate—the residents of an area—to buy into this, there needs to be an understanding that there is real decision-making at that level, rather than delivery of government projects.

**Lord Maclellan of Rogart**: Ms Cullen, do you see the English parliament as a step towards further decentralisation?

**Scilla Cullen**: We have always said that we are not against decentralisation as a concept, but it needs to be cohesive and there needs to be a collective voice for England. What we see at the moment is something that is totally incoherent. It is a political muddle. It is bespoke. There is no overall infrastructure for England. With regard to how decentralisation might work, we have always regarded the ancient English counties and shires as the natural seats of decentralised government.

**Q117 Lord Morgan**: It is very interesting to see these rather different kinds of proposal. A famous colleague of mine in Wales, Gwyn A Williams, whom Lord Hunt will recall, wrote a famous book called *What is Wales?*, with the subsequent inquiry, *When was Wales?*. Could I ask: what is Cornwall? You compare it in various places with Wales. To me, Wales is a nation with a strong historical identity and its own culture. I am not at all aware of that kind of historic feeling in Cornwall. As a Welsh-speaking Welshman, I can read Hen Gernyweg—Old Cornish. I wonder how many people in Cornwall could so do. What is the nature of the impetus and the demand?

**Julian German**: My a wor kewsel Kernewek, but I do not think that language is the sole identifier of a nation. For example, if we look at Gaelic in Scotland, do we say that Scotland is not a nation because the majority of Scots do not speak Scottish? There is a strong identity. I have moved from saying that we have a national identity and talked about a strong regional identity, although some years ago I had the pleasure of doing my dissertation in Lord Norton’s department on the claim to Cornish nationhood. We have a distinct border. The Government have recognised our language. We have been recognised as a national minority by the Government, through the Framework Convention for the Protection of National Minorities. It is true to say that there is a strong identity to the place. Our regional relationships—for example, with Brittany, Cantabria and the family of Gorsedd—show that we are recognised by others as having a strong regional identity.

**Lord Morgan**: When did the last person speak Cornish, I wonder? Has anyone spoken it in the last 150 years?
Julian German: The Government kindly fund the Cornish language, because of their commitments under the European Charter for Regional or Minority Languages. The language is very much alive. Please have a look on the internet or come to Cornwall. Even the London Cornish class is a good place to hear Cornish being spoken. I am going off the topic now, I am afraid.

Lord Morgan: I was wondering whether the west of England would not make a more plausible region.

Julian German: Exactly. These are questions we have been very interested in. I referred to the report by University College London’s constitution unit about the south-west region. Our fundamental economic differences from the rest of the south-west make a strong case for a separate regional construct. We are recognised as a NUTS 2 region. We have a much higher level of European funding, as a less developed region, which shows that we are an economic area distinct from the wider south-west. Our local enterprise partnership is well regarded as successful. We have a functional economic area. I would see us, and the constitutional convention would see Cornwall, as distinct from the south-west.

Q118 Lord Lester of Herne Hill: Many years ago, Lord Hailsham of St Marylebone described our system at Westminster as an “elective dictatorship”. In your schemes of things, what would you put in place to safeguard the rights of the individual and minorities against an English parliament or a Cornish assembly becoming an elective dictatorship that discriminated against minorities or was otherwise a tyranny by a majority?

Scilla Cullen: There is no reason to suppose that an English parliament would discriminate against minorities any more than one supposed that a Scottish Parliament would do so. Clearly, things like human rights would be for the UK Parliament, which underwrites the EU Convention on Human Rights, so that is not a question that I think should be feared. I cannot think of any reason why an English parliament should discriminate. That has floored me a bit.

Julian German: I agree. I do not see why a regional or an English parliament would be different from the UK. To ensure equality throughout the UK, it is important that we draw some baselines—for example, on healthcare—so that there is a base of service delivery to all the residents of the UK. Some regions may decide to go over and above that. That is their local democratic decision, but to ensure equality—importantly, equality before the law—there should be baselines for any regional or national devolution within the UK.

Scilla Cullen: Of course, many of us in England think that we are already discriminated against by the UK Government, because we do not have an equal franchise and we do not have equal representation. An English parliament would be very conscious of issues of discrimination.

The Chairman: Thank you. We will bring in Lord Norton to follow that up.

Q119 Lord Norton of Louth: I move on to the proposal for English votes for English laws, to see what your reaction is to that. I know that back in 2007 the Campaign for an English Parliament published a pamphlet called Devolution for England, which, it is fair to say, took a very dim view of English votes for English laws, to put it mildly. How do you respond to evidence that we have received? We have had conflicting evidence on the merits, but when it comes to popular support it seems to be the most supported option.

Scilla Cullen: If I can summarise, the reasons that we do not support it are as follows. It is an administrative procedure that can be reversed; it does not have the force of law. It politicises the Speaker. It does not cover
the issue of Ministers—heads of departments of state—being appointed from other parts of the UK. The policies for England will always be policies of the UK Government.

Why do people think that it is popular? I think that it is popular because it is the only answer on offer. The man on the Clapham omnibus feels that at least this is something for England. I think it will turn out to be pretty chaotic. I was looking at how the procedure was supposed to work; the BBC gave quite a good illustration. Of course, we now know that, despite their principled stand in the past that they would not vote on English matters, as far as the SNP are concerned, all English matters have a Barnett consequential—apart perhaps from sweeping the leaves in Hyde Park, as I heard from somebody. In that particular chart, it looks as though, where there are contentious issues, the whole thing could ricochet from the Committees to the other place and back to the Committees. It would just gum up the work of Parliament.

**Lord Norton of Louth**: Is there not the argument that, as things stand, not much legislation will fall within it? The argument, I suppose, would be that creating an English parliament is a rather substantial edifice that is quite expensive, to cope with something that could be coped with in existing procedures.

**Scilla Cullen**: If we are talking about the domestic matters that are devolved for Scotland, that is an argument that might have prevented devolution, but it did not. Of course, domestic matters are very important to the man in the street. That is really all they think about. They will get the international policy in the newspapers. When we are talking about hearth and home, it is about how their children will be educated, what their National Health Service is like when they need it, and those kinds of things. Have I answered your question?

**Lord Norton of Louth**: Yes. Mr German, do you have any views on this?

**Julian German**: I will limit my answer, because predominantly it is an English question. My understanding is that, generally, there is a knock-on of resources available. That is the issue for the other devolved Administrations. You touched on the fact that there is a lack of England-only legislation. The number four was referred to in relation to parliamentary time last year for Bills that referred to England only, so is putting these constructs together a worthwhile political accommodation to make?

**Scilla Cullen**: May I add something? The other thing we are concerned about is secondary legislation, because that can affect England only. We know about the workplace parking regulations and things like bin charges, which affect only England. This is another area that affects England more than you might consider primary legislation affects us.

**Q120 Baroness Dean of Thornton-le-Fylde**: Good morning. Part of my question has already been answered. If you look at the claim for an English parliament and, indeed, a Cornish assembly, could it be argued that the Government shot your fox, in the sense that we now have the northern powerhouse and devolution to various areas and cities? Is that not what people really want, rather than to replace one national parliament with another national parliament? The English parliament would cover 85% of the population of the UK. How do you react to that? Do you feel that the debate has moved on and that the solution has moved on, as regards an English parliament?

**Scilla Cullen**: We have talked about the man in the street. I do not think that the man in the street sees devolution to cities and myriad other types of local authority as anything to do with a national parliament; when I say “national”, I mean England. There have been referenda. Earlier we mentioned the north-east region, where the proposal was resoundingly defeated, by 78%. Ten out of 12 proposals for city mayors were turned down by the population. I find it very hard to believe
that people are in favour of all this, except for those with selective and sectional interests—in town halls. In fact, one of your earlier witnesses said, talking particularly about Manchester, that it tends to have a centralising power because of all the local authorities that are now being unified. I come from north Hertfordshire. I am concerned about rural communities in England, which will find that all the power, the funds, the money and the wealth have been sucked up from them.

Baroness Dean of Thornton-le-Fylde: Thank you. Mr German, my question is about the deal that was done with the Government in July. I live in Cornwall—

Julian German: I am aware of that.

Baroness Dean of Thornton-le-Fylde: Okay. I cannot quite grasp this. You are saying that Cornwall is discrete, that it is separate and does not want to be part of the English parliament. If you are saying that, are you actually advocating independence? Yes or no?

Julian German: No. It is not a word that has crossed my lips.

Baroness Dean of Thornton-le-Fylde: If you are looking at fiscal authority, which you mentioned earlier, to what extent do you want that to go? How do you see the Scilly Isles, which have the option under the deal to opt in to themes? They are not fully in it at the moment.

Julian German: That is right. There are a couple of interesting points to address. The Government are moving this agenda forward. The start of the question was about whether the Government have stymied our ambitions. No. We see the UK constitution as pragmatic and devolution as a journey. We had Scott Mann MP at our AGM last weekend. He was talking about the fact that we did not get planning powers as part of the deal for Cornwall but that we needed them if we were going to be able successfully to address our economic and housing issues. We are aware that these arguments will be ongoing. Lord Lang, earlier you asked about the secrecy of the deals. In Cornwall, Cornwall Council put forward the Case for Cornwall to the general public, and outlined the parameters. While Cornwall did not get what it had put forward in the Case for Cornwall, at least the public were engaged as to the broad areas where we are looking for devolution.

The OECD and many studies show the need for regions to have some level of fiscal control if they are to be able to make locally accountable decisions that make real differences to their community and grow their local economies. If we are to be successful, fiscal devolution will come. It was certainly part of the Case for Cornwall, although it was not given in the deal for Cornwall.

Baroness Dean of Thornton-le-Fylde: Does that include tax-raising powers?

Julian German: Tax-varying. I know that the proper word is raising, but for the general public perception, we should make sure that it is tax-varying. On business rates—perhaps we will hear more detail on them today—we would welcome the opportunity to lower business rates, as well as, potentially, to raise them. There are many different ways to drive your economy and attract business. Increasing the tax take is not necessarily the best way of bringing more money into local services.

Baroness Dean of Thornton-le-Fylde: And the Scilly Isles?

Julian German: The case of the Scilly Isles is interesting, is it not? On the English votes for English laws question, my understanding is that the Isles of Scilly have to be specifically included in primary legislation, otherwise they are excluded. Does that mean that the MP for the Isles of Scilly is the sole arbiter of legislation on the islands? The convention sees it as up to the people of the Isles of Scilly to decide what they would like to do. The Cornwall deal is open for them to join, but it needs
to be their democratic decision. They are a distinct unitary authority, so they need to use their democratic will to decide what they want to do.

Q121 Lord Brennan: The English parliament point is very important in terms of the division of power between an English parliament and the UK Parliament, let alone the other devolved legislatures. Some people are concerned that creating an English parliament would endanger the strength of the union—potentially, its future—because of competition between the English parliament and the UK Parliament. How would you answer that?

Scilla Cullen: We have always considered that, in fact, not having an English parliament will destroy the union. If the people of England cannot buy into the UK state as it is at the moment, clearly there will be no cohesion. Of course, the English parliament will have only the powers of the Scottish Parliament and will not rival the UK Government, certainly in the reserved powers we spoke of before. As far as we are concerned, it would not be over-powerful. It would be no more powerful than the Scottish Parliament.

Lord Brennan: As a matter of interest, Ms Cullen, could you tell us from what place the campaign proposes an English parliament and its government offices will operate? Secondly, have you costed it?

Scilla Cullen: Strangely, I remember that question from the last time we gave evidence to this Committee. We have never been stressed by where an English parliament would sit. We consider that it is a red herring. We are interested in the principle of the equality of nations within the UK, between each other and with central government. Those who support an English parliament—of note, Lord Salisbury, Lord Lexden and Frank Field—always considered that it would be in the current Houses of Parliament, with the English parliament in the other place and the House of Lords forming the senate. We would not disagree with that. John Redwood has talked about a peripatetic parliament, which we think would not really work. The truth of the matter is that wherever you put the parliament—wherever it is—it will have the same MPs, debating the same issues. I think that does not really matter.

As for costing, if it were situated in this place—the Palace of Westminster—the cost would be very little. In fact, you could argue that it would be much less costly to have a small senate than currently.

Lord Brennan: What evidence do you have about public opinion on the suggestion of an English parliament?

Scilla Cullen: All the polls that we have seen that have talked about devolution for England have always supported devolution for England as a whole. Where the possibility of an English parliament was put forward in recent polls, it received a majority. In very early polls, people had not really thought about it. One of your earlier witnesses referred to the fact that, when asked whether England, Scotland and Wales should be on an equal basis, 60% of people in the whole of the UK say, “Yes, they should”.

Lord Morgan: I have just one question. There has been much debate, particularly right now, about reserved powers being allocated to the Scottish Parliament and the Welsh Assembly. Should an English parliament have reserved powers? If so, would it really make any sense, as regards preserving the union?

Scilla Cullen: The diminishing of reserved powers to the UK Parliament has considerable dangers. I am thinking about defence, in particular, which is extremely costly. We have never advocated
changing the reserved powers, but clearly changes are taking place. I agree with where I think you are coming from; there should be very strong reserved powers for the UK as a whole.

The Chairman: We now move on to devolution to Cornwall. Lord Hunt, you had a couple of questions.

Q122 Lord Hunt of Wirral: Yes. My interest in this subject started with a big debate that I attended in Cornwall in 1968, since when I have been watching the situation reasonably carefully. Of course, the proposal that came from the Cornish Constitutional Convention in 2002 came at a time when arrangements for devolution in Wales and Scotland were at a different stage. How have the proposals for the Cornish assembly changed as the arrangements for devolution in Wales and Scotland have developed?

Julian German: Certainly they have strengthened. We have seen the Welsh Assembly accrue further powers because of the deemed necessity to be able to govern well, moving some powers from the UK remit to the Welsh. We have followed that trajectory. In saying that, I am not trying to draw a comparison and to say that Cornwall is the same as Wales; I am trying to expand on the relative powers that are required to have a successfully devolved area. Those powers have strengthened, in respect of what we see as required to be successful in taking forward a revitalised area that contributes more than it currently takes from the UK state.

Lord Hunt of Wirral: Should there be a symmetrical structure, where all counties or regions of England have devolved institutions like those you propose for Cornwall?

Julian German: I reflect my earlier answer. It is up to the people to decide. I have forgotten the name of the gentleman from the IPPR—

Lord Hunt of Wirral: Mr Cox.

Julian German: Thank you. I was interested in his evidence. He said that in the Devolution Deals there is a lot of symmetry. In the Government’s agenda around health and social care integration and the core elements that are coming through in deals, that is no doubt the case. Equally, we are seeing some very different things come through in deals as well. For example, in Cornwall there is the creation of a low-carbon zone and the facilitation of deep geothermal renewable energy. Cheshire is the only area in the UK that has geological similarity. While there will be similarities and it is important that we draw baselines to make sure that UK residents have equal treatment in fundamental areas, there will be quite distinct asks as well, because of the culture, the geography and, in the case of deep geothermal, the geology of the place. We should not be afraid of regions wanting to utilise the resources they have that other regions do not.

The Chairman: Let me follow that up with one final question for you, Mr German. I used to represent a constituency called Dumfries and Galloway. It embraced three rather disparate counties. Its landmass was broadly comparable with Devon and Cornwall. We hear about Devon and Cornwall regularly on the weather forecast and in other contexts. Why not a Devon and Cornwall assembly?

Julian German: I am happy to share detail, if that would be useful for the Committee. We have done a lot of work on this. There have been strong proposals about a Devon and Cornwall region in the past. We saw the paucity of intervention with Objective 5(b) European funding, but when Cornwall and the Isles of Scilly were granted NUTS 2 status, being seen as distinct economic areas for the purposes of European funding, they performed much better with that funding. The economies are very different. Even in the east of Devon, you can see a London effect. I travelled up to Exeter this morning. You see people on the train coming to London from east Devon nearly in
commuting fashion. You certainly do not see that from Cornwall. The economies and, indeed, the
traditions are different; for example, the religious and political tradition of nonconformism in
Cornwall is very different from the political and religious tradition in Devon. We are, of course,
western democrats. I do not want to overplay these differences—

**The Chairman**: You have made the point.

**Julian German**: Cornwall is comparable to 40% of the rural area of the UK. The people of Cornwall
have shown the desire for a regional assembly. We would be very happy to pilot that for the UK.
We can then see how it works and take forward other options within the country, based on the
evidence we provide.

**The Chairman**: Thank you. That was an extremely interesting answer. You and Ms Cullen have been
very informative and helpful to us. You have given us lots to think about. Thank you very much for
coming.
Transcript to be found under Claire Baker MSP, Labour
Garry Clark, Scottish Chambers of Commerce—Oral evidence (QQ 168-174)

Transcript to be found under Owen Kelly, Scottish Financial Enterprise
Edmund Burke MP for Bristol in 1774

“…Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole…. ”.

Executive Summary

1 The Union

The Will of the British people.

2 Authority

Authority is singular.

3 British Parliamentary Constituency Election

The exclusive method of expressing singular electoral authority.

4 Representation and Abstention

Two sides of the same Parliamentary coin.

5 Legislative Devolution Versus Administrative Devolution

National dis-integration or restoration of local government.

6 Conclusion

Legislative devolution will lead to the complete dis-integration of the United Kingdom unless it is repealed.

7 Recommendation

Repeal and replace with uniform local council powers (administrative devolution) and introduce a Common Representation Act.
The Union is willed together by the British People. Their will is expressed and manifest exclusively in their singular Parliamentary constituency electoral authority.

Everything that flows from the Union does so as a result of that authority and the expression of that authority through its institutions.

2 Authority

Authority is singular. It can only exist in either the elector (during the election period) or the MP (once it has been transmitted into the candidate with the majority of votes in the constituency).

Legislative devolution, like all UK legislation is made, re-made and un-made through this authority.

All devolved institutions exist on the singular authority that the elector has already exercised in the previous General Election and placed in the 650 MP’s. No secondary, alternative, superior or counter authority exist’s or indeed can be invented by a devolved institution or a referendum - which is why the Union and the United Kingdom Parliament remain Reserved matters in the 1998 Scotland Act (Schedule 5).

Parliamentary constituency election is the means and the method the British people recognise, accept and exercise as the valid and binding authority in our nation, it is how we peacefully compose and re-compose the Nation at every General Election. It is the foundation of the rule of law and it is the means of how we govern ourselves. It is the essence of the Sacrifice we remember on Remembrance Day.

3 Constituency Election:

Representation and Abstention.

At a general election, electors in each constituency must decide first and foremost if they wish to be part of the whole – the United Kingdom of Great Britain and Northern Ireland, if they do then they must elect an MP from those candidate’s who indicate that they will take their seat’s in the British Parliament.

If they do not wish to be part of the United Kingdom then they must give their vote to an abstentionist candidate who refuses to go and take his seat in the British Parliament.

In the 2015 General Election, in the British constituencies across Scotland, 59/59 MP’s took their seat’s including all of the 56 SNP MP’s. To go and sit in Parliament is to accept the valid and binding authority in law of the British Parliament. The phrase "if you don’t believe in it do not sit in it" was made for this matter. No abstentionist’s were elected.

It is not open to MP’s who have been explicitly authorised and sent by their constituency electors to sit in the British parliament to then abstain without at first seeking a new constituency election mandate in a by-election (s) or general election.

Abstention is the price that a separatist must pay (willing pay) in order not to belong to the whole. Abstention provides a parliamentary, representative, democratic and peaceful means
for those opposed to the unity of the nation to legally campaign for the reconfiguration or complete ending of the nation.

Representation and abstention are the opposite sides of the same parliamentary democratic coin. It allows those who favour union and those opposed to union to use a common singular authority in order to measure legally and peacefully where power should be exercised (London or Edinburgh etc).

Those who call for a referendum on the Union are advocating the existence of two authorities in the United Kingdom: Parliamentary authority versus referendum authority.

This is a dangerous road, one that eventually leads to ruin. Our parliamentary nation state cannot contain two separate claims of authority. Such a contest leads to political decay and public disorder. We need not and must not travel that road.

4 DEVOLUTION:

There are two forms of devolution: legislative and administrative:

Legislative Devolution

Legislative devolution differs from administrative devolution (local government) in three essential respects:

1. It authorises the exercise of initiating and making law by an institution that is not the British Parliament. (local councils only apply the existing law or modify it in permitted local narrow margins)

2. It sets up an institution which covers a limited geographical part of the United Kingdom in which a number of local councils are contained

3. It attaches an electorate to the law making institution of the identified territory.

Legislative Devolution is dividing the United Kingdom - an institutional, territorial and electoral conflict has now been created between different parts of the nation.

Legislative devolution has created differential (uncommon) representation - we now have a four-tier membership of the House of Commons (a House of Uncommons) - different powers, procedures and practice - between MP’s from different devolved and un-devolved parts of the United Kingdom.

The devolved institutions are challenging the authority of the British Parliament and in doing so are engaged in the de-constructing of the British state and in state-building of new statelets - in the case of Scotland a new Scottish statelet is being built inside the European Union.
Legislative devolution cannot endure or bring stable representation or government inside the British Parliament and no alteration to legislative devolution can make it equitable or durable in the House of Commons.

The current proposals to contain legislative devolution in the British Parliament cannot work:

1 Reduced Representation (Reduce the number of MP’s).
    Constituencies in Scotland already reduced from 72 to 59 and a proposed reduction to 52 does not remove the inequity of an elector in Dundee having more power in their vote than an elector in Leeds.

2 Limited Representation (English votes on English Laws).
    No Bill in the House of Commons is a purely Scottish/Welsh/Northern Irish or English Bill. The British Parliament and Treasury determine that all bills will contain some level of British interest and expenditure (we retain a common Treasury). Also the matter of who would determine an “England Bill” or a “Wales Bill” would bring them into the party political arena.

3 No Representation.
    The final complete dis-integration of the United Kingdom.

Administrative Devolution

Administrative devolution poses no threat to the United Kingdom. It does not devolve legislative authority or require 297 additional politicians and hundreds of tax funded political staff and separate structures to be set up.

Administrative devolution delegates administrative authority to either: official organisation's, local government, or individuals. It is equitable, simple, reduces political division, organisationally efficient and tends towards lower cost.

6 CONCLUSION

The anti-devolutionist's of the 1970s and 1980's warned that legislative devolution would lead to the break-up of the United Kingdom. We can now see the evidence before us that they were right.

Unless legislative devolution is repealed and replaced with administrative devolution (local government) it can only lead to the complete dis-integration of the Nation.

7 RECOMENDATION

Essential Practical Measures to Stabilise and Strengthen the United Kingdom.

1. We must repeal legislative devolution.

(The British Parliament has recently re-affirmed it's power to do this.) The Scottish Parliament, Northern Ireland Assembly, the Welsh Assembly (and the London Assembly) must be abolished.
All functions must be returned to national government (or local councils).

The 129 MSP’s, 108 MLA’s and 60 AM’s and all their political staff must be sacked.

All devolved public staff must be re-merged or merged into the British civil service or local council employment without penalty. No devolved public staff should be sacked.

2. Introduce administrative devolution on a uniform basis to all local councils across the United Kingdom and abolish Proportional Representation (PR) across all councils and restore "first past the post" method of election for all local council’s.

3. A Common Representation Act must be made law. All elector’s to legally have the same representation (power’s, procedure and practice) when they vote in General Election’s across all constituencies in the United Kingdom (therefore all MP’s by law to have common power’s, procedure and practice in the House of Commons) Only such practical and effective action will restore unity and strength to our Nation, Parliament, the House of Commons and our other national institutions.

August 2015
Introduction

The Constitution Reform Group is a cross-party body that has come together to address threats to the constitutional stability of the United Kingdom. The list of members of our Steering Group is set out below, and further details about us (including lists of patrons and correspondents) will be found at http://www.constitutionreformgroup.co.uk/about/.

The first objective of the Group is to inspire a widely-based discussion which will aim to articulate the core values of the United Kingdom. We have begun that by issuing a discussion paper which was launched at panel discussions at each of the Conservative, Labour and Liberal Democrat party conferences in autumn 2015. The discussion paper is attached to this submission.

The discussion arising out of that paper will focus on principles which could form the basis of a revised constitutional settlement. Our eventual aim is to identify features of a settlement that would command a general consensus of support from citizens, and thereby secure constitutional stability for the foreseeable future.

The issues to be addressed by the Committee in its inquiry into The Union and Devolution are within the remit of the Constitution Reform Group’s interests.

Our fundamental premise is that the United Kingdom as an effective Union is under threat, is worth saving and can be saved by prompt action. We believe that the four constituent nations of the United Kingdom have been inextricably intertwined for decades, and that this has been greatly to the benefit of each of them. The nations and their peoples are connected by ties of family, business, education and research and by a history of which every citizen can be proud; and they share a culture of rights, the rule of law and openness to the world which are conducive to human happiness and the prosperity of all citizens. We believe that if the United Kingdom were to be broken up, we would all become immeasurably weaker in the short term and more so with time.

We see an immediate threat to the constitutional future of the United Kingdom in the likelihood of a repeated referendum on Scottish independence in the near future. There are, however, other and longer-term discontents and concerns which we believe are placing increasing pressure on the existing constitutional settlement.

Committee’s Questions

Question 1 – characteristics of a nation state: We discuss this primarily in Chapter 2 of our paper, where we begin to identify the central functions that define the over-arching state. The proposed
methodology for the discussion which we hope to inspire focuses on identifying which functions are truly central in the sense of being best performed for the United Kingdom as a whole by central state mechanisms. We propose to invite stakeholders to identify what functions are most efficiently and effectively performed at a central level; and how those functions enhance the nature of a strong central Union. We will also invite citizens of each part of the Union to consider whether there are aspects of an overarching state that are not necessarily about the performance of particular governmental functions, but may be more about establishing a partnership for greater fairness and justice for each constituent part, as well as preserving a shared national culture and identity. Our preliminary discussion paper identifies an initial list of central functions, including foreign affairs, defence, national security, macro-economic and monetary policy, immigration, nationality and certain other matters. We are open-minded as to what should be added to our list, and what mechanism should be provided to ensure flexibility to alter it in the light of experience.

Question 2 – key principles underlying Union – We discuss this in Chapters 6, 8, and 12.

Question 3 – devolution principles: We discuss this in Chapter 12. Following the identification of central functions, there are a number of options possible for dealing with what remains. A fully federal system of one kind or another provides one set of options; a system based much more closely on the existing arrangements using devolution to national, local and regional institutions provides another set of options. At this stage we have, as a group, no settled view as to which set of options is likely to be most efficient to deliver a satisfactory and stable revised constitutional settlement. We are clear, however, that there are dissatisfactions and inefficiencies in relation to the governance arrangements for England that require to be addressed. Again, there is a range of options for dealing with the issue of the largest component part of the United Kingdom having no system for localisation or devolution of power, and the contrast with the degree of self-determination enjoyed by the other nations as a result of devolution. We do not believe that the amendment of Standing Orders of the House of Commons in the way that has been proposed for English Votes for English Laws provides a complete or sustainable solution in itself. We are therefore proposing to explore a number of options, some of which may include consideration of the restructuring of the second Chamber of Parliament in the process.

Question 5 – implementation: We discuss this in Chapter 13. We believe that adjustments of Parliamentary Standing Orders cannot be a sufficient way of enshrining the necessary principles to preserve the Union in a form that commands general support of its citizens. We are committed to identifying the key structural elements of a new legislative solution to achieve that purpose.

Question 7 – effects of fiscal and welfare devolution: We discuss this in Chapter 4. On matters of public finance, we are clear that the Barnett formula requires to be replaced, but we have not yet formed a view as to what is the most appropriate redistributive mechanism to replace it. We have taken as a working assumption that central taxes raised at State or federal level require to be distributed on a per capita basis, with mechanisms for adjusting distribution patterns to reflect areas of poverty or other features of particular local or regional need. We have also assumed that
greater fiscal autonomy for nations and regions within the United Kingdom needs to be matched by effective rules for borrowing by constituent parts of the Union so as to preserve the economic wellbeing of the State as a whole, while allowing each country and region the flexibility to secure investment for growth and to satisfy its own economic development aspirations.

Question 8 – steps to stabilise and reinforce the Union: We are clear that the benefits of a strong United Kingdom are not confined to economic and political matters, and much of our discussion paper is directed towards attempting to identify some of the intangible benefits of the Union, with a view to considering how best to preserve and enhance them. In the same way, since for many people one of the most important features of the United Kingdom politically, socially and culturally focuses on respect for diversity, equality of opportunity and the protection of the rights of the individual, we are looking at ways to ensure that human rights, equality and respect for diversity remain at the heart of any new constitutional settlement. We are also looking at the law and order implications for the Union both of recent constitutional changes and of the kinds of change that we believe may arise from our discussion. We have also begun to think about the importance of ensuring efficient and effective relationships within the United Kingdom, and how to deal with emerging issues in foreign affairs and defence, including internal defence, within the constitutional settlement.

If we can helpfully expand on any of these issues by way of supplementary written evidence or by way of oral evidence, we will be very happy to do so.

Members of the Constitution Reform Group Steering Group

The Marquess of Salisbury KCVO DL
David Burnside
The Rt. Hon. Sir Menzies Campbell CH CBE QC
Shana Fleming
Daniel Greenberg
The Rt. Hon. Peter Hain
Lord Lisvane KCB DL
Tony Lodge
David Melding AM
Caroline Roberts

October 2015
Lord Salisbury, Lord Hain and Daniel Greenberg, Constitution Reform Group

Q202 The Chairman: Can I welcome the representatives of the Constitution Reform Group, Lord Salisbury, the chairman, and the other members of the steering group, Lord Hain and Daniel Greenberg? Can I just begin by expressing our appreciation for the work you have already done leading to the discussion paper that you produced in September of last year? If I may begin the questioning, could I ask you what progress has been made since the launching of that paper in September of last year and, in particular, for example, the progress that has been made in drafting the proposed new Act of Union?

Lord Salisbury: Thank you, Lord Cullen. We hugely appreciate your asking us here, and we have read with very considerable interest the evidence, both oral and written, that has been submitted to this Committee, and as part of my answer I wonder whether it would be helpful if I set in context where we are coming from, which would take me, I hope, a very short time.

Certainly, glancing through your evidence so far, I think all of us in the CRG have been very struck by the near-unanimity of your extremely distinguished contributors, in one respect at least: a feeling that the proposed legislation may not deliver a long-term, stable constitutional framework for the United Kingdom, and that there is a horrible probability that this will not be the end of the matter. We certainly agree with that view, and those who do want to keep Scotland in the kingdom need, we think, to wrest back the initiative, which has been lost, from the separatists.

We think a sensible way of doing this would be to propose a new Act of Union, which would start from the other end, if you like. By that I mean that, instead of arguing what should be devolved, the four nations should agree between them what the centre should do. This, in our view, would make us all think about what we could all do better together—to coin a phrase—and in those things we
would be weaker apart. It would obviously be matters like security, both economic and military, basic levels of health and social security, human rights, support from the rich south-east of England, for instance, to the rest of the country. Those are, perhaps, just obvious examples.

We think that an Act of Parliament would be the neatest way of achieving this objective of wresting the initiative back from the separatists. Indeed, I think the Bingham Centre envisages a similar approach. We think the procedure of an Act of Parliament is clearly well-understood country-wide, and that it can be preceded by any amount of consultation and pre-legislative scrutiny. It can be brought into force only after a post-legislative referendum, which we think would obviously have to be approved in its provisions by all four parts of the kingdom. It has the advantage of being able to be encapsulated in relatively straightforward terms, because we feel it is very important for the nation or the electorates as a whole to rescue constitutional matters, at least in their essential principles, from being the province of—however admirable—masters of constitutional arcana. An Act of Parliament could select what needed to be changed, and only change what needed to be changed.

We think it is a good time to introduce this idea, and that such a Bill would provide a way of injecting the idea into the political bloodstream, as we face the run-up to the three elections in Scotland, Northern Ireland and Wales on 9 May. We therefore have tried to match our timetable—and I finally come to trying to answer your question, Lord Chairman, and I am sorry that it has taken so long, but it might be helpful to set it in context—in that we have made very considerable progress in our first attempt at a draft Bill, which we hope to have at least three-quarters cooked within the next relatively few days. We will, of course, be very happy to provide this Committee with a copy, and any comments, as always, would be extremely welcome.

We hope we will be able to circulate this draft to our very large number of what we call our correspondents—many of whom have already given evidence to this Committee—for further comment and discussion. We are going to initiate next week a series of opinion polls and focus groups—particularly in Scotland, where this initiative started, with a group of Scots people with whom we are beginning to collaborate, to provide them with technical support, both drafting and financial—to see whether the public as a whole have any interest in such an idea, and, if they do, whether they approve of it. We would want to play the results of those efforts into the political debate in the run-up to the campaign.

We hope that this draft will be generally available, that everybody will feel able to comment on it, and that over the coming couple of months what we have now will be greatly improved in its content and presentation. I hope that gives you some idea of the background of how we approached this, and the progress that we have made since we published the consultation paper you so kindly referred to.

The Chairman: Arising out of that, in the course of your discussion paper you mentioned choices as to whether one goes for alternative A or alternative B. Will your draft come down, as it were, in favour of a particular one?

Lord Salisbury: No. We are giving two basic alternatives—one rather radical one, which I know would involve some very major changes and which a number of us in the group regard as not wholly practical. Others are more ambitious and more radical, and it is in that light that there will be two basic approaches in the Bill. It will not be a definitive answer, but it will provide two options.

The Chairman: One other question: when would the group regard its work as finished?

Lord Salisbury: That is a very interesting question, which we have not yet resolved. My personal view is that, if the group is proved right in its predictions that the Government’s present policy will
prove not to be the beginnings of a final settlement and that further work will need to be done, we
hope that a general realisation allied to increasing public approval, as a result of our activities for
the idea of a new Act of Union, would generate enough momentum over the next two or three
years to induce the Government to take over the idea of a new Act, in the light of public support. If
we manage that—which is quite a big ambition, I grant you—we would think that our primary work
was done, although obviously all of us would continue to take an interest.

**The Chairman:** Lord Hain, is there anything you wish to add?

**Lord Hain:** Only, briefly, that we were very grateful to receive funding from the Joseph Rowntree
Reform Trust, which together with other funding has enabled us to have in mind and begin to put in
place a detailed series of focus group activity and polling, in order to maximise public consultation
without being over-ambitious as to what might be achievable. We are not planning meetings in
every town hall in every town and city across the UK, but we are seeking to get a representative
response to what we are proposing.

Perhaps I could just briefly add another point that I think is relevant. You might have been surprised
to see Robert Salisbury and myself as a united front on this.

**Lord Salisbury:** Not as surprised as we were.

**Lord Hain:** Not as surprised as we were, yes. But for me, the interest in my own involvement, and I
think this goes for others in this room, is that whereas in the past a series of very important, worthy
and admirable initiatives have been launched from, as it were, the other side of the political
spectrum—the Liberal Democrats, some Labour and then the considerable group of expert
constitutional reformers that there are, some of whom have given evidence to your Committee—
this initiative came from Robert and other senior Conservatives, and that seemed to me to put it in
a different place, with a different possibility and a much greater opportunity for change of the kind
that can bring and maintain the UK. That is its significance and what attracted me to work
enthusiastically as part of this group.

**Q203 Lord Judge:** The Act of Union would, presumably, be legislated through the House of
Commons and then this House in the usual way. How are we going to engage with the Scottish
Parliament, the Welsh Assembly and the Northern Ireland Assembly about this very crucial question
from their individual points of view?

**Daniel Greenberg:** In one of a number of possible ways.

**Lord Judge:** Give us your best three.

**Daniel Greenberg:** It is a question of three different kinds of approach. One is getting them to
produce almost their own wish lists and their own key foundation provisions, and making sure that
we incorporate them in our drafting. You could have a bigger Sewel convention vote. You could
have something that formally engaged them in the process at that point. The other end of the
spectrum would be something less formal but purely about engagement behind the scenes. I would
preliminarily favour something in the middle that does not involve creating a new kind of
constitutional beast, because that has its own obvious problems, but nevertheless allows the
peoples of each nation to see that their Parliament or their Assembly has been formally involved in
the process.

**Lord Judge:** Is what you are envisaging involvement in the process prior to the enactment of the Act
of Union, or approval afterwards?

**Daniel Greenberg:** Both.
Lord Judge: All right. Let us assume that beforehand all is fine and good, but then the Act of Union appears and one or other of the Assemblies or the Scottish Parliament does not like it. What then?

Daniel Greenberg: In formal terms, “What then?” is nothing, because as you say in formal terms this is an Act of Parliament. In practice, as Lord Salisbury mentioned, this will only come into force with a referendum, and we are making it very clear that a commencement referendum would have to have a majority not just UK-wide but within each of the constituent nations. I would take an eventuality such as you describe as an indication that we were not going to get that overall majority.

In a way, it does not matter formally why it has fallen apart, but to us it would be very important to come up with something that is accepted by the people informally and by each of the Parliaments formally, whatever mechanism we decide to use. If we do not get buy-in from the people informally and from the Parliaments formally, we have lost.

Lord Judge: Do I also understand from what you have said that, if either the Assemblies or the Scottish Parliament in their own right, or a referendum in Northern Ireland, Wales or Scotland said, “No, we are not having this”, the whole thing falls to the ground? One or other of the constituent parts has, in effect, a veto.

Daniel Greenberg: Certainly, yes, as to the second. If the referendum fails in any part, we have failed. As for the first, I would not want to say now unequivocally yes, because for example if there was a specific issue, we might want to go back and amend to meet that issue. That needs to be worked through.

Lord Salisbury: If I may, Lord Chairman, I would like to emphasise that first bit, because for the Bill to become law in what used to be called the Imperial Parliament and have any chance of being credible, it has to have the support of the four constituent parts of the kingdom. Therefore, without both the formal approval of the constituent parts of the kingdom—that is, their own Assemblies and Parliaments—and in so far as we can tell the pull of public opinion, I would be surprised if the House of Commons and your Lordships would feel inclined to pass such a Bill. Once it has been passed it would clearly imply that there is general support for such a thing, and after that general support had been given and the Bill passed there would be a further check put on it, in the form of a referendum with approval from all four parts of the kingdom.

Q204 Lord Lester of Herne Hill: To avoid wasteful duplication, will you be combining forces with the Bingham Centre so that we have a single constitutional document, or will we have to have two?

Lord Salisbury: Lord Chairman, I could not agree with what Lord Lester says more. One of the dangers of groupuscules, it seems to me, in almost any political activity is they hate each other more than they do the enemy. Our basic principle is to be wholly open about this, to give maximum circulation. We sent, for instance, the Bingham people copies of the consultation document. We certainly will send them drafts of our Bill, and we hope that, so long as we are not too precious about wanting to take credit for it, we can build a consensus behind this, and whoever wants to take credit for it can do so. As we know, success has many fathers.

Daniel Greenberg: Can I just add to that, very briefly, Lord Chairman? Just to assure Lord Lester, at what you might call an official level we are in close, practical co-operation with them.

Lord Lester of Herne Hill: I hope you are not drafting both.

Q205 Baroness Taylor of Bolton: I have a very brief and simple question. You are talking with a degree of confidence that there will be buy-in from each of the different parts of the United
Kingdom. Given that we have a Scottish Executive who have no interest in remaining part of the United Kingdom, how do you think you are going to get buy-in from them?

**Lord Salisbury:** There are two ways. The first thing is that we do not, and there is clearly a risk, as with any activity, and the risk is a high one for the reason that Baroness Taylor gives. However, we would be very interested to see what the results of our polling and our focus groups are in Scotland, which are going to be fairly intensive over the next couple of months, to see whether there is interest and approval among the 50% plus who still want to remain part of the kingdom. That, in the end, if we or our Scottish friends can generate some momentum behind this idea, is bound to have some influence.

Secondly, I do not know what you think, Lady Taylor, but I am interested that the Scottish National Party, whose raison d’être is Scottish independence, still do not scorn engaging on constitutional reform matters so long as they remain part of the kingdom. They have not said, “We will not talk about constitutional reform”. After all, the Scotland Bill and all of the rest of it is something they have a vital interest in. If there is going to be further constitutional arrangements while they remain part of the United Kingdom, they have not shown that they are wholly averse to taking part in those conversations.

**Baroness Taylor of Bolton:** Maybe they see what has happened with the Scotland Bill as part of the path to independence.

**Lord Salisbury:** That is our fear. I agree with that.

**Q206 Lord Morgan:** Will your draft proposals—when they appear; shortly, I gather—about the procedures of how a referendum would be organised, and in what circumstances, take account of the fact that it is probable that it would take place after the referendum on membership of the European Union? I mention that because that is likely to be a very destabilising factor, with opinions in different parts of the United Kingdom very much at odds with each other.

**Lord Salisbury:** Of course, there are two huge questions that have to be settled over the coming years. One is whether we remain members of the European Union, and I would submit the other is whether it is possible to arrive at a stable constitutional framework for the future of the United Kingdom itself. I would think it wholly impractical, in view of the Prime Minister’s hints that we are facing an EU referendum earlier rather than later, for this proposal to have any force or chance of being brought forward before the European referendum, and anyway it would be undesirable or impractical for us to suggest that should happen, even if the referendum on Europe were delayed until 2017. This is going to take a good deal longer than that.

**The Chairman:** Let us move on to another subject.

**Q207 Lord Hunt of Wirral:** You are proposing a new system, which should have as much flexibility as possible, for instance allowing each constituent part to draw down from a set of available powers, whilst having a clear and understood list of functions for central performance. By what process would those powers be devolved, and should there be some sort of mechanism by which the public are explicitly involved?

**Lord Salisbury:** The short answer is yes, but may I turn to Daniel?

**Daniel Greenberg:** Probably, although this is, like everything else in the Bill, something that we want to hear people’s views on. But probably you would start off with a core that is made central, that functions by the Bill itself. That is achieved by the Bill. Then there is a mechanism by which—to pick up the language that Lord Salisbury was using earlier—each nation and its Parliament or
Assembly can choose whether a particular function is to be dealt with for them by Westminster or by themselves. I do not want to go further into the mechanism than you want me to guess, as it were, but I would say, similarly to the question before, that you need to have the mechanism in both places. The initiative has to come from the nation that wishes to exercise its choice, but there has to be within Westminster a balancing effect of the approval of that choice.

**Lord Salisbury:** A number of people who have given evidence to this Committee hitherto have suggested the idea of what I think they called a drop-down menu, which might get around the question of inflexible uniformity for each part of the kingdom. That sort of device we would find quite attractive.

**Lord Hain:** Devolution up until now has been a top-down process: the centre deciding to devolve powers to Scotland, Wales and Northern Ireland and more recently in parts of England. The model we are proposing is a bottom-up process. It is turning it on its head. That is to say that the nations, and I hope also in England’s case the regions and maybe city regions, will then federate upwards to the UK and decide what is done at the centre and what is done at a national level, for the purpose of the nations. That is what would make the UK a lot stronger and a lot more appealing to Scots and Welsh in particular—particularly Scots at the moment. They are deciding what is done at the centre, rather than the centre deciding what is allowed to be done by, say, Scotland. That is what makes a new Act of Union on this particular model attractive.

**Q208 Lord MacGregor of Pulham Market:** The sharing of risks and resources between richer and poorer areas of the United Kingdom is stressed in your discussion paper. How will you ensure that this sharing continues as, crucially, greater powers over taxation and spending are devolved to Wales and Scotland? We are beginning to see a problem here already. Can I be quite specific on it? You say in your paper, as the two legislatures take on more of their revenue-raising and rely less on the block grant from the UK consolidated fund, it may be useful to discuss how that affects the redistribution of funds from richer to poorer areas. I would have thought that it is not just useful but crucial. What is your answer to that?

**Lord Hain:** I completely agree with you, Lord MacGregor. This, for me, is one of the absolutely critical parts of this whole debate and what might follow from it on constitutional change. I speak as an enthusiastic devolutionist when I was Secretary of State before and subsequently, for Wales and Northern Ireland, but I am concerned that, if the devolution particularly of income tax and other taxes goes too far, it will exclude the possibility and the mechanism for redistributing resources, not just from the south-east and London, which constitute together 40% of UK GDP, and not just to parts of Scotland and the poorer parts of Wales but also to deprived parts of England, which often get excluded from this debate, whether it is Cornwall or the north-east of England. This Act of Union has to address that very seriously and have a taxation mechanism in which there is considerable room still to redistribute. Getting that right is not easy, but it has to be part of the settlement that we are seeking to achieve.

**Lord MacGregor of Pulham Market:** Are you thinking of looking further at this, developing your views further on this point, so that you can come up with at least one solution to it?

**Lord Hain:** We have set ourselves a pretty stiff and tight timetable, and are not going to be able to answer all of the questions before the May elections, but we start to address them in the draft Act we are going to produce, and the beginning of addressing that is recognising that a rather ad hoc system is evolving, which is going to leave us all in a mess as far as redistribution of resource is concerned. For me, the union that stands for fairness and equal rights, and an opportunity for the poorer parts to be assisted by the richer parts of the UK, is one of the attractive things for the
citizens of the UK—whether they are Scots, Welsh, Northern Irish or English—to feel part of this union. That is a key attraction, and we have to make it work and not lose that through this ad hoc, incremental devolution of taxation.

**Lord Salisbury:** I think, like everybody else, Lord Chairman, we feel that we need to do a lot more work on this, for exactly the reasons that Lord MacGregor gives. As always, trouble is going to come over money. That is going to be extremely difficult. Historically, if you look at other countries which give support from the centre, it is very difficult for a union to keep together unless there is a way of making sure that the centre can support the individual parts of the polity and, if there is no way, there is a good reason for the individual parts of the polity to break away.

**Lord MacGregor of Pulham Market:** We have done it so far, to a large extent, through the block grant, have we not? That will disappear as a mechanism, because of the ability of the other devolved administrations to set their own levels of social security, university fees or whatever. I am glad to hear you are going to give further thought to it.

**Lord Salisbury:** I have not heard anybody else being able to give a glib reply to your absolutely-on-the-button question. I include myself in that.

The Chairman: We have some time to turn to England.

**Q209 Lord Norton of Louth:** The Future of England Survey 2014 found very substantial support for retaining England as a political unit, yet many of the proposals for devolution, of course, are to go at the sub-national level. Is it possible to create a devolution settlement that achieves both of those, and resolves that tension between focusing on England and at the same time pushing power further down within England?

**Lord Salisbury:** The short answer to that one must be, “Yes, there is”, but beyond that there is endless scope for argument. I am quite sceptical about whether the deals between the Chancellor and Manchester, for instance, are anything more than a happy convenience for both parties. I hope that is not too rude. However admirable that may be, I do not see that as a sustainable basis for devolved power. First of all, our first focus in our working paper has been on the four constituent parts of the kingdom. You all, as usual, have put your finger on the button when you see we have not fully addressed the English part of this, but it does seem to us that if you can find a way of settling the constitutional relationship between the four parts of the kingdom, then what England does should be very much a matter for England. Obviously, it is hugely important in any long-term settlement, with 85% of the population and the vast majority of the GDP of the polity itself, but equally there is huge geographical difficulty in splitting up England into regions. The most convenient one, Lord Prescott thought, was the north-east, and that did not get him anywhere. When you begin to draw divisions between southern, south-eastern and the Midlands of England, you just have to ask yourself the question, “Does it work?”

From our point of view, we have deliberately eschewed going into detail on England, because we think that the first important thing is to settle the four nations themselves. However, we recognise that part of that settlement, if England’s increasing unhappiness is to be addressed, must be for England itself to determine what it wants to do. It may be a form of regionalisation in parts of it, or it may be some expansion of Lord Heseltine’s idea of greater unitary authorities with elected mayors, and then the question is whether they would have any local tax-raising powers of their own and, if so, under what circumstances, and the consequences for being given borrowing powers and so on.
Lord Norton of Louth: You are saying that it would be the unit itself, England, that would determine the distribution of powers.

Lord Salisbury: That is our feeling, but we recognise that if England is unhappy, the union as a whole will be unhappy. The two are intimately connected.

Lord Hain: As an enthusiast for devolution within England outside London, because of course London has substantial devolution, I do not take the rejection of that option in 2004 by the north-east as being a significant obstacle. I was in the Cabinet at the time, as maybe Baroness Taylor was. It was offered a very watered-down version. When you look at the English regions, most if not all of them are bigger than Northern Ireland. Most of them are bigger than Wales. Some of them are bigger than Scotland, in size. You could envisage a UK constituted with substantial English devolution, whether to Cornwall or the north-east or whichever unit wanted, and develop it incrementally. That would be possible.

Lord Norton of Louth: You would be creating the framework within which that could take place, rather than stipulating what form it would take.

Lord Hain: Absolutely.

Lord Salisbury: Yes.

Lord Hain: An enabling framework, rather than a prescriptive one.

The Chairman: Lord Lester, perhaps one short question?

Q210 Lord Lester of Herne Hill: It is probably my fault, but I am a bit confused. Surely Whitehall and Westminster have to decide whether to use administrative or legislative measures to create units within England. That is not something that England can decide; it must be decided by the Government and Parliament. Do you think that, in the framework that you desire, we shall go on devolving purely administratively, as we have at the moment in England, or do you think that we would need to have legislation to devolve to units of one kind or another within England, as we do, of course, with Scotland, Wales and Northern Ireland?

Daniel Greenberg: We feel that, in order to achieve it in a satisfactory way, you do need legislation; you do need a legislative option that is available to regions and cities. I do not think that means we necessarily rule out administrative action on top of that and around the edges of that. That has to be possible, but we agree there has to be clarity, and that requires legislation.

Lord Lester of Herne Hill: It would mean the power to create assemblies in English regions or city regions, if that power was to be used.

Daniel Greenberg: That would obviously have to be legislative, yes.

The Chairman: We have, by now, overrun the allotted time for this session, but that is perhaps an indication of how important your evidence has been, and how useful it has been to us. We thank you very much, indeed. We appreciate that there are a number of questions towards the end of the list concerning England that we have not got around to. If any of you would like to submit something in writing, please do so. That would be most helpful.

Lord Salisbury: Thank you, Lord Chairman. We would be very happy to do that, and we greatly appreciate being asked.

The Chairman: Thank you very much for your attentions.
Constitution Reform Group—Supplementary written evidence (UDE0072)

Answers to remaining questions put to Constitution Reform Group witnesses by the House of Lords Constitution Committee
(Questions 1-7 were covered in the evidence session on 13th January 2016. Time ran out before the remaining two questions could be put and CRG were invited to provide written responses to these).

Devolution in England
8. If devolution or decentralisation in England proceeds on an asymmetrical basis, what impact would that have on the areas that are slower to receive devolved powers?
   
   This is a factor that would need to be taken into consideration by English cities and regions in choosing whether or not to take up the option of localised administrative and/or legislative powers. But this is also something that, under a non-English Parliament option, would need to be considered in ensuring that non-devolved areas continue to receive fair treatment in financial allocations and other decisions.

English votes for English laws
9. To what extent do the ‘English votes for English laws’ procedures as adopted by the House of Commons address the concerns you express about it in your Discussion Paper?
   
   We do not believe that adjusting the procedures of the House of Commons – whether through Standing Orders or by legislation – represents a sufficient long-term political solution that will cement the future of the Union. EVEL does not adequately address “the English question” which is that with devolution in Scotland, Wales and Northern Ireland, England has less control over its own affairs than any of the other smaller nations. Dissatisfaction with EVEL has already been expressed both inside Parliament and elsewhere. The Standing Orders are hugely complicated and the procedures required to undertake proper and robust certification of legislation could be lengthy and complex. It is not difficult to foresee a situation where a question is decided one way by the Supreme Court on a reference from a devolved legislature and the other way by the Speaker on a certification decision under the Standing Orders. This would put impossible pressure on Article 9 of the Bill of Rights.
   
   Additionally, the separation of the House of Lords into English and non-English members is of course impossible while peers continue not to serve in a representative capacity. Having Bills on English matters passing through a House in which influence can be exerted by politicians whose political and other interests all relate to another part of the United Kingdom has the potential to contribute to the perception of unequal governance.
   
   What impact do you expect the new procedures to have?
   
   We believe these will only serve to increase general frustration and confusion, leading to an ever louder demand to have constitutional issues dealt with by substantive legislation and not by obscure procedural technicalities.
   
   Our proposals for options for England and an analysis of the limitations of EVEL are set out more fully in our discussion document “Towards a New Act of Union” in Chapter 3 and Annex 2 respectively.

February 2016
The Constitution Society—Written evidence (UDE0019)

Introduction

1. The Constitution Society is an educational charity. It is impartial and has no affiliation to any political party. The Society is concerned with the promotion of wider understanding of the United Kingdom (UK) constitution. It does not take specific positions on particular substantive proposals intended to impact upon the constitution. However, it does endorse the idea that constitutional change should be given careful prior consideration. It should also be subject to the fullest possible consultation; and consensus should be sought for alterations when enacted. Constitutional change demands such an approach because it is a different order to regular public policy, entailing transformation to the system within which the political process takes place.

2. In a country with a written constitution, the core features of the constitution are protected against casual alteration by heightened amendment procedures. Changes to the constitutional text, for instance, may require the convening of a conference of experts, and be subject to legislative supermajorities or referendums before they can come into effect. In such states, changes of the type brought about in recent times in the UK, such as the introduction and extension of devolution, alteration to the composition of the House of Lords, the Human Rights Act 1998, and the Fixed-term Parliaments Act 2011, might well have been subject to these procedures.

3. However, in the UK, there is no written constitution. Discussions on the merits or otherwise of introduction such a text to the UK are not the central concern here, and The Constitution Society does not take a position on this matter. However, it is certainly the case that the lack of a written constitution makes it possible for systemic alteration in the UK to take place with relative ease. Whether or not this modification is subject to any kind of special procedure such as a referendum is not governed by clear principles and to a large extent at the discretion of the government of the time. Therefore, while under any system it is possible for change to take place by means other than a formal constitutional amendment process, such as judicial decisions or the development of conventions, in the UK this tendency is pronounced and subject to the particular influence of whichever group holds power at Westminster and Whitehall.

The current position

4. The present Committee inquiry is necessary precisely because of a sustained failure on the part of successive UK governments to adhere to the principles of constitutional change to which The Constitution Society subscribes: careful consideration, wide engagement, and consensus-seeking.

5. While the individual changes involved may have had merit, a series of measures have come about to a significant extent under the influence of calculations of partisan gain. It is reasonable to assume that the parties that were most supportive of the introduction of devolution to Scotland and Wales were of the view that they were likely to play a part in the government of these territories for the foreseeable future (though in the case of Scotland, disruption took place). Plans for ‘English Votes for English Laws’ (EVEL) have presumably appealed to the Conservative Party, their strongest advocate, partly because of the relative strength of the party in England. Moreover, constitutional changes have been executed...
sporadically, and without due attention to their possible consequences and the way in which they integrate into the constitutional whole. Devolution has proceeded in different parts of the UK in different ways and at different times. No government has made consideration of the lack of devolution for most of England a serious political priority. The present government has committed to plans to modify the impact of the European Convention on Human Rights in the UK without clearly taking into account the importance of the Convention within the devolved systems. Furthermore, no single, all-UK process of engagement has participated in and endorsed the major changes in the territorial governance of the UK that have taken place since the 1990s, despite their significance for the wider UK constitution.

6. The outcome is a position of pronounced instability for the UK. Asymmetrical devolution lies at the centre of present problems. Asymmetry is not necessarily wrong in itself. But the particular form it has now taken has created uncertainty and is connected to various forms of political dissent, some of which are in tension with each other.

7. The lack of devolution in most of England (and the existence of only limited devolution where it does exist in Greater London, or is presently contemplated, for ‘Northern Powerhouses’) has led some to call for greater local or regional autonomy within England. It has also encouraged complaints regarding the so-called ‘West Lothian Question’. In Wales, there are demands for devolution to be expanded to bring it more into line with Scotland. In Scotland, devolution has not, as initially hoped, quelled the independence movement and seems to have boosted it substantially. There are also calls for more devolution to Scotland, and the limits on devolution in Scotland are unclear. Overall the growing but uneven downward transfer of powers leave the central UK constitutional in an uncertain position. Disagreements prevail about how funding should be redistributed centrally. Intended measures such as EVEL, the impact of which is difficult to predict, could create further problems still.

Specific questions

8. Questions 8 and 9 from the Committee in particular are of interest to The Constitution Society. The first, number 8 is: ‘What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?’. The second is ‘Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?’

9. A process that could potentially contribute to the cohesion of the union, for those who believe that the maintenance of the union is a desirable goal, would be a UK constitutional convention. Such a body could promote a thorough consideration of the constitutional future of the UK and agree on appropriate steps forward. To be effective and command sufficient legitimacy, its membership should probably largely comprise members of the public, removing it from the competitive environment of party politics. It should seek evidence as widely as possible in the course of its deliberations. Its recommendations might require approval through popular referendum, or adoption by the devolved legislatures and UK Parliament.

10. There are a variety of areas of constitutional concerns that the convention might wish to consider, involving the different devolved systems, their potential extension to the whole of England, and how they might relate to each other at the centre. Beyond these matters, one subject which the convention could address is the means by which constitutional change
itself takes place. This submission has suggested that flawed process is a source of present difficulties. A convention could identify those features of the constitution that it felt were key to the UK system, and propose a consistent arrangement whereby changes to them were subject to a special procedure.

11. This approach could help ensure that the principles of constitutional change proposed here were more fully adhered to in future. It would share some features with a written constitution, in that it protected core components from inappropriate interference. However, it need not entail a complete move to a full text of this kind. A variety of routes to achieving the outcome envisaged here exist. They include the publication of a concordat not resting on direct legal enactment, through to the use of the standing orders and the committee system in Parliament, through to options with fuller legal force, such as the protection of some statutes from implied repeal, that is deeming that Parliament can only subsequently alter constitutional enactments if it states expressly that it intends to do so. It is also possible that the constitutional convention might advocate a clearer shift in the direction of a written constitution. These options each require close consideration.

12. Whatever particular method is favoured, without a new approach to our political system along these general lines, it seems likely that future changes, whatever might be their particular value, will only aggravate present constitutional dislocation.

29 September 2015
THURSDAY 21 JANUARY 2016

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

Ben Cottam, Head of External Affairs, Federation of Small Businesses in Wales, and Steve Thomas CBE, Welsh Local Government Association

Q281 The Chairman: Welcome to this session of our inquiry. We were in Scotland before Christmas and we had a session with your counterparts in local government and in small business, which was extremely interesting. I hope we will also find this an interesting session. I hope we will be able to cover the ground without too much difficulty. I should explain that one of my colleagues, Lord Judge, is going to have to slip away before the session finishes because he has pressing business elsewhere in the country later on.

I shall ask the first question. What are the most important features of the union to the people of Wales? What matters to them most? Do they appreciate that, or is your perception of what matters to them most different from what they might say themselves? Would you like to start, Mr Thomas?

Steve Thomas: I tried to rewrite your question. I read it a few times and worried about the arrogance of speaking on behalf of the people of Wales, which I cannot do. I think that what you are asking is whether the idea of nationhood is still attractive enough to keep the distinct parts of the union together, as much as anything else.

The Chairman: That is an underlying theme of our inquiry, yes.

Steve Thomas: In the Welsh context, all available polling evidence—if we take that with a pinch of salt—tends to suggest that the union is greatly valued by the Welsh people. A poll undertaken by BBC Wales last year showed that an extraordinarily high level of people want more powers to come to the Assembly while an extraordinarily low level of people in Wales support the concept of independence. That said, I think the union is a shifting entity. What we are seeing today in many of the regions and nations of the UK is people outside London saying, “Enough is enough. We want some of the power back”. Because of that, I think there is a view that the devolution journey is not yet concluded. I think many people in Wales are supportive of the concept of devolution, but clearly
for them the linkage with England and with other parts of the UK is equally important, not least because of the sense of economic well-being.

**The Chairman:** Yes, and they understand that sometimes what is devolved might undermine the union.

**Steve Thomas:** Absolutely.

**Ben Cottam:** From a business perspective, there is clearly still great regard and indeed need for the union, if nothing else for maintaining a very strong market for businesses. In Wales we have a very porous border, and organisations trade across it on a day-to-day basis. The existence of the union maintains the integrity and strength of that market. In looking further afield, the union is a brand for business that businesses of all sizes can capitalise on. Obviously my individual members will hold very individual views, but I am not sure they are sufficiently well versed in the alternative to form a view of what the change in the union has meant for them on a day-to-day basis. Still, there is some perceived strength in the union maintaining the market that is available to businesses.

Q282 **Lord Judge:** Local government is a devolved area, while business is business. Since 1999 there has been steady devolution, and I have a whole list of things for which the Government of Wales Act says the National Assembly for Wales is responsible—agriculture, fisheries, and so on down to Z. To the extent that there are differences in government policy as enunciated in the National Assembly and those that emerge from Westminster, have they affected either business or local government?

**Steve Thomas:** For local government there are positives and negatives. The differences can be positive for local government in the sense that we have a different policy regime in the Welsh context—for example, we are very much free to set our own council tax levels within a defined capping limit, we still retain local education authorities in Wales, and we have seen Welsh local government cut but not as badly as some of our counterparts in England. The negative is that we can no longer speak of a common local government system across the UK. The differences now are so pronounced, structurally and financially, that there is no symmetry across local governance in the nations, and that is reflected in a number of settings. One anecdotal example is that the trade magazine for local government, the *Local Government Chronicle*, should become the *English Local Government Chronicle*; it has never got to grips with the fact that there are devolved and different systems of local government across Wales and Scotland. So there are a range of issues there. On one hand, that could be seen as a good thing—it could be seen as a newly defined localism—but most of this confusion is the creation of central government and domestic statecraft. That is a problem for an identity for local government across the UK.

**Lord Judge:** You do not have a series of different forms of local government, do you? You do not have unitary, metropolitan, and so on and so forth—you have the one single system.

**Steve Thomas:** We have unitaries and town and community councils, but we are also talking about another structural reorganisation in Wales, probably in 2020. The proposals are to take us down from 22 authorities to eight or nine. So there is constant talk about the structure of local government; it is a hardy perennial.

**Lord Judge:** And businesses?

**Steve Thomas:** In terms of the differences in decision-making, there is certainly confusion. I do not think that fundamentally it causes day-to-day problems for businesses. In getting used to the lines of responsibilities, what business wants to see is a clear line of accountability, clear lines of
understanding of where responsibility lies for what area. There is certainly some confusion within that. Steve mentioned the differences in local government. That presents opportunities as well. We as an organisation would like to see a greater focus by local government on local economic development, for instance, and there is an opportunity maybe to phrase the conversation differently here in Wales. The differences in the lines of policy-making are really issues for politicians and constitutional lawyers more than they are my members, but it is beholden on organisations such as the FSB and certainly on politicians to make that very clear to businesses. It can cause some confusion. I heard the First Minister say this morning that when he has a surgery the members of the public have that confusion. The same is writ large for businesses, but they are making commercial decisions based on some of these issues, so it is very important that there is a clear communication of the impact of the differences in policy-making lines between Westminster and Cardiff Bay.

Lord Judge: If you had to ask the politicians to stop doing something or to start doing something that they are not, what would the members of your organisation say is the worst feature of this divided system? Do you have a raw example in mind?

Ben Cottam: I have a very current example. There is the very unfortunate situation with Tata Steel at the moment. There is an expectation on the part of business in instances such as that, or more broadly in terms of economic development and policy-making, that Governments in Westminster and Cardiff Bay are seen to work very collaboratively and in concert to the best advantage. There are plenty of occasions where that has been the case, but it is fair to say—I should predicate this by saying that the FSB as an institution has no constitutional position—that the story of devolution is that we have clearly been moving over the past few years towards institutions, or at least governance, of a different colour, and there have been growing pains with that. It has posed some challenges to economic development; in major crises, major decisions have been required where there is a different competence. Businesses have an expectation of clear decision-making and clear lines of accountability. That has not always necessarily been reflected in the decisions that have come from both Governments.

Q283 Lord Cullen of Whitekirk: We understand that Cardiff is likely to agree a city deal with the UK Government, perhaps to be announced later this year. Do you think that Wales would benefit more from expanding this form of devolution to cities and regions or from greater powers being granted to the National Assembly? Either way, which do you think are the most important powers?

Ben Cottam: On the principle of city deals—particularly in the immediate instance, as Cardiff poses a huge opportunity—some meat on the bones is required before businesses can make a decision about the likely impact of them, but a city deal focuses an economic development conversation more locally and encourages the collaboration that we as an organisation would want from local government and business in relationship with the Welsh Government. There is potentially a compelling case for looking at other opportunities around Wales. I know that there has recently been a conversation within the media, particularly in north Wales, where the lines of economic trade are east-west rather north-south. There is an opportunity for areas of north Wales to collaborate with the northern powerhouse in the north-west of England, for example, although whether that would be through a city deal model is probably another question. The city deal as a principle allows for a focus on localised decision-making, and as an organisation the FSB applauds and supports the principle of localised decision-making. It brings our members closer to the decisions on economic development that will directly affect them, so there is a huge opportunity. With regard particularly to the Cardiff city deal, the proof of the pudding will be in the eating as to how that translates across the border. The border of Wales is a social and political one, not an
economic one, and is not recognised by businesses. Sometimes we forget that when we come to policy-making, so the need to collaborate closely with regions outside Wales is imperative.

**Lord Cullen of Whitekirk:** My question, I think, was asking among other things whether that was more significant as a development than more powers being granted to the National Assembly. Can you make any form of comparison?

**Ben Cottam:** No, I am not sure that I could.

**Steve Thomas:** I think you have to be sensitive to the complexities of place. There are not only city deals; there are a range of regional or regional models across Wales of economic development. Swansea is also thinking about a city deal, and there is something called the North Wales Economic Ambition Board, which is very much looking to link into the northern powerhouse. There are a range of sub-regional economic development and regeneration initiatives across Wales. The city deal is an interesting proposal. It sees the possibility of a £1.2 billion investment fund; it sees 10 local authorities in Cardiff and the south-east Wales region working together, which is good; and there is the possibility of some big anchor projects with it. It also sees the possibility of a discussion into the future about where business rates sit, and what that means in the Welsh context. There is a huge debate raging in England at the moment about business rates and local government. That debate is not happening within Wales. The city deal initiative will bring that debate to the forefront. It has to. If you are to do things within the capital regions that we have, you are going to need some financing to push it forward.

**Lord Morgan:** The one city deal that is going ahead is in Cardiff. That is, of course, easily the most prosperous and thriving area of Wales, and I wonder whether you feel that the National Assembly should make an effort to spread that kind of advantage more widely. You mentioned the possibility of a Swansea city deal. I used to live in Swansea, so I declare an interest, but it seems to me that, since then, west Wales has suffered by comparison quite acutely. Might there be a push towards localised decisions being made there?

**Steve Thomas:** In local government at least, the leaders of the rural authorities in Wales, particularly Ceredigion and Powys, are looking to develop their own initiatives. A lot of that will depend on things like broadband going into rural areas, but you are right to think that if you are not careful the danger is that you get a two-speed Wales and you exacerbate the differences that already exist across the country. However, one of the advantages of having 22 local authorities is that they are fiercely protective of their areas, and they are looking to ensure that they all have a slice of the action. North Wales, to be fair, seems to have got its act together more quickly than south Wales. As a result, I think there is an even spread across Wales.

**Lord Morgan:** I am ignorant about the Swansea city deal. Is it close to—

**Steve Thomas:** The Swansea city deal is slightly easier to construct because it involves a smaller number of authorities. The leader of Swansea made an announcement about moving forward this week, and that makes a lot of sense. There has of course been a proposal with regard to local government reorganisation for what in effect would be a Swansea city region local authority.

**The Chairman:** And the business organisations are closely involved in the negotiations, are they?

**Ben Cottam:** They are indeed. It would be disingenuous of me not to suggest, particularly in areas in the west and north-west Wales, that my members do not feel very far not only from the decision-making but maybe the outputs of things like city deals. There is a responsibility to ensure that there is a feedback loop and a dividend from what is going on, and that a lot of light is shone on the city deal. That is about not just about west and north Wales but particularly up into the valleys.
Ensuring that the city deal benefits the valleys as much as it benefits Cardiff is of huge importance. With regard to the conversation in Swansea, as a native of Pembrokeshire I know that people in Pembrokeshire feel very far even from Swansea, so ensuring that, where there is an opportunity to focus on localised economic development, you are bringing in as much of the community as possible, and from as reasonably wide an area as possible, is very important. We cannot have city deals everywhere but we can at least use them as a template for localised decision-making and collaboration. That is what I want to see coming from the structure and the example of city deals.

Q284 Lord MacGregor of Pulham Market: I want to ask a question about the social union, which we have been discussing quite a bit during the day. The sharing of risks and benefits in a social union—I am talking particularly about welfare and other social benefits—is seen as important to the union. The Scottish Government are particularly keen on it; they are increasing the level of fiscal responsibility—or, as they would describe it, full fiscal autonomy—the principle that revenue is raised and spent at the same level of government. Does increasing the level of fiscal responsibility for devolved Administrations and city regional mayors risk increasing inequality, especially if the level is not minimal but reasonably high, by reducing the UK-wide redistribution?

Steve Thomas: We gave evidence on Monday to a committee chaired by Lord Kerslake, which is covering some of the same ground that you are. One of the things that became clear from the discussion we had then about the risk of inequality—if I can speak to the local government element of this—was that in England there is clearly a risk of two-speed devolution. What I mean by that is that there is a proposal on business rates. If I were in a London borough like Westminster, which currently raises £1.8 billion worth of business rates, I would be banging the drum and screaming very loudly for more devolution on a daily basis. Alternatively, if I were the leader of Newcastle, seeing my tax base not even covering the level of my services, I would be doing a reverse impression of Lord Coe and running a mile backwards. There is a problem in the inequality that could arise. We have not had that proposal in Wales yet, and one of the problems that we have, I suppose—again, this is the distinction between England and Wales—is that we are still hugely dependent on the revenue support grant, which has been phased out in England. How that then plays out in the great machinations of the Barnett formula, with someone putting that through the sausage machine in the Treasury and working out some sort of formula for us, will be very interesting to watch, but it shows a very different way of doing devolution, which I think can lead to regional inequality and even, if you read the local government press at the moment, inequality between the counties and some of the urban areas. There are some real and distinct issues to worry about on that front.

Ben Cottam: From the perspective of business, clearly we are in the early stages of getting used to what the devolution of powers of taxation will mean. It is clear that there is a lot of work to be done to help businesses to understand that, not least to understand the emerging nature of differential taxation for those who actually train across the whole of the UK, which, from the perspective of administration, can be difficult to understand. With regard to local government, we are very supportive of the idea of the repatriation, if you like, of business rates, which allows local government to fund and capitalise on their local economic development objectives. For business, this represents quite a significant challenge in the emerging powers of taxation and responsibilities and exactly what that will mean to them in the long term. This is a process, and we are seeing emerging conversations about income tax. We are therefore seeing taxation of a completely different order, and businesses struggle to come to terms with this, although, as I say, as an organisation we are supportive in principle of the idea of localisation.
**Lord MacGregor of Pulham Market**: There is a distinction in a way between revising the Barnett formula, and all the complexities that lie with that, and giving local authorities more powers to raise their own local revenues, with a concomitant requirement, if you are a comparatively poor area, to raise much higher revenue to deal with social deprivation than would otherwise be the case. There are differences there.

**Steve Thomas**: If you held in Wales the debate about the equalisation formula that there is in England, Cardiff would outstrip everyone in the amount of business rates that it raises, while Pembrokeshire raises quite a lot because of Milford Haven, the refineries and so on. There would have to be an equalisation formula because if you are in Bryn Y Gwynt, or one of the valleys, you are never going to make that level of rate rises pay as your base financial support.

**Q285 Baroness Dean of Thornton le Fylde**: Following on from that point, we are getting different responses to the question of a minimum level of welfare benefits. Scotland has said that it does not want it and it goes against its whole principle of devolution. In Wales, that is not quite the situation. Looking at Mr Cottam in particular, should a minimum level of welfare benefits be set for citizens? If there should be, who should set it? How would your members respond to the difference between the minimum level being set and perhaps a higher level being required? Where would the money come from?

**Ben Cottam**: I am not sure it is appropriate for me to say whether or what that should be. I can, however, comment on the principle of dealing with that, which, particularly for the smaller businesses, could be very complex. It is very difficult; I am conscious we are saying that we are supportive of localisation and generally supportive of devolution but perhaps not of the consequences of it. That is something that businesses clearly need to reconcile. I would say that within these emerging conversations, the engagement with businesses and the effort to reach out to them in the first instance is pretty limited. The way in which businesses can deal with the consequences of fiscal responsibility and the differential in welfare reforms is sometimes an afterthought. What concerns members is the ability to deal with and respond to it in a way that does not put them at risk of prosecution or whatever, and allows them to treat competitively. I do not think it is for me to comment more directly on the differential of welfare systems across the UK; it is more for me to comment on the complexity of dealing with the consequences of any change.

**Baroness Dean of Thornton le Fylde**: Mr Thomas, perhaps you could come in on this. At the moment we have a universal welfare system. There are exceptions in Scotland, such as student fees and prescription charges, but at the moment we have what could be called universal benefit. If devolution brought a change to that, the element of the poorer, lower-GDP parts of the country might not feel that change because it is a universal benefit, so the tax raised from the wealthy areas covers it and it is paid across the board. With devolution, that would probably come to an end, if you look at the direction of travel at the moment. How do you respond to that from a Welsh point of view?

**Steve Thomas**: May I respond with an example? When the devolution of council tax reduction benefit was announced, it was devolved and immediately there was a 10% cut.

**Baroness Dean of Thornton le Fylde**: You did not ask for it?

**Steve Thomas**: No. It was devolved—and then a 10% cut. The Welsh Government took a view that was different from that of the UK Government: they did not want to cut the benefits. In effect, the view in England was that local authorities take a view to subsidise or not. In Wales, the view was that there would be an all-Wales view to continue paying the same levels of council tax benefit to families across Wales. That required the Welsh Government to find an extra £22 million from their
budget and require local authorities to find money from their budgets. That is an example in the welfare system of a devolved Administration taking a view about the value of the benefit and the impact of inequality and using, within a universal framework, a distinct devolved approach to ensure that something did not happen. So it was a gatekeeper role rather than a proactive role. Those people in receipt of council tax benefit were very grateful indeed. There are examples across the system, such as the way student finance occurs in Wales, of different ways of providing what would be described as welfare or support programmes which devolved Administrations are taking on board. The Assembly was asked at one time to take on board the impact of the so-called bedroom tax. The costs of all these things are something that devolved Administrations are prepared to invest in, but I imagine that there would then be questions from the English side of the border about where the money would come from to pay for it.

Baroness Dean of Thornton le Fylde: And where did the money come from?

Steve Thomas: In this case it came distinctly from the Welsh Government budget and local authority budgets, but if it had been a much bigger benefit than that, at the end of the day it would all have been money collected through Her Majesty’s Revenue and Customs.

Baroness Dean of Thornton le Fylde: So there were no implications in that situation for small businesses or businesses?

Steve Thomas: There were no implications for businesses, but there were massive implications for people who did not have their benefit cut.

Q286 Lord Norton of Louth: To come on to another dimension—public engagement and accountability—Mr Cottam, a few moments ago you touched on a point that one of your colleagues made to us the other week, when looking at decentralisation, that small business felt that it was left out of the process and there was not much opportunity to have an input. There is a wider question about the public getting involved in the process. A lot of the negotiation is taking place at governmental and intergovernmental level, and the public are not necessarily part of that process. Could anything be done to ensure more public input as this process continues in respect of devolution? We have the Scotland Bill before us along with the draft Wales Bill and continuing discussions. Is there a mechanism by which the public can actually feel they are involved in the process?

Ben Cottam: My comments were more about the effects on business quite often being an afterthought. The experience of the FSB as an organisation, and of our members, has been that devolution has at least brought the conversation closer, and the opportunities to contribute are much more than they otherwise would have been under the system that was focused on London. However, there is clearly an increasing imperative to seek further engagement from businesses. The decision-making process is quite complicated, and, as we see, variable lines of accountability are problematic, but for businesses that seek to engage and want to do so, I commend both the Secretary of State but particularly the Welsh Government in their efforts to reach out to the business community. The outputs and fruits of our labour are not necessarily always what we would want them to be. Nevertheless the process is there, although probably not capitalised on.

Lord Norton of Louth: You have the advantage, though, that you are an organisation, so you are familiar with government. That means that you can make representations to them and you know what is going on.

Ben Cottam: Absolutely. That is what we are here to do.
**Lord Norton of Louth:** In a way, it is the public, who are not organised, who are the ones who will feel the effects of devolution. It is about how they can feel involved rather than simply being the recipients of whatever is agreed by the Government or those who know how to influence government.

**Steve Thomas:** We are talking about less involvement, then, are we not? There is currently a debate in the Conservative Party about whether there should be a referendum on income tax-raising powers in Wales. In the last referendum, it was put to the Welsh public that there would be such a referendum, so if there is not going to be one, cynicism may arise as a result. That said, the average person on the Cardiff omnibus is not that worried about the constitutional niceties of Welsh devolution; they are probably slightly more worried about the National Health Service in Wales, education and the economy. The debate on the constitution in Wales is in danger of boring large parts of the Welsh public to death.

**Q287 Lord Norton of Louth:** Once you have things in place—there is a changing picture of accountability, which perhaps adds to the confusion—people are probably bored by the process, but once it is agreed it has consequences for them, and in a way they need to know who is responsible for what, not least for reasons of accountability. Much of the evidence that we have been hearing is about how much confusion there is about who they think is responsible for what. Could more be done to enlighten people? Obviously as a principle they should be enlightened anyway—they should know—but how do we go about achieving that? How do we keep abreast of what is a changing picture, because those lines of accountability are changing?

**Ben Cottam:** I think there is a balance of proactive versus reactive. It is fine to say, for example, that this, as an institution, is open to all, but the National Assembly as the legislature could probably do more to go out and be much more proactive in its engagement, and to engage organisations and individuals in the process. Clearly there is a role for individual Members themselves, and I will absolutely take that point, but as an institution it has to fight against the relative indifference that is shown at the ballot box, with low turnouts at both the Westminster elections and the National Assembly elections. There needs to be a redoubled effort to engage. You are right that organisations like the FSB are a conduit for that, but we cannot be the only answer. There is a real danger that for organisations that work very closely with the Assembly and the Government it is seen as enough to work with them because, “We are working with the wider community”. I would always encourage my members to become as involved as they can individually, not just through organisations such as ours.

**Steve Thomas:** We as an association support the First Minister’s call for a constitutional convention. Looking at it in the Scottish context, something like that played a part in electrifying the debate there. However, I do not sense that that debate is happening to that level in the Welsh context in any sense. In terms of codifying powers, which is probably your next question, there needs to be a much clearer understanding of who does what. It is very messy at the moment; the devolution settlement remains untidy. Because of that, I do not despair of my fellow countrymen not understanding it, because I do not understand large parts of it myself.

**Lord Norton of Louth:** That is part of the problem, is it not? It is untidy and not clear-cut; it does not just say to the public, “That is there and that’s that”. It is untidy and there is a continuing untidiness. I take your point that people are not necessarily going to be interested in the mechanics of it or the debate about how we get there, but once we get there, as I say, the question of accountability and who was responsible for delivering those services affects people. Mr Cottam is
suggesting that the National Assembly for Wales has a particular role in disseminating material. Would that be sufficient?

**Steve Thomas:** Again, I do not think there is great understanding of the various functions of the Welsh Government or indeed the National Assembly for Wales. I think the National Assembly should be much more proactive in its approach to spreading the practice and the benefits of devolution. However, there are issues that the current debate is just not engaging with. I have never had anyone come up to me and say, “The greatest problem we face in Wales is the lack of a reserved-powers model in devolution”. It does not roll off the tongue and excite the general public. However, we are in a position where that understanding then permeates a range of other issues. A poll a few years ago showed that nearly 50% of Welsh people did not understand that the Welsh Government control the NHS in Wales, which is pretty poor. I was delighted to see in the same poll that they understood that education came within local government—that was good news, really. That might suggest that the more localised a function is, the more readily understood it is. We complain about people not engaging in politics, but I can tell you that in Wales if you announce that you are about to shut down a school, you will get a big public meeting. A school was shut in Gwyneth recently. There were 20 pupils at the school, but 500 people turned up at the public meeting. Clearly, those 20 had a very large extended family.

**Lord Norton of Louth:** In a way, the problem when they are complaining is knowing who to complain to.

**Steve Thomas:** Absolutely.

**Ben Cottam:** There is a problem here. We are talking effectively about the growing pains of devolution and the settlements across the UK. The imperatives of understanding and coming to terms with that are clashing with the reality that it will be the next generation who understands this perhaps better than ours does. This is why there is a need to engage younger people and schools in that conversation, and it is unfortunate that in Wales the funding for a kind of youth movement, for instance, the youth assembly, has been cut. Those are opportunities to engage with and inform younger people. It will come through in a generation, but clearly there are economic and social issues that cannot wait that long.

**Lord Norton of Louth:** That has been a theme of the discussion today: that education is the route to ensuring that people are informed. It will take a generation.

Q288 **Lord MacGregor of Pulham Market:** Just on your last point, Mr Thomas, I recall that some years ago, when I was an MP for a very large constituency with loads of villages and towns, by far the biggest meeting I ever had, and we used to do them very regularly—I could not even get into the hall because it was so full—was about a local proposal to have a wind farm next door. That really did engage the local community in a way that I had never seen before.

Somewhat on the same theme, would it help that process of local engagement, and for policy reasons, for greater tax and regulation to be devolved below UK and devolved national Governments to local government in all regions? What would be the benefits and risks to your members of pursuing that approach?

**Steve Thomas:** In one sense, that has happened in the Welsh context: the Welsh Government have gobbled them up. Stamp duty, business rates and a range of other things have been devolved into Wales, and I have seen some of the literature coming out of the combined authorities in England asking for much greater devolution. From our point of view, we would like to see a debate about that in Wales. Our problem at the moment is that there seems to be a perception in the Welsh
context that devolution stops in Cardiff Bay. From our point of view, it is our role—and we are paid to do it—to bang the drum for localism. The debate about more localised approaches in Wales seems to be tied to this question of local government reorganisation and, “You can have more powers as long as you reorganise”. Fine, but that is not going to happen until 2020. Indeed we have been talking about it since 2013, so even if we achieve it by 2020, we defeated fascism in Europe more quickly than we will have reorganised Welsh local government. We are in a position where the debate about the devolution of things, particularly financial mechanisms, down to authorities being conditional is not raging in Wales, and that is a problem. The debate is primarily about devolving more functions to the National Assembly, particularly financial instruments. Obviously at some point the next stage of the debate will be about devolved income tax powers.

**Ben Cottam:** The most pertinent example for us is business rates. As I mentioned earlier, we would like to see the local retention of business rates. Beyond that, with competence for business rates, we would like to see a complete overhaul of the business rates system, which we see as rather unresponsive, clunky, difficult to negotiate and in many ways unfair. There is an opportunity to use these powers and—I agree with Steve—to use a new conversation about what that should look like to best benefit our communities. There is an opportunity now to refocus on more localised economic development. In various areas of Wales we have significant systemic problems within communities that need localised solutions, but they need localised funding that would be able to support that. We certainly support the principle of the local retention of business rates, which I think is a good example from our members’ perspective.

**The Chairman:** Thank you very much. You have both been extraordinarily articulate and informative. We have covered the ground without going into overtime, which has sometimes happened to us over the day. We are extremely grateful to you. The great advantage of these occasions is that we do not need to take notes ourselves because we see a transcript afterwards, and we shall certainly be studying the things that you have told us. From my immediate recollection, there are a number of very interesting points that we will want to dwell on. Thank you very much indeed for coming in to see us.
**Ed Cox, Institute for Public Policy Research (North)—Oral evidence (QQ 105-114)**

**WEDNESDAY 25 NOVEMBER 2015**

**Members present**

Lord Lang of Monkton (Chairman)
Lord Brennan
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclean of Rogart
Lord Morgan
Lord Norton of Louth

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**Examination of Witness**

**Ed Cox, Institute for Public Policy Research**

**Q105 The Chairman:** Good morning, Mr Cox. I have already explained to you that you have a solo session with us today. Unfortunately Professor Harding has been prevented from getting here, for personal reasons. However, as leader of the IPPR for the north of England and with your experience in local government information units and so on, you may well have perspectives that the Committee has not yet been able to gather in this broad-ranging inquiry.

If I may, we will just fire off into the questions. We asked earlier witnesses what they think is the core of the value of the union—its purpose, its nature and how it works. We have had very brief but pertinent answers, such as security and trade and a reference to the sharing of risks and resources. There is another side to it, of course, apart from the mechanical side. There is the cultural and hereditary side—the heritage and so on—and the philosophical approach, but answer this as you think fit. What does England gain from its union with Scotland, Wales and Northern Ireland?

**Ed Cox:** It is a huge question to start off with.

**The Chairman:** Yes, it is.

**Ed Cox:** I can offer a partial answer. I offer my answer along the lines that you have already suggested. There are huge economic benefits by way of trade and co-operation between the different nations and, indeed, from having a shared currency. At the time of the Scottish devolution debate, many of those facts and figures were traded, so to speak. Broadly speaking, there was a sense that the economic integrity of the union was very important.

Secondly, from a fiscal point of view, there are clearly big advantages to raising and spending tax revenues over a very wide population—the wider, the better, in many respects—because that allows for sharing of risk across different areas. Having said that, many people within England feel that they get rather a bad deal out of the way in which that fiscal redistribution currently operates.
Given my role as director of IPPR North, I would make a particular case that people outside London, within England, feel that very often they get the worst deal around the whole fiscal redistributive set-up that we have at the moment.

The third area, which you touched on in your question, is the cultural dimension. Clearly there are strong emotional ties to the union, as we saw in the debates 15 months or so ago. Those date back over many centuries. To that extent, there is a very interesting relationship to be explored between English identity and British identity. I would throw into the mix local identity as well. IPPR has written about those different issues.

On each of these things—economically, fiscally and culturally—there are arguments both for and against what England gets out of current arrangements. What is particularly interesting in this regard is that while in the devolved nations—in Scotland, in particular—there has been a very lively debate about these issues, we do not seem to have had quite the same debate in England. That is to our detriment. We have not thrashed out from an English perspective—as English people, so to speak—precisely what the benefits are in this regard. We have normally done it in reflecting on the benefits to Scotland, Wales and Northern Ireland.

**The Chairman:** Yes. We hear in the north of England a feeling of slight resentment that Scotland seems to get more financial help, more economic assistance and so on. Does that work against the broad national comity and the feeling of a shared United Kingdom, or does the latter overturn the economic grumbles?

**Ed Cox:** It is a matter of personal opinion, in most cases. As a think tank, we try to establish the evidence and do the research properly to understand how people feel. I would suggest two things; it is very difficult to tease them out. The case for economic union is largely made—that is one fact that can be established—as is the case for fiscal union, to a large degree, although we can explore that in more depth. As regards the cultural argument, the problem with research that is done around this is that we are unsophisticated in the kinds of questions that we ask. People are quite comfortable with what I would call nested identities and that they are—in my case—Mancunian and English and British. I can sit fairly lightly with those three identities. The problem is that when we do polling, surveys and so on, we force people to make a choice about those things. That leads to a relatively arbitrary sense of what is most important to people, when actually they are quite comfortable holding multiple identities.

**Lord Maclennan of Rogart:** Can you say what you think about foreign policy and defence? The recent defence paper, which appeared on Monday, revealed that there will be considerable investment in Scotland, in manufacturing of vessels and the location of defence centres. There is also the question of influence in Europe from the fact that we are four nations. There are some threats of separation in Spain, Belgium and so forth. How do you think this plays in England? Not only that, how does it impact upon foreign countries?

**Ed Cox:** The first thing to say is that I do not consider myself an expert in matters of defence and some of the topics you have raised. IPPR North has written particularly about the devolution issues, the constitutional issues and the cultural identity issues. To offer a partial answer to your question, as regards where the economic activity associated with defence takes place, it plays very much to the argument I made that it is better that we draw on all the economic opportunities in the whole United Kingdom as we decide how we want to grow the national economy. The economic arguments for having particular industries in particular places are significant in that regard.

As regards our influence in Europe, you can play the argument both ways. Having four nations, with all that that carries with it, is clearly a matter of significance in relation to our European partners by
way of not just size but reputation and so on. At the same time, there are countries with much smaller population sizes that have significant influence and weight. We need to be cognisant of that fact. Simply having greater size and scale is not necessarily the only way in which we can have an influence in Europe.

**Q106 Baroness Dean of Thornton-le-Fylde**: Good morning, Mr Cox. Looking at the asymmetrical impact of devolution, we know that in the devolved nations it is there. We have heard people say to us as a Committee, “It is a great virtue. You cannot really have one without the other”, but others say that it impacts on the stability of the UK as a nation. I would like you to comment both on that and on a second part, particularly as you come from the north-west. How do you think the government policy of devolving powers or decentralising—whichever word you want to use—to the northern powerhouse or other areas will impact, at least on that asymmetry within England? Will that then be changed? In your view, is that a good thing or a bad thing?

**Ed Cox**: Let me address the asymmetry across the United Kingdom to start with. Again, there are different ways into answering that question. In economic terms, it has been very interesting that research done by Professor Michael Parkinson at the University of Liverpool has shown that the cities of Cardiff, Edinburgh, Glasgow and Belfast have all fared very well since devolution. He contrasted that with English cities and the fact that, to some extent, they have been held back by the lack of economic development powers that they have held. We carried out our own research, looking at inward investment in England and Scotland. Clearly, what the Scottish Government have done by way of inward investment powers has been very effective in attracting investment to Scotland. In economic terms, the asymmetry has allowed Scotland to push ahead, whereas English cities have not been able to do so in the same ways.

As regards public services, which are another key dimension of the asymmetrical debate, as we are aware, there is a rather more mixed picture. In particular, people have noted challenges regarding health and education in the devolved nations. Personally, I think that there needs to be more substantial debate about that. It is not simply a case of saying that they have done badly in health and education and therefore devolution was wrong. It is much more sophisticated than that. There are historical issues. There are big questions as to how far it is down to the particular policies of Scottish and Welsh Governments, the funding mechanisms and so on. We need to explore that in more detail if we are to understand fully whether it is asymmetrical devolution that has led to a perception of poor public services in Scotland and Wales.

There is a democratic issue, too, which is probably at the heart of what we are concerned about here. Asymmetrical devolution has really enlivened democratic debate across the country. We have seen that particularly energised in the Scottish situation. In turn, that has raised big issues about devolution in England as well. My sense is that many people, certainly in this place, will feel that it has stirred up a hornet’s nest. It may not necessarily be something that many people here wanted, but I believe that it has been an excellent thing for our democracy, to enable a much richer debate about the nature of British democracy, which—in my personal opinion—has become much too centralised and disconnected from many people’s lives. To that extent, it has been positive.

As regards asymmetry and what is happening in England at the moment, with the devolution deals process that is currently taking place, we are seeing a fragmentation, but that is nothing particularly new. I would want to make the point that London is already very asymmetrically governed compared with the rest of England, in that it has a mayor and a GLA. I would add that it is the home of central government and the majority of central government institutions. For the rest of the country, it seems highly asymmetrical within England. The other aspect of asymmetry that we have
long established in our system is the messiness of local government. I do not think that we are unfamiliar with asymmetry within England.

Whether that is a problem depends on two issues. The first is the extent to which that asymmetry within England is perceived to be unfair. Speaking as somebody from the north of England, representing an organisation that does a lot of work in this field, I think that there is definitely a sense of unfairness in relation to London and the rest. We have demonstrated statistics to show that our planned expenditure on transport infrastructure, for example, is running at around £2,600 per head in London compared with £400 per head in the north of England. People perceive that asymmetry as incredibly unfair. You could look at similar stats around the amount that we spend on education per household, which is £600 more in London than in the rest. We recently demonstrated that at the ages of four and five, when children enter school, children in London are already 12 percentage points further ahead of children in the rest of the country. In so far as London’s asymmetrical governance gives it those advantages, that sense of unfairness is key.

We have just spent six months researching the devolution deals process that counties, as opposed to cities and metropolitan areas, have been following. There is a real sense of unfairness among counties that cities are being privileged, both in the process by which their devolution deals are being negotiated and in the deals themselves, which are considered more substantive than the deals that are being brokered with counties. In perceptions of fairness, there are problems with a very asymmetrical approach.

The Government are right to say—we have argued this ourselves—that devolution deals need to be different and bespoke to different places. A degree of asymmetry is absolutely right, particularly in the short term, as the Government take a case-by-case approach to devolution. Although that asymmetrical approach is absolutely right, ultimately it will have its limits. For example, the city deals that have been announced and struck already are very similar to one another. There are differences, and those differences are important, but the kinds of things that are being negotiated are increasingly similar. Central government has a big capacity problem with trying to negotiate 38 all at the same time. To that extent, having a degree of symmetry and some core packages that could be negotiated between areas may help the process and reduce the pressures on central government in doing the negotiation.

The last point that I would make is around sharing good practice. There is a huge amount to be said for the devolution deal-making process being more open, so that areas can look at the different deals that are being done and share with one another the good practice that they are developing. Asymmetry is a good thing within England, but we have to address some of the problems of capacity and fairness.

**The Chairman:** Can I bring in Lord Hunt, please?

**Q107 Lord Hunt of Wirral:** Where does that leave us now? Thank you for your essay, but it was really an outline of all the problems. We are looking for solutions. It may well be that by demonstrating what a hornet’s nest we have, you are advocating the decentralisation decade—

**Ed Cox:** Yes, we are.

**Lord Hunt of Wirral:** You think it will take a coherent programme over 10 years, with a clear timetable. A slightly briefer exposition of your decentralisation decade would be very useful.

**Ed Cox:** We have argued that, if we are to get to a position on decentralisation that is coherent and credible, we need a 10-year process, based on some clear principles. Those clear principles need to include understanding the purpose of our devolution in the first place. We need a clear and co-
ordained approach over 10 years that allows for asymmetry but has some clear outcomes at the end of it, be those economic, or on public services or democratic devolution. I can dig into each of those, if you want me to; I am conscious that you wanted a clear and concise answer. I am saying that the process we have at the moment is piecemeal and partial, which is leading to an even greater sense of messiness around the country. However, if we were to set out on a very clear and purposeful 10-year programme, as we have argued and set out in some detail in our report, we might move to a situation where, yes, we end up with asymmetry—different places having different powers and responsibilities—but in a far more coherent fashion than we have at the moment.

Lord Lester of Herne Hill: I understand that you are describing the system in positive terms, but what are the limits on decentralisation to protect the basic rights of the citizen, irrespective of which part of the union they happen to be in, to ensure that decentralisation does not lead to local tyrannies of local majorities, for example?

Ed Cox: Professor Tony Travers has described the situation at present, which is that we could not be more centralised in this country if we tried to be. To that extent, we have a long way to go before we reach any particular limits, but allow me to suggest a couple of things.

First, what we are doing at the moment is largely administrative devolution. We are only just beginning to address the kinds of decentralisation that we see in most developed, modern, democratic nations. I refer particularly to fiscal devolution, and to a greater sense of political devolution as well.

On fiscal devolution, clearly the Chancellor has begun a conversation about that process by saying that he wants to devolve business rates in their entirety to local government. We do not think that can be done without opening the wider Pandora’s box of fiscal devolution more generally. To contrast, Germany and Sweden raise and spend between 50% and 60% of their tax revenues at that local level. We currently raise and spend about 5%, if you take a very generous view of council tax. As far as limits are concerned, we are a long way fiscally from what we can do.

On political devolution, we have started a conversation, with the formation of combined authorities and, indeed, the introduction of directly elected mayors for certain city regions, but a lot more conversation needs to be had about how we revive local democracy—in particular, devolving powers around, for example, proportional representation, votes at 16 and second chambers. Some of those ideas have been used in Scotland, Wales and Northern Ireland to some extent, but we are yet to have that conversation within local government in England. That addresses your concern around what you described as local tyrannies. My sense is that the only way to have a more vibrant local democracy and to put trust and faith in local councillors, combined authorities and directly elected mayors is to give them powers that allow the general public to take them seriously and to want to get involved in the local democratic process. The problem we have had is that by constantly limiting the powers and stripping the funds of local government we have, essentially, denuded it of any credibility. We end up with a poverty of local government, and then people do not see the value of getting involved with it and challenging it.

Lord MacGregor of Pulham Market: Can I ask you one question, before I come to the question that I was going to ask? You described the differences between the different regions and the unfairness of it all. Is there no impact from the regional MPs, who are presumably raising the case all the time—I recall doing it myself for East Anglia—for the issues that concern them, including some of the ones that you described as being very different from those in London?

Ed Cox: Yes. It is fair to say that many Members of Parliament are very vocal about their local areas and secure the kind of decisions that will be beneficial to their areas. The problem with that system
is that it militates against the proper and necessary devolution of power and has historically drawn powers to the centre. The game then, of course, is to be elected as a Member of Parliament and to come and do the bidding of your constituency in Parliament, rather than to do what most modern democratic nations have done, which is to recognise the proper principles of subsidiarity, pass down the relevant powers to the relevant institutions at that subnational level and, effectively, allow politics and politicians to get on with their business at the most appropriate level. Instead, we have sucked powers to the centre and then made Members of Parliament king in negotiating those. A far healthier democracy is one that shares power vertically. There are necessary decisions that need to be taken at national level and Members of Parliament can do that, but, equally, we need politicians working at other tiers of government in order to make the appropriate decisions there, too.

**The Chairman:** Lord Morgan, do you want to come in?

**Lord Morgan:** I was going to track back a little, but it relates to what has been asked. I should apologise very much for being late. I was a victim, I suppose, of administrative devolution—namely, what has happened to London’s traffic, which meant that a journey of two miles took me 50 minutes. I am sorry about that.

England has a very considerable boundary with Wales and a considerable boundary with Scotland. If there is considerable variation within the various local authorities in England in what they do, how would that relate to links with Wales and, no doubt, with Scotland, too, in connection with transport services, collaboration in hospital and health services and things of that kind? Might that be a limitation on the extent of decentralisation that we should have?

**Ed Cox:** I am sure that it is a limitation on the extent of decentralisation, but it should not be an insurmountable hurdle. If we look at the way in which other nation states such as Germany operate, the different Länder all have significant boundaries with one another. Tax is something that is often raised in this regard, but there are processes at the national level to enable a degree of harmonisation between them. We have published research looking particularly at issues of public service variation between the Länder in Germany. What we have demonstrated over a number of different public services is that, through Germany’s decentralisation process, it has caused a race to the top, rather than a race to the bottom, between the different federal states of Germany in the way it provides public services. Yes, there are issues. Yes, there are matters that need to be addressed and understood, but there are very good ways, whether on tax or on public services, to harmonise and to enable those borders to operate effectively.

**Lord MacGregor of Pulham Market:** Shall I come back in now?

**The Chairman:** I am sorry, Lord MacGregor; I had not realised you wish to ask a further question.

**Q108 Lord MacGregor of Pulham Market:** I would like to probe a bit further on the question of asymmetry. Does the Government’s policy of decentralisation risk a fragmentation of power and governance across England? Do you think that represents a problem?

**Ed Cox:** I have addressed many of those questions before, so I will not rehearse them all. Yes, it leads to fragmentation. The question then is, should there be a limit to it, and is it a problem? In the short term, it is not a problem. We need devolution and decentralisation to enable the economy to flourish, for public services to improve and to engender a much greater democratic debate in our nation. To that extent, the fact that the current process is leading to fragmentation is not problematic, but, as I suggested before, in the longer term we will naturally see a greater level of symmetry than the current Government perhaps expect, in that ultimately different cities will want
very similar packages of powers. That will cause a greater degree of symmetry than might currently appear. Similarly, counties will ask for similar powers. I feel that over a period of time—it will take a little while, perhaps 10 years, for it properly to mature—we will end up in a new settlement, which will be more symmetrical than it feels it is becoming at the moment.

The Chairman: Professor Robert Hazell told us that “the risk of continuing with devolution on demand is that we may end up, in England, with a very fragmented and patchwork set of powers and responsibilities in different parts of England. I do not myself think that that, in the longer term, is sustainable”. You are saying that you think that in the longer term we will not be at that position.

Ed Cox: Yes. It feels like that at the moment. We have only six or seven deals currently struck. Those deals are being presented to us as all very different from one another, because that is exactly what the Government and the cities want us to think—that they are all very different and bespoke to their area. In the course of time, when the other 38 deals are struck, we will be able to see quite clearly patterns emerging as to the nature of some of those deals. Then we will feel more comfortable that it is not as asymmetrical as we thought. I really do not want to lose the important point that the Government are right to make—that in the current process it is absolutely right that each area should negotiate its own bespoke deal. That is very important, given the terms of the devolution conversations that are going on right now. I would prefer to see a 10-year process, with much more coherence, but it is clear that the only way to drag certain powers out of certain departments is to take the approach that the Government are currently taking.

The Chairman: Three of my colleagues want to follow this up, Mr Cox, so I will ask for short questions and fairly short answers.

Ed Cox: I will do my best to be quick.

Baroness Dean of Thornton-le-Fylde: Mr Cox, I have two quick points. When talking about asymmetry and devolution, quite a number of witnesses sitting where you are quote London. It could be argued that London is the worst case, not the best case, to quote, because often the rest of the country is not in such a good economic position. The effect of the recession on other areas, as opposed to London, was much more severe. You talk about the upside all the time, but are you building in any unintended consequences? In 10 years’ time, will we, in fact, have pockets of England—that is what we are talking about at the moment—in a worse economic position than they are now, simply because of devolution asymmetry and because they do not have the economic wherewithal to pump-prime the growth in their economy that they need? There is loss of population in Liverpool, for instance, and other areas.

Ed Cox: What we have demonstrated since the 1930s is that regional policy dictated by central government has not been particularly effective. There are limits to what we tried to do before. Effectively, what we have done—certainly since the 1970s—is to centralise more and more economic development powers. It is right now to look at what has happened in other mature democracies where they have far healthier, more balanced economies and to say, “Actually, they are doing something there that we have failed to do in this country”, which is to decentralise economic development powers. As I said, interestingly, since devolution to Scotland and Wales, we have seen the cities there, in particular, flourish to a greater degree. We are beginning to see the cities in the north of England flourish as well, thanks to the devolution to those cities that is starting to take place. Yes, there is a risk, even in the long term, because London is so dominant in the national economy, and to a large degree that benefits places outside London, through redistributive grants, benefits and so on. In the long term, however, I think northern cities would rather stand on
their own two feet and drive their own economies, even if that means that in the short term they are poorer for doing so.

Q109 Lord Lester of Herne Hill: You referred us to Germany as another mature democracy. Germany has a written constitution, a Bill of Rights and a system that allocates powers between the Länder and the central government. How is that relevant to us when we have none of those characteristics?

Ed Cox: I would simply argue that those are the kinds of characteristics that we need to develop in this country.

Lord Brennan: Mr Cox, I have some difficulty grasping the concept of asymmetrical democracy, which seems to flow from the cities paper. I will not challenge you on the principle of decentralisation, but rather on the method. The first paper, 2014, refers to cities and the second to counties. England is a territory with about 50 million people in it. I can understand wanting to expand and fortify successful cities and counties. I do not see how at the moment this programme helps the lesser places that there are bound to be, with a population of such size, as to powers and as to finance. I am concerned that asymmetry could become a synonym for inequality.

Ed Cox: I very much share your concerns. That is why we have argued for a more coherent and coordinated approach than we are currently seeing. At the moment, we have local enterprise partnership areas across England that broadly cover the whole geography of England—38 of them. My sense is that they cover what you have described as the lesser places—the smaller places—as well. If we were to have a systematic approach to devolving powers to each of those, we would be in a situation where those lesser places were covered by devolution powers as well. However, I agree that with the deals that are currently being struck some places are being left out.

There is a deeper problem about the narrative that we currently have around city growth, which, in my view, excludes too many areas. There is a problem with this. Forgive me, as I am sure that you do not want me to go into the detailed economics of it, but we presume too much of our city growth policy on US and east Asian models of city growth, rather than on European models of what I would call metro regions, where cities and smaller towns and places all grow together. The dominant narrative around city growth is important, and we have to take it seriously, but there is also a narrative from the European situation that shows that, for example, the relationship of places such as Preston, Burnley and Blackburn to Manchester, which are currently outside that combined authority, is very important, not just for those places but for Manchester itself. We need to be a bit more sophisticated in our economic understanding of the way city growth operates.

The Chairman: We have one or two substantial points that we still want to address. Lord Maclennan, would you like to squeeze in your question before we do that?

Lord Maclennan of Rogart: A lot of it has been answered already.

The Chairman: That is rather what I felt. Are you content?

Lord Maclennan of Rogart: I was wondering whether you had evidence from the public about how to deal with the problem of inequality, and whether or not you think that the public would be overwhelmingly concerned if there were considerable imbalances in the resources being ploughed into different parts of the country.

Ed Cox: There are three quick dimensions in responding to that. First, if you are talking about income inequality, I am not persuaded that any of the conversations that we are having around devolution in England will address that fundamental problem that we have with our economy. It
Ed Cox, Institute for Public Policy Research (North)—Oral evidence (QQ 105-114)

has much more to do with the structure of the national economy, the role that particular sectors play and how that works.

If you are talking about public services and inequality of public service provision, I would simply make the case that those who say that devolution leads to postcode lotteries should look at the situation we have right now. There is growing evidence to show that the centralisation of our public services is the primary cause of inequality, because of the constraints on public service providers. The way we deliver public services at the moment, through central contracting processes, is the fundamental problem and why we see inequalities at the moment. If we devolve greater power, it is more likely that we will see much more adaptable public services, much better attuned to local populations, and perceived inequality will reduce.

If you are talking about fiscal issues, we currently have a system that I believe is asymmetrical and skewed as regards the amount of public resource that we put into places such as London and Scotland, compared with the rest of the country. I would argue for an opening up of the whole fiscal box and the way in which we redistribute tax revenues across the country, and that we consider different ways of administering our tax system to address that problem.

Lord Maclennan of Rogart: Do you think that there is any way in which we can stimulate the public to comment on these issues?

Ed Cox: When the public are provided with information and decision-making processes, as has recently taken place with the Sheffield citizens’ panels that they have been running over the last few months, people are very animated and have very strong views about devolution—just as we saw in Scotland. The problem is that there is cynicism on the part of both central government and local authority leaders in the present situation to strike relatively secretive deals in order to transact power from one to the other. They believe that it is better to do it that way than to involve the general public in these things. That situation needs to be opened up over the next few years.

Lord Norton of Louth: Coming on to a somewhat different topic, we have had different evidence on English votes for English laws. I know that in the past IPPR research has tapped a certain degree of resentment in England over the West Lothian question. Do you see English votes for English laws as an answer to the English question?

Ed Cox: English votes for English laws is an immediately attractive proposition to try to address a particular problem around voting in Parliament. It is also a very useful device for causing political mischief, I would argue, which may or may not have unintended consequences; I just flag that, too. Its particular salience in the current debate betrays poverty of thinking about wider democratic issues in this country, for two reasons.

First, for the English question to be subsumed into a procedural issue in Westminster demonstrates just how disconnected this place is from wider democratic concerns among the general public at large. As events in Scotland have shown us, our democratic deficit cannot be dealt with simply by tinkering with arrangements here. I appreciate that people in this place do not perceive English votes for English laws as simple tinkering, but, frankly, many people in the country do. People want to see powers being exercised much closer to them. To that extent, it is only a partial answer.

The second problem is that English votes for English laws denies a fundamental proposition or principle of modern democracy—in particular, of our union—which is that at some level there needs to be an element of solidarity and shared decision-making. To that extent, we have to trust one another, at some level or other, to take decisions on behalf of one another. I am worried that simply as a knee-jerk reaction to a grievance about the way the Scottish devolution debate has
played out, and, indeed, to cause political mischief, this is really a lowest common denominator approach to the problem.

Q110 Lord Norton of Louth: Can you do anything else in the short term to address the concerns that people have? As I said, the IPPR research reflected attitudes and tapped problems in England. To what extent can we deal with those in the short term? Essentially, you are indicating that your solution is a longer-term one. Should we simply be working towards that, or is there something else that we should be doing?

Ed Cox: I am not arguing that devolution is a long-term answer; I am arguing that devolution is a long-term process. The steps that we are taking already on devolution are short-term steps, but they are in the right direction. We can all take a view. Immediately after the Scottish referendum, discussions about English votes for English laws were very high on the agenda. I perceive that they have dissipated to quite a large degree. I would make the case that that might be because, in a rather sophisticated and mature way, the Chancellor, in particular, has recognised the fact that devolution may be a better solution to this question than English votes for English laws. Short-term steps that the Chancellor has taken are perhaps dissipating some of that debate.

Q111 Lord Norton of Louth: Given that, do you think that English votes for English laws has any wider consequence for the union, or do you think it will diminish as steps are taken in the direction that you favour?

Ed Cox: No. I think that it has very profound implications for the union, which is why there needs to be a very significant debate about it. If you are asking how we answer the English question, I think we need a range of debates and discussions as to how that plays out.

Lord Norton of Louth: That would be the debate you referred to.

Ed Cox: Yes.

Q112 Lord Lester of Herne Hill: You said in answer to one of my questions that you like the German constitutional model and you think it is relevant to us. Is there, in fact, a viable federal model for the UK?

Ed Cox: Let me be clear about my comments on Germany. My response to you was that we need to work towards a written constitution and a more federal model in the UK, not that we should adopt the German model. Please be clear about that. Is there a viable federal model in the UK? In principle, yes, in so far as most other modern democracies of the UK’s size have a more sophisticated what I would call multi-tiered governance structure than we have. Yes, there could and should be a more viable federal model. A lot of the international evidence suggests that to divide nations into states of about 6 million to 8 million people is a pretty good principle that seems to work quite effectively, but there are myriad examples of how federal states might work. In principle, the answer is yes.

In practice, we still have a long way to go in understanding the form that we would like a federal state to take. I will come to a solution. To a degree, we already have a federal state, in that we have the devolved nations, but England is far too big and too dominant. The issue is, how far can we subdivide England, and should we subdivide England? To go from national to local authorities, I would argue that local authorities are definitely much too small. We now have local enterprise partnership areas, which are essentially around functional economic areas. There are 38 or 39 of those. My argument would be that even that is probably too small. We therefore need some kind of mezzanine regional tier. That is where the creative thinking
needs to come. We know from recent history that administrative regions were not perceived as fit for purpose. Nine regions of England did not seem to work very well both in the public imagination and in some regions, effectively, economically on the ground. That leaves a big question as to what the regional tier should look like. This is a piece of work that IPPR would like to explore more in the near future.

Lord Lester of Herne Hill: One needs people’s consent if you are changing the system. One of the suggestions has been a kind of Spanish model of opting in. You could have a framework, which would allow coherence, but only with the consent of the regions. That is the Spanish solution. Is that the sort of thing you have in mind, or do you not have any particular recommendations for us?

Ed Cox: It would be fair to say that I do not have any particular recommendations. Certainly the opting-in model that you described is something that could be explored. Where there is some real energy around this issue at the moment, it relates to the north of England—in particular, the formation of the Transport for the North body, which, as many will know, is now to be given statutory powers. It seems to me—again, this refers to my principle of subsidiarity, of which we need to be very mindful—that there are a number of powers that are best held at that mezzanine level. Transport, inward investment and innovation are three, but you could look at others as well. The salience of the Transport for the North body, now with statutory powers—let us be clear: it will have a certain amount of governance around it, too—shows that there is some appetite and some geography that you could develop for England at that mezzanine level. I think that we will see Transport for the North extend its remit. It already has. It started with rail and has now moved to transport generally. I think that it will quickly move to infrastructure. It is already carrying out a big economic review, which will take it into areas of wider economic development. For me, that is only a few short steps away from being something akin to the kind of governance that we see at the mezzanine level in other countries. What does that mean for the rest of England? They need to get their skates on.

Q113 Lord Brennan: Is the idea of English regional assemblies dead—politically, first of all, among the parties at Westminster—or is it alive, perhaps in a state of cryogenic freezing in the community, waiting for the Government to respond?

Ed Cox: As my previous answer indicated, the idea of regional assemblies in the form in which they were developing—let us put it that way—under the new Labour Administration in the early part of this century is probably dead. I do not think that there is any appetite for bringing back nine regional assemblies of that nature. However, as I suggested, some mezzanine tier of governance in England, between the functional economic areas and central government, is absolutely necessary. It is only a matter of time before we evolve structures at that level, no doubt in our typically British and organic way. I point to Greater London as another structure at that mezzanine tier.

Lord Brennan: What is the evidence that the people of the country want that solution?

Ed Cox: It has been borne out by a number of surveys. The most recent was a BBC survey last week, which said that 82% of the population believe that the balance of power between central and local government is wrong and that we need devolution. The problem is that if you then ask the general population, “Do you want mayors?”, they say that they do not know. They do not say that they do not want them; they say that they do not know whether they like them or not. It is very mixed. If you say, “Do you want regional assemblies?”, they say, “We are very mixed in terms of what we want and what we don’t”. It is the form that people are less clear about, not the fact that they want more devolution.
Q114 The Chairman: Your answer leads into our next set of witnesses, who are already here. We are almost out of time. There is just time for me to ask you one question, for a one-sentence answer. Has the decentralisation of the BBC to the Greater Manchester area had a beneficial spin-off that is in any way measurable?

Ed Cox: Yes. It has had great economic benefit to Greater Manchester.

The Chairman: What it spends itself in the area, yes.

Ed Cox: What it spends itself, but there is also the movement of population to Manchester and the wider spin-off industries that have come out of MediaCityUK. Indeed, looking at my own neck of the woods, in south Manchester, house prices have gone up because of demand. Those wider economic effects have had benefits as well. Culturally, too, it makes a big difference. To get up in the morning and hear presenters talking about the weather in Salford or in Manchester, rather than assuming that whatever the weather is like outside the window in London is the way we should all perceive the world, makes quite a significant difference to people.

The Chairman: As a Scot, I can identify with that, Mr Cox. It has been a fascinating session. You have been extremely helpful and very informative. Thank you very much.

Ed Cox: Thank you very much.
Transcript to be found under Campaign for an English Parliament
1. What aspects of the Union persuaded Scottish voters to support continued membership of the UK in the independence referendum?
   - What aspects of the Union pushed voters towards independence?

For the most part this question can only be answered indirectly. Polling and survey research during the referendum focused on what people thought of independence and its perceived consequences rather than on their evaluations of the Union. Indeed some attempts that the Scottish Social Attitudes (SSA) survey made to try and ask people what they thought were the consequences of being part of the Union suggested that people struggled to evaluate the consequences of the status quo as opposed to a possible change.

All the polling and survey evidence suggests that the strongest correlate with whether people proposed to vote Yes or No in the referendum was the perceived economic consequences of independence as opposed to remaining in the UK.

For example, according to the 2014 SSA, just 1% of those who thought that Scotland’s economy would be ‘a lot worse’ under independence said that they proposed to vote Yes in the referendum, as did just 10% of those who thought that it would be ‘a little worse’. In contrast, as many as 92% of those who said that the economy would be ‘a lot better’ under independence and 83% of those who indicated that it would be ‘a little better’ anticipated voting Yes.

Equally, in response to a question that the company asked regularly during the course of the referendum, ICM found in its final poll conducted just before polling day that, of those who had made up their mind, 99% of those who thought independence would be ‘good’ for the economy proposed to vote Yes, while 97% of those who thought it would be ‘bad’ voted No.

Finally, an internet panel study conducted by the British Election Study (BES), found that just 5% of those who in May 2014 thought it was ‘very likely’ that Scotland’s economy would be worse under independence eventually voted Yes, as did just 20% of those who thought it ‘fairly likely’. In contrast, as many as 95% of those who thought it ‘very unlikely’ that the economy would be worse voted Yes, as did 90% of those who thought it was ‘fairly unlikely’.

All of these exercises found that the link between perceptions of the economic consequences of independence and which way people intended to vote in the referendum was stronger than the link between the perception of any other consequence and referendum vote, including perceptions of whether or not an independent Scotland would be a more equal country.

At the same time, all of these exercises found that more people thought that the economic consequences of independence would be disadvantageous than thought they would be advantageous. In interviewing conducted in early summer 2014, SSA found that 44% thought that the Scottish economy would be worse under independence, while 25% believed it would be better.

At much the same time, the BES reported that 46% thought it likely that the economy would be worse under independence, while just 24% believed it would be better. Meanwhile, in its final poll, ICM found that 38% thought independence would be ‘good’ for Scotland’s economy while 45% believed it would be ‘bad’. In short, it would appear that the key attribute of the Union in voters’ eyes that did most to persuade them to vote No in the referendum was that it was regarded as economically the ‘safer’ option.

2. What does the referendum campaign and other research tell us about public understanding of the Union and devolution?
• How can the Union and devolution be more effectively communicated to, and understood by, citizens across the UK?

I am not sure that the referendum campaign or subsequent research tells us much about ‘public understanding of the Union and devolution’. I am certainly not aware of any attempt to try and measure the ‘accuracy’ of such understanding, let alone to assess the implications of that ‘accuracy’ for attitudes or referendum choice. (There was, in contrast, at least one attempt to assess the level of understanding of the some of the details of the Scottish Government’s proposals for independence, and this found that as of June 2014 typically around 60% were unable to say whether a statement about those proposals was true or not.)

What does seem to be the case is that there is a relatively low level of awareness of the proposals for more devolution prepared by the Smith Commission since the referendum. As of last January, at least, only 55% said to Ipsos MORI that they had seen or heard anything about the Smith Commission report, while just 23% claimed actually to have read any of it.

3. What level of support does the continuation of the United Kingdom have in its four nations?

• What elements of the Union are particularly valued or disliked in England, Wales and Northern Ireland?

Support in Scotland for the maintenance of the Union has probably never been lower. To date, there has never been a period when polls and surveys have consistently pointed to majority support north of the border for leaving the UK. Yet polls conducted since the referendum have on average found that Scotland is now almost evenly divided on the question of its constitutional status. On average four polls conducted in September and October have found that 48% would now vote in favour of independence, while 52% would vote against. These figures are in line with most polling that has been conducted since last year’s referendum.

In contrast, there is little support at present in Wales for leaving the UK. In the most recent reading, obtained by ICM in February 2015, just 6% chose independence as their preferred option when asked to choose between a variety of different constitutional positions for the country. The previous September the same company found that just 3% were in favour.

Only a minority of people in Northern Ireland currently wish to leave the United Kingdom. According to the most recent Northern Ireland Life and Times (NILT) survey conducted in the autumn of last year just 21% wish to unify with the rest of Ireland (17%) or want Northern Ireland to become an independent state (4%). Support has hovered at around this level in this annual survey since 2010, and since then has consistently been lower than any time since the survey began in 1989. Previously at least a quarter supported the proposition and occasionally as many as a third did so.

It is relatively rare for polls or surveys to ask people in England whether they want England to become independent or not. But when the proposition is put it appears to find little support. The 2013 British Social Attitudes (BSA) survey, for example, found that just 16% thought it would be better for England if it were to become independent while 78% thought it would be better if it remained part of the United Kingdom.

There is rather greater evidence on attitudes towards what might be considered a proxy for this issue, which is how people in England think that Scotland should be governed. BSA has asked voters in England how they think should Scotland be governed on a regular basis since the advent of devolution. Support for independence has ranged between 19% and 29% during that period and stood at 24% on the last occasion the question was asked in 2013. Meanwhile, the proportion of people south of the border who back Scottish independence appears to have fallen
during the referendum campaign. In a poll conducted by YouGov shortly before referendum polling
day, just 17% of people in England and Wales said that Scotland should become independent, down
from 24% in January 2014, 36% in January 2012, and 41% in May 2011. Similarly, the Future of
England survey found that the proportion who back Scottish independence fell from 30% in
November 2012 to 19% in April 2014.
4. What level of support is there for the current devolution settlement and how does it vary
between the four nations of the UK?

There is course no such thing as a single ‘constitutional settlement’, but rather separately crafted
settlements for Scotland, Wales and Northern Ireland, and more piecemeal moves towards a
degree of devolution in England. At the same time, the current arrangements in Scotland and Wales
are in a degree of flux, and thus the relevance of attitudes towards the ‘current’ devolution
settlement might be considered problematic.

There is no doubt that the principle of devolution is popular in each of the three territories that
now enjoy legislative devolution. According to the longest running time series on the subject
(provided by SSA), support for devolution in Scotland (either with or without tax-varying powers)
has been at or above 50% on 13 out of the 15 occasions between 1999 and 2014 on which people
in Scotland have been invited to choose between devolution, independence and no parliament at
all. In the last ten years support for the last of these options has typically been less than 10%, while
further evidence from the same survey indicates that nearly everyone whose first preference is
independence choose devolution as their second preference.

However, this does not mean that the current devolution settlement or even the version envisaged
by the Smith Commission necessarily matches the current or likely new dividing line between
‘devolved’ and ‘reserved’ responsibilities. The instinctive reaction at least of most people in
Scotland appears to be that more or less all of the country’s domestic affairs should be determined
by the Scottish Parliament, leaving the UK government to deal with just defence and foreign affairs.
For example, SSA has persistently found that just under 60% think that the Scottish Parliament
should make the key decision for Scotland about taxation while just over 60% say the same about
welfare benefits. (In contrast, less than two-fifths say the same about defence and foreign affairs.)
Meanwhile, such polling evidence as there is on the proposals of the Smith Commission suggest
that the public are inclined to think they do not go far enough. For example, a YouGov poll in
December last year reported that no less than 51% said that they did not go far enough, while just
14% reckoned they went too far.

In Wales, the ICM poll to which reference is also made at 3, found that just 13% now think that the
National Assembly should be abolished. This result is typical of recent polls on the subject.
Meanwhile no less than 77% said they preferred devolution to either independence or no assembly,
with just over half of this group (40%) saying that they believe that the Assembly should have more
powers. However, the extent to which people in Wales back more powers appears to be somewhat
less straightforward than in Scotland. Research undertaken for the Silk Commission by Beaufort
Research in May/June 2013 found clear majorities in favour of making the Assembly responsible for
renewable energy, policing and wind farms, but that a majority were opposed to devolution of
criminal justice as well as defence and foreign affairs. Meanwhile, opinion on welfare benefits was
almost evenly divided. However more recently polls by YouGov on how people would vote in a
referendum on giving the National Assembly tax powers have found that a plurality are against; in
the most recent poll in September 34% said they would vote in favour, 41% against.

NILT has found that on the seven occasions on which the question has been asked since 2007,
between 50% and 58% have said they preferred devolution to either direct rule or unification, with
the most recent reading standing at 50%. As we might anticipate the option is rather more popular amongst Protestants (63% in 2014) than Catholics (44%). The most widely available indicator of attitudes in England towards devolution in the rest of the UK is in respect of Scotland. It suggests the principle of Scottish devolution appears to be widely accepted south of the border. In 2013 BSA found that just 21% did not think that Scotland should not have a parliament at all, while 55% said that there should be a devolved parliament (while as reported earlier 24% backed independence). However the proportion opposed to Scotland having any kind of parliament has consistently been somewhat higher since 2007 than it was in the early years of devolution (when the figure never exceeded 19%). Meanwhile, the 2013 BSA found that 45% of people in England supported the devolution of key decisions on taxation and welfare to the Scottish Parliament, while just 27% were opposed.

This, of course, does not necessarily mean that people in England are supportive of the current financial arrangements whereby Scotland enjoys a higher level of public spending per head than England. Certainly, according to the most recent BSA reading (2013) just 5% think that Scotland secures less than its fair share while 36% believes it obtains more than its fair share. The latter figure has tended to be somewhat higher since 2007 than previously, when it never exceeded 24%. On attitudes in England towards devolution for England see 7.

5. To what extent can constitutional change (such as devolution to or within England, or a new ‘charter of the union’) be expected to affect public opinion about the Union and the governance of the UK?

There is evidently no guaranteed link between constitutional reform and the level of support for staying in the UK. In Northern Ireland the full restoration of devolution in 2007 has been accompanied by a reduction in support for reunification, though that may have also been occasioned by the financial and fiscal difficulties facing the Republic of Ireland following the banking crisis. England appears to be keener on the Union, convinced perhaps by some of the arguments made in favour of the unionist case in the Scottish referendum. Support for independence in Wales continues to be remarkably low. But at the same time, the advent of devolution in Scotland has apparently done nothing to strengthen support for the Union there, but rather appears to have helped to instigate a series of developments that have undermined it. Much evidently depends on the skill of politicians!

6. To what extent is there still a British or UK politics, rather than different politics in each of the nations of Great Britain?

 Electoral behaviour in Scotland has long been divergent from that in England and Wales, not least in respect of the relative weakness of Conservative support north of the border. But that tendency became even sharper in 2015. Whereas both Conservative and Labour gained ground across England and Wales as a whole, both saw their support fall back in Scotland – the Conservatives to a new all-time low, and Labour to its lowest share since 1918. Half of the vote in Scotland went to a party that does not contest elections elsewhere in the UK. Neither UKIP nor the Greens advanced as strongly as they did elsewhere. Only the sharp fall in Liberal Democrat support in England and Wales was echoed north of the border. These patterns suggest that Scottish voters are now attuned to different messages and considerations than are their counterparts in England and Wales, and this significantly undermines the notion that there is a common pattern of electoral politics – and thus a ‘British politics’ - across Great Britain.

7. What appetite is there for legislative or administrative devolution to England or its regions?
Support for legislative or administrative devolution in England appears to be weaker than elsewhere in the UK, and is certainly more fractured. BSA has regularly asked people in England to choose between an English Parliament, regional (administrative) assemblies and maintenance of the status quo whereby laws are made by the UK Parliament. The latter has always proven the most popular option on the 15 occasions that the question has been asked since 1999, backed by between 53% and 65%. The proportion preferring an English parliament has ranged between 19% and 31%, while those preferring a regional assembly has varied between 13% and 28%. Regional assemblies were the more popular of the two options until the defeat in the referendum of the proposal for a regional assembly in the North East in 2004. Since then an English parliament has been the more popular option.

However, answers to questions on this issue appear to be quite sensitive to the way in which the question is asked. Questions that simply ask people whether they are for or against a possible form of devolution as opposed to choose between devolution and the status quo often secure majorities in favour. For example, a YouGov poll in May 2015 found that 47% of people in England & Wales supported the creation of ‘a new English Parliament, while just 21% were opposed – though we should note that as many as 32% said Don’t Know. A Survation poll conducted immediately after the Scottish independence referendum reported that as many as 60% supported having a ‘separate English Parliament to decide matters like health and education that only affect England’, while just 11% were opposed. Meanwhile a poll conducted by Opinium in August 2015 found that just 22% wanted ‘things to continue as they are now’ while 28% wanted ‘power devolved to a new English Parliament’, 15% ‘power devolved to new elected regional assemblies’ and 12% ‘power devolved to city-regions’. These options are, of course, not necessarily mutually exclusive.

The sensitivity of the pattern of responses on this subject to question wording and format may be thought to raise questions about the strength of support for devolution in England as well as underline its potentially fragmented character.

See also Dr. Eichhorn’s evidence.

8. Will a parliamentary mechanism, such as ‘English votes for English laws’, address public dissatisfaction over the democratic representation of England within the Union?

There is no doubt that the principle of ‘English votes for English laws’ is popular in England. When BSA has asked people on a regular basis whether they support or oppose the idea, the proportion backing the idea has never been less than 64% and has been as high as 74%. There is, though, no consistent trend over time towards higher levels of support, although the proportion who say that they ‘strongly agree’ as opposed to just ‘agree’ has never been less than 30% since 2007, whereas between 1999 and 2002 it was never higher than 25%. It should also be noted that the question was never asked before 1999, and thus we cannot be sure that support for the idea postdates the advent of devolution in the rest of the UK.

The recent change to the standing orders of the House of Commons does, of course, represent something considerably less than only allowing English MPs to vote on English laws. ‘English votes for English laws’ is an idea for which there is also considerable sympathy north of the border. SSA has regularly found that around a half agree with the idea, while only between a fifth and a quarter are actually opposed. Polls conducted since the referendum have again suggested that just over half still back the idea. What, however, we do not know, because no Scottish poll has addressed the issue since, is whether attitudes have changed in the wake of the SNP’s electoral landslide in May. That development has certainly changed the implications of EVEL – what originally appeared an embarrassment for Labour is now, perhaps, at risk of being portrayed as an attempt to silence ‘Scotland’s party’, viz. the SNP.
9. What non-legislative or non-constitutional initiatives to strengthen the image of the Union might be supported by the public in the UK as a whole, and in each of its four nations?

This question is too wide-ranging to respond with written evidence.

10. Which powers do people consider should be exercised by devolved legislatures and which should be reserved to the UK level? How does this vary between the nations?

This has been addressed at 4 above.

11. Is support for greater devolution or decentralisation matched by support for variation in service delivery and potentially in tax and welfare policies?

Despite the apparent high level of support for the devolution of both taxation and welfare, people in Scotland do not at the moment at least seem to embrace the prospect that there might be highly visible differences in rates of taxation and welfare on the two sides of the border, while many do not appear to accept the funding implications of more devolution.

SSA has asked on three occasions between 2009 and 2013 whether public services such as health and education should be paid for ‘out of a sum of money decided by the UK Government and funded out of taxes collected across the UK’, or whether instead they should be funded ‘out of taxes decided and collected by the Scottish Government in Scotland’. On each occasion only around a half agreed that they should be funded out of Scottish taxes, while support for UK-wide funding rose from 40% in 2009 to 46% in 2013.

It appears there is a particular reluctance to see responsibility for funding applied to the funding of welfare benefits. In 2013 SSA found that only 34% believed that pensions in Scotland should be funded solely out of Scottish revenues, a proportion that fell twelve months later to just 22%.

Equally, in 2013 just 36% reckoned the benefit paid to people in Scotland who are unemployed should be funded solely out of Scottish taxes, while just 26% did so a year later.

On rates of taxation, SSA asked on three occasions between 2011 and 2013 whether the basic rate of income tax in Scotland should ‘always be the same in Scotland as it is in England’, or ‘whether it is OK for it to be different in Scotland (either higher or lower) than it is in England’. Every time rather more people (between 50% and 52%) said that the rate of tax should always be the same than said it was OK for it to be different (between 41% and 48%).

Reluctance to embrace differences in welfare payments appears to be even greater. Between 2011 and 2013 only between 37% and 41% thought it was OK for the old age pension to be different on the two sides of the border, while between 56% and 63% said that it should always be the same.

However, although these figures indicate that support for policy variation is lower the level of support for more devolution, those in favour of a stronger Scottish Parliament are more willing to embrace variation than those who do not want a stronger parliament.

As we might anticipate, the level of support in England for Scotland having different rates of taxation and levels of welfare benefits are even lower than they are in Scotland. According to the 2013 BSA, 58% of people in England think that the basic rate of income tax in Scotland should always be the same as in England, while no less than 65% say the same about the old age pension.

Equally, England is more inclined to believe that the revenues from taxation in Scotland should be pooled with those from the rest of the UK – and that welfare benefits in Scotland should be paid from those pooled revenues too.

We may need to remember, however, that the questions reported here asked people to consider the principle of difference, but that in practice their reaction to differences in taxation and welfare
on the two sides of the border may well depend on whether or not they approve of the substantive decisions in question.

November 2015
Professor John Curtice, University of Strathclyde—Oral evidence (QQ 57-67)

Evidence Session No. 4  Heard in Public  Questions 57 - 67

WEDNESDAY 4 NOVEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Cullen of Whitekirk
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord MacLennan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

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Examination of Witnesses

Professor John Curtice, University of Strathclyde, and Dr Jan Eichhorn, University of Edinburgh

Q57 The Chairman: The Committee is having a change of tack today, and instead of looking directly at issues, we are asking opinion formers and those who canvass public opinion extensively to give us their insights as to how various issues are perceived by the public and how they might be received by them. Welcome, Professor Curtice and Dr Eichhorn. Their CVs have already been circulated to colleagues. In your case, Professor Curtice, I—as a Scottish Conservative—am afraid that your name for the last 20 years has always been associated with bad news. But you are very welcome today.

Professor Curtice: If I may say so, Chairman, I think some members of your party were rather delighted by what we said at 10 o’clock on the day of the election.

The Chairman: They were indeed.

Professor Curtice: I hope, therefore, I have salvaged my reputation.

The Chairman: Very much so. Can I start the questioning? Lord Ashcroft produced an opinion poll on the issues that affected the decisions in the referendum campaign, and he mentioned things like the NHS, jobs, prices, pensions and so on, as though it were just another election. Can you tell us whether there are aspects of the union that persuaded Scots to support or to vote against the independence campaign?

Professor Curtice: There are two things to say to that. First, the truth is that the proposition on the ballot paper was whether or not Scotland should become independent. As a result, virtually all of the polling and survey work that was done on the subject was about people’s evaluations of the consequences of independence, rather than asking about the Union. Indeed, we tried on the
Scottish Social Attitudes survey, for which I have responsibility, at the piloting stage to ask people about what they thought were the consequences of the union. The difficulty is that it is quite difficult for people to evaluate 300 years of rather familiar furniture and what difference it has made. We had to give up. That is number one. That said, the truth is that in all of the research and survey evidence, if you are going to ask what single thing seemed to determine whether somebody was likely to vote yes or no to independence, it was their evaluation of the economic consequences of independence, and therefore by implication also their evaluation of the economic consequences of remaining in the Union, and their relative judgment as to which course of action—staying in the United Kingdom or becoming an independent country—was in their view likely to be more economically efficacious. That is point one.

That in itself is rather interesting, because one of the often unspoken but rather important characteristics of the referendum campaign, which in a sense the polling information reveals, is that, in many respects for the most part the debate and attempts to change public opinion were essentially around what you might call the contingent consequences of independence versus the Union, as opposed to any clear commitment. Now, why is that the case? Certainly underlying this there is no doubt that those people who had a strong sense of British identity—who are a decided minority north of the border—were certainly much more likely to be in favour of staying in the Union. Conversely, those who were feeling strongly Scottish and might deny having a British identity—a rather larger group—were certainly more likely to vote in favour of independence. Therefore, one aspect of the Union that matters is people’s sense of emotional empathy for the idea of the Union, and whether or not they themselves regard themselves as British, and therefore in that sense want to remain inside the Union. Then one has to ask why we ended up with such a contingent referendum debate, because the truth is that most people in Scotland feel some mix of the two identities. They feel both Scottish and British, albeit their Scottish identity is the stronger of the two. Therefore, in a sense, for many people answering the referendum question could not simply be addressed by how they felt and which constitutional settlement best reflected their feelings. They felt both. For them, it was the balance of advantage in expressing their Scottish identity and the state organisation that would reflect that, or going with their British identity and the state organisation that would reflect that.

Dr Eichhorn: It is also probably quite important to remember that that is how the referendum was distinct from an election; we were looking at two years of campaigning on an issue that a lot of people had views on anyway, perhaps for the whole of their life. In that sense, I would argue that people were more informed, in many ways, than parts of the electorate that otherwise were not engaging. The idea sometimes put forward, especially by journalistic commentators who came quite late to the debate, that it would be very emotive and so on does not necessarily hold true. If we look at it after the referendum, people in Scotland on average, and particularly younger members of the Scottish population, look at a greater variety of news sources than their counterparts south of the border. With that process over the two years, you had more people who looked at arguments, who engaged with a broader set of information and weighed up those options. It was not just in simple terms of whether or not they liked it; they heard a lot of arguments about the dangers of leaving and the advantages of staying, and vice versa. That is quite important to keep in mind. Many people went through quite complex and long-lasting discussions to reach that decision, which is arguably slightly different from elections, where some people come very late to a discussion around that before they form their opinions.

The Chairman: One rather senses from your answers that those who wanted independence voted on philosophical reasons, the big question, whereas those who voted to stay in the union were not motivated by the union itself, but by either fear or other small points that accumulated. Is that
correct? We are trying to identify the union, what its pulling power is and what needs to be done to clarify its advantages.

**Professor Curtice**: My answer to you, Chairman, is that ultimately the debate, and for most people the consideration in their minds, is what course of action is in Scotland’s best interests and best represents their feelings. One needs to understand that politics in Scotland now is primarily about Scotland, and not about the interests of the UK as a whole. The truth is that the Prime Minister is rather good at being able to articulate the view as to why the United Kingdom as a whole should stay together, but I am not sure that it cuts a great deal of mustard with voters north of the border, because that is not the question that most voters in Scotland are asking themselves. The question most voters in Scotland are asking themselves is what is in Scotland’s interest, not necessarily what is in the interests of the UK as a whole.

**Dr Eichhorn**: Just to add to that, it is very easy to jump to the conclusion that, therefore, we have had a rise of national identity and so on. But that is not the case. There was no rise in the emphasis of Scottish national identity, in the long run or throughout the campaign. If anything we have more people now who say they are equally Scottish and British than 10 years ago. So, basically, identifying with Scotland as a political community and an interest community has definitely risen, but it is not necessarily the same as saying that identity orientation has risen on a more emotive side.

**Lord Lester of Herne Hill**: I thought that dissatisfaction with the Westminster political system might have been a factor. Was I wrong?

**Professor Curtice**: You are not wrong in the sense that clearly the proposition on the ballot paper was that Scotland should leave the Westminster political system. Clearly the truth is that if you believe in independence for Scotland you are going to be inclined to take a relatively critical standpoint on this institution and the institutions in Whitehall. The two things follow. However, I, certainly, have not been able to demonstrate through the work that I do that feelings about Westminster or the United Kingdom governmental structure in particular were particularly influential as opposed to the considerations in terms of the implications of independence or otherwise for Scotland.

**Dr Eichhorn**: We can also see that, to some extent, if we compare Scotland with other parts of the United Kingdom. We have asked people how well they feel their respective part of the UK is represented in, for example, the discussions about constitutional change at the moment. Scots are, on average, about as satisfied with their representation as the English, whereas the Welsh and Northern Irish are, on average, a lot more dissatisfied in that sense. If we think about it, there are a lot of Scots who say that they do not feel that Scotland is sufficiently represented in the process, but if that were the determining factor, more than orientation towards the economic consequences, we would expect that such independence motivations would be much higher in places like Wales, for example, but they are not—despite the dissatisfaction being greater there.

**Professor Curtice**: Certainly, one of the relative successes of devolution—if one wants to use that term—is that people are now relatively inclined to believe that Scotland’s voice within the United Kingdom has been strengthened as a result of devolution. But notice the way I am putting it: it is the implications of devolution for Scotland that seem to matter, which has been credited to the advent of devolution. It is not necessarily people’s views about this place in particular.

**Q58 Lord Morgan**: You say, and I am sure that it is absolutely right, that Scottish electors are concerned with what is best for Scotland, but one of the great puzzles I have is that the last few years under Scottish nationalist rule have not been particularly successful. The statistics on things
like education and health are not very encouraging. On the economy, through external circumstances, oil and the financial services that loom so large in the Scottish economy have not been thriving. Do electors not take into consideration much the history of Scotland over the last five years?

**Professor Curtice**: I have two answers for you. Voters ultimately have a choice between alternative parties and perhaps, in their minds, alternative governments. We are where we are because, frankly, there was a collapse in the ability of the Scottish Labour Party to provide Scotland with effective devolved government, particularly in the 2011 election. There is a choice. One of the interesting things that came out of the 2011 election was that, indeed, if you asked people what had happened to education or health, et cetera, in the last four years under the then-minority SNP regime, they replied it was ‘not too bad’. They were saying that it was so-so, or even slightly critical. When asked how good a job the SNP had done of governing Scotland, they would say that they had done a pretty good job. The thing is that it is a choice between two alternatives. There is no doubt that the SNP have their first XI inside the Scottish Parliament. Virtually all of the senior players inside the SNP opted to go to Holyrood rather than stay here, Alex Salmond albeit in a slightly zig-zag fashion. In contrast, for a variety of reasons, very few senior members of the Labour Party opted to go north of the border, and many of those who did, for a variety of reasons and in some cases very sad ones, were not in Holyrood for very long. The truth is that the Labour Party ended up with a second XI in Holyrood, and voters in part are making that judgment.

That said, the other thing you now have to realise is that one of the consequences of holding the referendum is that electoral politics in Scotland is now centred on the constitutional issue to an extent that has never previously been the case. Roughly speaking, around 90% of those people who voted Yes in the referendum voted for the SNP in May 2015, and around 85% of those who voted for the SNP in May 2015 voted Yes in the referendum. That relationship is much stronger than in 2011 or in 2010, or in any previous election in Scotland. There is a question now about whether or not, for example in the Scottish Parliament election of May 2016, that now very strong link between people’s constitutional preferences—as finally determined in 2014—and their vote choice will remain so strong or not. In which case you are right: those considerations may not be relevant, because the constitutional question has become so dominant in the minds of voters.

**Lord Morgan**: That is a very interesting answer. I find it very interesting that in Wales the record of the Labour-led Government has been used to attack it, particularly the unfortunate statistics on aspects of health. That does not seem to be happening in Scotland in the same way.

**Professor Curtice**: No—presumably because the UK Government have not found comparative statistics to their advantage. Partly the issue of Wales became politicised across the UK because it provided an opportunity for the Conservative Party to fend off attacks from the Labour opposition about its record on health in England and say, “But look at Wales”. Doubtless you do not need me to tell you that coming up with exactly comparable statistics across the four territories of the UK on this issue can be somewhat difficult, because we have four different health and administrative systems, so to some degree four different sets of statistics. That often gives politicians on all sides of the borders enough wiggle room to suggest that comparisons that may be unfavourable to them are perhaps not necessarily as robust as their accusers would like to think.

**Q59 Lord Maclean of Rogart**: Can you give any idea of what the Scottish electors might consider their place in the world, and to what extent they feel being part of the union is important in order to have influence outside?
Professor Curtice: The answer to you is that one of the things that we were tracking on Scottish Social Attitudes during the referendum. If you put it through the statistical sausage machine and asked what the most important issue is, and what the next most important issue is, it would be on the list but lower down. It is certainly a consideration. But you will not need me to tell you that, for many of those on the Yes side, the United Kingdom’s role in the world is a point of contention, not least over the issue of the UK’s nuclear weapons facility. Some people will say to you that they agree that the United Kingdom has clout in the world, but would either cite Iraq or their dislike of the UK’s nuclear weapons facility as evidence that it would be rather nicer to live in a country that did not have quite so much influence in the world. The other thing that I would say to you is that the truth is, for most voters, whether or not they have politicians that are sitting at a top table in New York, or wherever, is perhaps not as important as it is to those people who are involved in politics.

Dr Eichhorn: However, it is important to mention that, when you ask people to specifically consider which issues should be devolved and which should be reserved, the majority of people in Scotland at all points thought that issues such as defence and foreign affairs should be reserved—should be decided at the union level. When it is about outward-facing activities of government, there is more of an orientation towards the union. We have also asked about this in the context of the referendum on UK membership of the European Union, and when the proposition came up that each country should effectively hold a veto on this, not even in Scotland did we find a majority for this. There were more people in favour of this idea—that each of the four parts would have to agree. But even in Scotland there was not a majority for it. When we are outward facing, more people, even in Scotland, consider the union as probably the more important actor.

Q60 Baroness Taylor of Bolton: I am not sure, in terms of what you have told us already, how much real public understanding there is of what the union means, what devolution means, and what the issues were. I know that we should not get involved in personal experience or anecdotal information, but earlier Professor Curtice, I think, said that there were two years and therefore there was an increased knowledge of the issues. During those two years the public opinion polls changed dramatically, yet during the referendum campaign more or less everybody who was involved, certainly on one side, found that people did not want to talk about the issues; they were talking about the emotional aspects. You mentioned empathy, and whether you were more or less Scottish. How did people make up their minds? A mention was made of people being alienated, and I wonder to what extent people in Scotland were voting against Westminster, in the same way that people in parts of England would vote for UKIP against Westminster.

Professor Curtice: I have a variety of things to say in response to that. The first is that anybody who lived in or, frankly, visited Scotland for any length of time during the referendum would have realised how incredibly engaged the Scottish public were.

Baroness Taylor of Bolton: In the event, but I am talking about the issues.

Professor Curtice: Okay, but I think it all gets to this. The truth is that many foreign journalists who visited north of the border, and particularly those from southern Europe would ask where the referendum was, because they are used to political issues attracting large crowds in the streets and flags waving, et cetera. They said, “Hang on, what is going on?” The answer to them was quite simple: “Just sit down for half an hour in any pub or café in Scotland, and I bet you within half an hour, if you keep your ears open, you will hear people talking about the referendum”. The truth is that part of the answer is that people just talked to each other. We also saw the incredible revival of the public meeting north of the border. You just needed to say that you were holding a public
meeting, put the word independence in it, and people flocked to turn up. Part of my answer to you is that people talked with themselves about the subjects and about the issues that they regarded as being important in the referendum. Certainly that was going on. We can all argue about whether or not they were talking about the things that we think to be relevant, but they were certainly talking to each other and certainly engaged. That is point one.

The second thing I would say to you is: my judgment of the referendum campaign is that—and, again, this is about the proposition on the ballot paper—we now all know what questions should be asked about the proposition of independence. That proposition underwent fairly extensive critical scrutiny. All of us came to our own views as to how well it survived that critical scrutiny, but it had undoubtedly undergone that critical scrutiny. You have to realise that at the other end of the spectrum we were talking about a “No” campaign that was being led by three different political parties who would not necessarily agree with each other about how to run the United Kingdom as a whole, let alone Scotland in particular, and who in particular until the very end of the campaign adamantly refused to agree with each other as to what alternative vision for Scotland’s place in the Union they would be willing to offer in the wake of the referendum. That has led to this situation, frankly, where we now have very major legislation going through this place for devolution in Scotland that very few people in Scotland know anything about. But I would lay the blame for that with the people who are responsible for promoting that idea, because very little has been done north of the border to say to people that this is what we are in favour of. To be brutal about it, the SNP have run rings around the unionist side in the last 12 months on this issue.

Dr Eichhorn: Just to substantiate this further, one of the key lessons in terms of participation in the process on this in Scotland is that we would not have seen the same amount of engagement at all of these different levels had this campaign been only four or five months long. It needed time, because a lot of people who became involved in discussions and local activism, and who just went to information events and so on were people who did not do this on anything else, and who might never have done this for an election or in any other context. That is important. The way that people discuss issues might be slightly different at different levels, but you always have to compare it with what sorts of discussions were held before by particular individuals and groups. Around this debate it went up at many levels, so the question is: what is an issue for whom? For a lot of people, it was about issues that happened at their local level. The key thing is that you are absolutely right, and in particular in the month before the referendum there was a lot of emotion, and if you spoke to people it became emotionalised. But I would argue that the causality is the other way around. They started to realise that these issues were important and that they had a chance to participate, and therefore they became emotionally involved. That makes sense. If you start to become involved and think that it matters for your own life, and we have seen that people who thought that it mattered to their own life were more likely to turn out and become active, you obviously become more emotional. If you are campaigning for several months, you will be more emotional about it. It is more that way around.

With regard to what is happening now and why people do not feel that they have much of a say in this, it is because the process was so much quicker. The Smith Commission process was so incredibly fast. There was a public consultation, but also we did elite interviews around this project, and it is very clear that there was little feeling, and the public feels this. We have asked how much people feel that different actors have a chance to influence this debate. Ordinary people are at the very bottom of the list everywhere in the UK. The Scottish do not feel that ordinary people have more efficacy than elsewhere in the UK, in this process about constitutional change in the UK. That is a real problem for the process, if it is meant to take people along and keep them informed.
Baroness Taylor of Bolton: Can I just follow up on one point? Professor Curtice, you talked about the legislation going through, and I can only agree about the actual process of the Smith Commission, the vow and all of that. But if people do not understand what is happening now, because this legislation has left them behind because there has not been involvement, does that not create another problem? How do we get to the stage of making people understand what it is, rather than just those broad-brush emotional issues?

Professor Curtice: The proposition that I have argued for for some time is that you should be holding a referendum on the provisions of the Scotland Bill currently going through this place. That will force the public to engage with the issue, and if you wanted to be Machiavellian about it, it is perfectly clear that simply having held a referendum and 55% of people voting in favour of staying inside the UK has not done anything to quell the debate. If your objective is to cement Scotland’s place in the Union, then it seems to me that the unionist side in this cause needs to stop apparently wanting to run away from facing the public and be willing to take what it wants to do, put it before the public and get a positive endorsement. If you then get a situation where, if indeed you succeed and get a majority of people in Scotland voting for this, your position is much stronger because you can then say not only that people voted against independence but that people actually voted for this, and this is what people in Scotland wanted. In the absence of that kind of endorsement, you are always, frankly, going to be in a difficult position.

Q61 Lord Lester of Herne Hill: The experience of Irish referenda in particular suggests that the public do not understand complicated issues when they are raised in referenda. What I was going to ask you, before you mentioned referenda, is whether you think one answer to Baroness Taylor is that one of the problems about public understanding is that no sensible person, not even a sensible lawyer, can understand the state of devolution law as the asymmetrical system operates. I am a rather old lawyer, and I am probably one of the few people in this room who has had the sad misfortune to have to read the whole of all of the devolution acts. If you ask a simple question, such as how did it come about that the DUP was able to veto same-sex marriage in Northern Ireland and what is the role of the Secretary of State in securing human rights in Northern Ireland, I assure you these are extremely impenetrable questions, certainly to me, and if they are impenetrable to me then I expect that they are to ordinary men and women.

Professor Curtice: Can I take two responses to that? The truth is that probably a pretty large body of the legislation that goes through this place, and indeed the other legislatures of the United Kingdom, is pretty complicated. The job of politicians is to communicate and to ensure that the public understand in broad terms what they are doing. That would be my first response to you. The second response is that one of the remarkable things about the Scottish independence referendum, whatever we think about the merits of what people were voting on, is that one thing it does not seem to have been about is what people thought of the current UK Government. There is no doubt that one of the classic concerns about referendums on subjects about which people are not terribly concerned or interested, such as the Nice treaty in Ireland, is that people choose to give the Government a kicking. The fascinating thing about this referendum, apart from the extraordinarily high turnout, was that it did seem to be about what people thought of the issues that were put before them, regarding independence versus staying in the Union, and not the much more ephemeral things such as what they thought about the current UK Government. Putting it slightly differently, if you cannot convince people in Scotland that you are providing, within the framework of the United Kingdom, the degree of autonomy that people in Scotland are looking for, undoubtedly the position of Scotland within the Union will remain relatively weak.
Lord Lester of Herne Hill: Professor Curtice, do Parliament and Government not have a responsibility to create a code that ordinary people might be able to understand?

Professor Curtice: In an ideal world, sure. Reading the original Scotland Act was not too difficult, because there was a list of reserved matters. That was not too complicated to follow. It seems pretty clear that, in the arguments about the legislation going through at the moment, once you get into a situation of partly devolving welfare and partly reserving it, it becomes even more complicated. That is undoubtedly true. But that is the settlement that you wish to implement, that is the settlement that the unionist parties have decided they think Scotland should have, and it seems to me that it is the responsibility of those parties to generate public support for it, because at the moment, frankly, you have failed.

Dr Eichhorn: It is important to consider, if I am just a general member of the public, what my motivation is to become informed with a question like this. In the Scottish referendum a lot of people, at different levels, became more informed about these matters than before. It does not mean that they understand every detail, but they definitely understand a lot more than before, and continue, as I said earlier, to look at a greater variety of news sources than they did before. But I will only, as a general member of the public, do this if I, first, have the feeling that what is being discussed matters to me—if I see the connection, for example, between a constitutional issue and my life, which was very clear in the Scottish referendum—and, secondly, if I have the feeling that I am being taken seriously as a member of the public. It is not even a question of knowledge. In a lot of situations there are comments that people do not care about constitutional matters, for example. We have asked people if there is too much time spent on this, because sometimes the argument is that we spend too much time talking about the constitution and we should talk about other things; there are a lot of media comments on these sorts of things. The majority in every part of the UK says either it is the right amount of time or we should be spending much more time talking about how we are being governed. There is an interest for people, but if they are constantly told that they are not interested, as is often done, there is some resistance to it. Secondly, if we look then at processes about decision-making and the change of the governance of people—for example, if we look at the devolution of powers to Manchester, which was done in a process that did not involve the public, full stop—that is very problematic. Why then, as a member of the public, when I do not feel that my voice matters in it and nobody thinks that I am interested, should I engage with it in much more depth?

The Chairman: Your answers have been fascinating, but they have also been quite wide-ranging. You have strayed into some of the areas about which we have yet to ask. We will ask anyway, but it may give you a chance to give us slightly shorter replies.

Q62 Lord Cullen of Whitekirk: I would like to ask about the level of support for the union within the nations, as matters now stand. I notice that in your written evidence, Professor Curtice, you say that the instinctive reaction of most people in Scotland appears to be that more or less all of the country’s domestic affairs should be determined by the Scottish Parliament, leaving the UK Government to deal with just defence and foreign affairs. You go on to give examples in support of that. Now, if that was to come to pass, would we have a union, or would we simply have a situation where the Scottish Government wrote a cheque every year to pay for the cost of defence and foreign affairs?

Professor Curtice: Sure. If you go to the full version of devolution max, Scotland therefore has to finance its public expenditure entirely out of its own resources, and you do not have any of the pooling and sharing of resources that you might regard as integral to a Union. I do point out
elsewhere that I use the word “instinctive” quite deliberately, because if you ask people explicitly about the proposition of pooling and sharing resources, in many respects the Better Together campaign got it absolutely right. Their offer was ‘the best of both worlds’, and there is no doubt that people in Scotland want the best of both worlds. They want to make the decisions about welfare, but they are still quite keen on the UK-wide taxpayer having some responsibility for funding that. Human nature is thus. I can find you the odd occasion when on pensions it is about 50:50, but virtually all of the survey evidence shows that, if you ask about a domestic affair, people think that Holyrood should decide, and if you ask about defence and foreign affairs, as Dr Eichhorn has already said, it is that Westminster should decide. That is point one.

Point two, coming back to where we stand as far as public support for the Union is concerned, as I say in my written evidence, I think that support for the union in England is now stronger, because the referendum campaign convinced people in England that it was in England’s interest that Scotland should remain inside the union. It is pretty clear that support for independence in Wales is very low. Support for reunification of Ireland is now lower than it was. This may be because of the eventual revival of devolution, although I believe it also may be because of the fiscal crisis in the Republic of Ireland. The one place where continued membership of the Union is clearly now problematic is Scotland. It is now more problematic in Scotland than it ever has been, and my view is that Scotland’s membership of the union is now more problematic than Northern Ireland’s. You would not have expected that to be the case 20 years ago.

Lord Cullen of Whitekirk: But does the attitude to which I have referred not show a desperate lack of understanding as to the value of the union?

Professor Curtice: Perhaps. But, again, if I come back to some of the other things that have come out of the statistical sausage machine, there is no doubt that, for people who were rather keen on the idea of pensions being funded across the UK as opposed to being funded out of Scottish revenues, it was one of the secondary considerations that helped to incline them towards No. One of the things that we certainly know, as I like to put it, is that those who are older than I am were much more likely to vote No than those who are younger than I am. Undoubtedly pensions seems to be one of the considerations for that group. Yes, there is that indication, but in a sense, under the devolution settlement that is now being proposed, we are going towards ‘the best of both worlds’. There is now a range of options across much of the welfare field. What is now being proposed is that Scotland’s welfare provision is funded out of the UK tax base, but if it then wishes to use its devolved tax base in order to spend more on welfare and top those benefits up, it can do so. It is the best of both worlds, perhaps.

Dr Eichhorn: Just briefly, it is not completely surprising that is how people might think about it in Scotland, when a lot of the campaign, as pointed out earlier, was constructed around the risk of leaving the United Kingdom rather than the benefit of staying in. There is some path dependency. Briefly, just because there is not a strong movement for independence in Wales in the same sense, we should not mistake that for satisfaction when we are talking about resources and the financial aspect of this. Wales, by far, has the largest dissatisfaction with the share of government spending it receives. On average, the Scots have exactly the same satisfaction as the English, roughly speaking. It is Wales where two-thirds of people say that they get less than their fair share of government spending, whereas in the other places it is somewhere around the 50% mark or lower. It is important to note that attitudes towards independence are not equivalent to satisfaction with the current arrangements.

Lord Morgan: We have covered the point, but is it possible to generalise about support for devolution in the four nations? As you very well know, it is asymmetrical, and the settlements are
quite different; the historical backgrounds are totally different. Can anything generally be said? I will say, incidentally, that one of the statistics we have in our papers is that 6% of voters support independence for Wales, which exaggerates it by at least 5% in my experience.

Professor Curtice: That is for you to judge, Lord Morgan. The answer to you is that, as I detailed in the written evidence, as you know one of the crucial things that happened in Wales is that, although Wales only voted very narrowly in favour of devolution back in 1997, opinion shifted fairly rapidly thereafter, and not many people in Wales wish to get rid of the National Assembly. Equally, now, in Scotland less than 10% of people wish to get rid of the Scottish Parliament, and I cannot remember the exact figure but support in Northern Ireland for direct rule is relatively low. Pretty much in all of those three parts of the UK, over 50% of people say that devolution is their first preference, and for those in Scotland for whom independence is their first preference, devolution is undoubtedly their second preference. The idea of Scotland, Wales and Northern Ireland being able to run themselves, to a degree at least, is clearly popular within those three parts. The evidence on England seems to be that it is still unclear, in my view, how far England wants devolution for itself, but that England still seems to be willing to tolerate Scotland having its own Parliament, if that is what it wants to have.

Q63 Lord Brennan: Following up your last response, Professor Curtice, to what extent can constitutional change affect public opinion—productively not just negatively? Secondly, you have told us a great deal about Scotland, the once and for all decision and its impact, and you have mentioned Wales and Northern Ireland. Let us talk about England for a while. How might public opinion in England be influenced in relation to the union and the governance of the UK?

Dr Eichhorn: The first thing is that constitutional change processes, policymaking and campaigning can influence public opinion. In Scotland, at the beginning, obviously, polls were quite stagnant. The determinants of independence remained very stagnant; it was quite solid for a long time. But it changed over time in this long-run process. For example, the issue of what people expected would happen to Scotland in terms of inequality was not very important at the beginning to people’s vote decision. In the end it was quite highly correlated with vote decision. It was not as important as the economy overall, but things can change. Campaigns and policy discourses can have an influence on public opinion. People can start caring about things that they have not thought about because they have not been confronted with them. If you force people to engage with something, that can help but, I would argue, as I said earlier, only if they feel that it matters to them and that they are taken seriously, and do not perceive it as a consultation with 14,000 or 20,000 people but the decision made in backroom dealings. That is important.

That matters for your second question about England. When we look at these processes about what could be done in England, it is very complicated. There is not a one-size-fits-all solution. If you ask people about different options for devolution in England—arrangements to address this—we find that there is some form of support for doing something that affects England at a whole level, but it depends on how you phrase the questions and how you engage with it. There is also some support for doing things at a more local or regional level, to some extent. Crucially, when you ask these questions in a way that is unbiased, what you get is that people have quite complex interplays of their preferences for how to deal with things. There are some areas of the UK where the preferences, for example, for empowering city regions are greater than other regions. There are some regions where an emphasis on larger regional arrangements is more important. It is very important to look in depth at what is happening there. I guess that it is important to disentangle that, and not assume that there is a simple solution to it. People have very different needs, and
people do understand that some decisions are made at local levels and others are made at much higher levels. Both of these areas need to be addressed.

**Professor Curtice**: Constitutional change can make a difference, but constitutions are inhabited and used by politicians, and it is the way in which politicians use constitutional change that can be crucial. Let us take two examples. Clearly the process of constitutional change has been very important in Northern Ireland, and the Good Friday agreement and St Andrews agreement have been pretty important. But ultimately what was crucial was the willingness of the DUP and Sinn Fein to sit down together and come to an agreement and the way, at least initially, that agreement was developed, articulated and promoted by the late Reverend Ian Paisley and Martin McGuinness. Things more recently have clearly been more difficult, and the process looks rather more fragile. As I said earlier, it may well be that one of the reasons why support for reunification in Ireland now seems to be lower is that the concerns of the nationalist and Catholic community in Northern Ireland are more clearly articulated inside the Northern Ireland settlement. At the other end of the spectrum, clearly in Scotland, insofar as one of the purposes of introducing devolution was to cement Scotland's place in the Union, it has clearly not succeeded. Why not? In part it comes back to something we were dealing with earlier: in my view it is essentially to do with the political failure of the Scottish Labour Party and doubts about what it was offering Scotland in the first place, and its seeming to think that what the people of Scotland wanted from devolution was a lovely partnership with London. No; what they want is grit in the oyster. They want somebody standing up for Scotland's interests within the framework of the union, and that is something that the SNP understood. Thereafter, the SNP have used the fact they have power to end up in a situation—partly, I think, by accident—whereby they have been able to push the cause for independence. It depends on how politicians use and develop the constitutional framework that is promoted and put in place. There is no obvious necessarily deterministic relationship.

On England, there are a number of points to make. One is that, ironically, the referendum probably did help to increase support for the Union in England. In England the kinds of arguments that many unionists would want to make about overall being stronger together and having a great British heritage, and why should we throw that away, have much more resonance in England than they do in the rest of the UK, and therefore they serve to work here. That said, we know that if you ask people in England whether Scottish MPs should be voting on English laws, they say, “No—why should they be?” But, to be honest, until now that has also been the reaction in Scotland: “Why the hell are Scottish MPs voting on English laws?” What we do not know is whether or not people would, in fact, have taken that view even before the advent of devolution. Nobody ever asked people before the advent of devolution whether only English MPs should vote on English laws. Therefore, we do not know whether it is a case of, “Hang on, of course that makes sense,” or whether it is a reaction to the advent of devolution in the rest of the UK.

**The Chairman**: We will come on to English votes for English laws a little later.

**Q64 Lord MacGregor of Pulham Market**: I was really going to follow up on the point that Lord Brennan made about England, and what you just said. I wonder to what extent it is the influence and intensity of the media that conditions people’s thinking. Put it this way: in East Anglia there is very little talk about Scottish independence except in terms of the Barnett formula or English votes for English laws. It has not been an issue on people’s agenda, and it is hardly ever reported in the local media. In Scotland, of course, it is entirely different and the focus has been entirely on this. What I think has been happening with the increasing support for Evel is that people have begun to see the consequences of Scottish devolution for them, and it is at last beginning to be talked about
in the local media, but it has not been until now. It is really a question about the impact of the media.

**Professor Curtice**: Let me say two things to you. The first is that I do not, as yet, know of any clear and unambiguous evidence that support for EVEL has gone up. It has always been there ever since it was first mentioned in 1999/2000. It has become somewhat more intense, in the sense that people are now more likely to say that they strongly agree with it, but there is not any clear change over time.

The second thing I would say to you, of course, is that inevitably both the referendum and the outcome of the May 2015 election have ensured that Scotland now has a visibility south of the border that was not previously the case. One of the ironies of what has happened in the wake of May 2015 is an electoral outcome that has ensured that Scotland’s politics are now so different from the politics of England—and in that sense British politics does not exist has, however ensured that the SNP is now a significant player in British politics and its views are now being quoted much more widely, because the frame of reference that the media use for deciding who to put on air means the SNP are the third party, and therefore they put somebody from the SNP on.

Undoubtedly Scotland is now much more visible. To that extent, the media and what has happened in Scotland mean that England probably does take more notice. But whether it has changed opinion in England, other than, as I said, during the course of the referendum England being keener on keeping Scotland inside the UK, is, I think, much more debatable. The other thing to say about the media is, of course, that anybody of a nationalist disposition would certainly dispute the notion that the reason why Scotland is now where it is is because of the media campaigning in favour of independence. They would say to you that we are where we are despite, not because of, the media.

**Dr Eichhorn**: Briefly, one thing we definitely find is that over 80% of people in Scotland say that the referendum had a long-term effect on how they are governed; that is unsurprising perhaps. In Wales and Northern Ireland it is about a third who say that the Scottish independence referendum had a long-run effect on them, but in England it is over 50%. There is, particularly in England, definitely a more strongly felt long-term effect of the Scottish independence referendum, compared with Wales and Northern Ireland. But I would argue that people obviously care more when they feel that this impacts them and there is relevance to it, and this has probably galvanised some of the debate. There is something to that. We have to be careful not to infer change in particular attitudes towards it, but there is maybe heightened awareness or engagement.

**Q65 Lord Norton of Louth**: Following on from your response to Lord MacGregor, we still have a union, but we have been talking about attitudes in different parts of the union. To what extent can we still talk about British politics—that there is a polity there, as distinct from UK politics being the sum of its parts? We have fragmentation, structures, political parties in control of different parts of the United Kingdom. To what extent is there still a UK demos such that we can talk about UK or, for that matter, British politics?

**Professor Curtice**: There is still more of a UK demos than there is a European Union demos, but that demos is undoubtedly weaker. The first thing one has to accept is that the degree to which Northern Ireland has ever been part of the UK demos is debatable, and indeed although British Social Attitudes has stopped asking recently, it was very clear throughout the 80s and 90s that the majority of people in the rest of the UK were quite happy to let Northern Ireland leave the United Kingdom if that was what it wanted to do. That is number one.

Number two, of course, is that in terms of the party-political system, Northern Ireland, whose relationship was always somewhat tenuous, left in the 1970s. I would now say that Scotland has
also left it. The considerations that affected people in Scotland were completely different. The outcome was completely different. To that extent, at least, Scotland now has its own distinct party system, which is also becoming increasingly focused on the debate at Holyrood. We still have English and Welsh politics, but that is what we are left with. To be honest, my view is that the United Kingdom is probably moving towards a situation whereby four parts are living beside each other, and in a degree of mutual accommodation, but the idea that we have a single demos that wishes to see its politics articulated through one set of institutions has frankly gone out of the window.

Dr Eichhorn: Just to add to that, that is important. It is the systemic changes, the party structures, the orientations, how people engage. It is not that people care about what is happening locally to them. Scotland is now the focus, because there we have the relation to nation and things like this, but that has always been the case. People cared very much and had different identities also in different parts of England in the past, and different foci. It is not that. It is really the larger-scale systemic changes that we should focus on, I think, to understand this. People still see something in some of the issues that we talked about earlier with regard to external affairs at least. But that might be seen as quite a pragmatic evaluation rather than something that is deeply or even ideologically rooted. It is quite interesting, and I think you can read these figures one way or another. If you ask people whether the arrangements for devolved powers should be the same everywhere across all of the parts that make up the UK, about 60% in Wales, Northern Ireland and England agree. Even in Scotland 50% say everyone should have the same, probably like the Scottish model. But it could be read the other way: even in England 40% say it is fine to have this disparity. In a sense you could argue that you have a coherent political community in which people accept that there is a lot of difference, and that is a connecting factor, with a high emphasis on localism and so on. But that depends very much on your reading and interpretation.

Lord Norton of Louth: So the unity comes through fragmentation.

The Chairman: We will move on from that interesting point. Because we are time limited and we are running out of time, I am going to jump to one or two questions that have not yet been covered, and bring in Lord Morgan on question nine, and then Lord Maclennan on question 11.

Q66 Lord Morgan: We have been talking as the debate has gone on, indeed over some time, about devolution continuing and the differentiation between the nations being clearer. Would you think there is, or have you discovered, support for initiatives perhaps of a non-constitutional kind that might strengthen the image of the union—something that might be supported by the public in Britain as a whole?

Dr Eichhorn: We can definitely say from our research that people agree with general ideas about, let us say, things that might be called a constitutional convention, people coming together and developing ideas. It is not what everybody lists as the number one thing that they want to do, but if asked about it around three-quarters of the population say that is an idea they support. Around 60-70% in each part of the UK would give up five hours or more to be part of it. People are not opposed to these things. Whether they are enthusiastic about it is a different question, but there is a general support. There is an openness to these ideas.

The important thing, in the end, is that whatever initiative, engagement or sort of campaigning there is and whoever does it, it needs to resonate. Again, it needs to matter to people and people need to feel a connection. It needs to have some accommodation of the union, and articulate the worries that people have about their particular parts. It is very important to note—I emphasise this, and we touched on it briefly—within the English context and English votes for English laws, there is
support for it, but equally there is majority support across all of England for regional assemblies and powers to city regions. For most people a variety of different options are not mutually exclusive. There is not this magical thing that would happen and people would say, “Fantastic—now I am happy with the arrangement”. Partly, that is because there have not been these engagements with people. If you want to do anything, and want people to come on board and develop lasting support, people need to engage in the process long term. What has happened in the case of Manchester is exactly the opposite of what should happen from a point of view of getting people along and participating, rather than saying, “This is happening; see how it works out. We think it will be really good for you”. That does not work, obviously.

**Professor Curtice**: I would rephrase the question slightly, in the sense that it is probably not a question of how you strengthen the image of the Union but rather how might you strengthen the underlying emotional affinity that might then translate into support of the Union—basically, Britishness. My answer to that is to ask Danny Boyle and Dan Snow to do lots of programmes for you. Clearly in part underlying the argument about the constitution is an argument about culture. Some people in your part of the United Kingdom would prefer Wales to have much more autonomy because in part they see that as a way of promoting the Welsh language and culture. In part—and this is not confined only to the Gaelic-speaking community—in Scotland the nationalist impetus is a wish to promote what they would regard as a distinctive Scottish culture, and undoubtedly to some degree a distinctive Scottish history. It is similar in Northern Ireland. Insofar as you can do very much about these things, you may want to ask yourself about the extent to which there is adequate work being done to remind people of and promote to people a sense of shared British culture and history. The obvious problem you face, however, is that you have devolved education, so you no longer have control or influence over the educational curriculum in Scotland, Wales or Northern Ireland. The pass may already have been sold, from your perspective.

**Q67 Lord Maclennan of Rogart**: Do you consider that the greater devolution or decentralisation has been matched by a desire to see greater variation in service delivery and possibly tax and welfare policy?

**Professor Curtice**: The short answer is no. We have already touched on this. When we have asked people in Scotland whether it is okay for the basic rate of income tax to be different from that in England, either higher or lower, they are inclined to say no. They are certainly inclined to say that as far as pensions are concerned. Of course, if you ask people in Scotland whether they think that the policy on tuition fees should be the same as that in England, they say no, even though there is not that much support in Scotland for free university tuition, but that is a different story. It may well be that, if you begin to introduce policy difference, people will accommodate to it, but one possible reading of the legislation that is currently going through this place is that it will certainly require Scotland, to some degree, to live off its own tax base. But how much freedom Scotland’s politicians will have in practice to be able to vary the rates of taxation in Scotland is much more debateable. In a sense, the Scottish Labour Party is going to test that proposition relatively early, because the announcement that Kezia Dugdale made at the weekend is essentially saying that those people on the 40p rate are going to have to pay more if there were a Scottish Labour Government. You could raise the top rate from 45p to 50p and most people would not notice, but otherwise it gets you into the kind of territory where it will be fascinating to see whether or not people are willing to accept a non-trivial taxation difference between Scotland and England, and those who want to do that will have some work to do to persuade public opinion in Scotland that that is “fair”.

**Lord MacGregor of Pulham Market**: What do you mean by “fair”?
**Professor Curtice:** The truth is that this is where the demos does still exist; there is still a tendency for people to say that it is not fair that it is different in Scotland from that in England. The truth is that people’s reactions to policy differences ultimately will not simply be a high-minded, “Is it okay that this policy is different on the two sides of the border?” In the end, their reaction will be whether they think the policy they are getting is okay or not. People’s sense of fairness tends to be mixed up with a substantive idea. But as you know perfectly well, the postcode lottery syndrome is still, potentially, important, and if people think that they are getting different services or paying higher taxation or getting lower benefits because of where they live, it still matters, and what goes on in the rest of the United Kingdom is still, potentially, a frame of reference, even within Scotland, Wales and Northern Ireland.

**Dr Eichhorn:** The important thing is that people accept difference if they feel they benefit from it. That is the key point. It is difficult; if you are being asked the question of whether you want higher taxes, and you might get something out of it, a lot of people would be inclined to say no. As was just said, it is really important to see what exactly that would be offset with. What is the benefit from this to advance? It is very complicated to predict exactly what would happen. People do not like difference if it means that they can see something better happening somewhere else from their own perspective, obviously.

**Lord MacGregor of Pulham Market:** If they want better welfare benefits, or tuition fees, or whatever, and they are going to be asked to pay something towards that through their tax system, is that not fair?

**Professor Curtice:** It is fair in the sense that insofar as, say, Scotland wishes to provide more in the way of public services or welfare than England, then Scotland pays. That still raises the issue, for example, as to whether it is fair that people in Scotland are going to end up with higher pensions, let us say, than people in England. People in England may not think that is fair, because that opportunity has been denied them.

**Dr Eichhorn:** It also raises the question, first of all, whether people in Scotland in that example want those specific differences in the first place. As we said, the evidence on tuition fees is quite complicated. Traditionally—and we will see whether this changes—if we look at things like unemployment benefits and so on, and whether they are too high or too low, there is a small difference between Scotland and England on this issue, but it is not massive. These differences in attitudes between people are quite often blown up in magnitude. That is one of the things; voting behaviour should not be mistaken entirely for attitudes towards specific policies. There are loads of other factors that come into it, of course, and that is very often forgotten by commentators in the media, as well.

**The Chairman:** There I am afraid we must draw stumps. Thank you very much indeed. You have been extremely informative and you have managed to range extremely widely. You have covered the ground that our questions embraced, even if we had to leave one or two out. But it has been extremely useful, and we are very appreciative of the time you have spent—and for your written evidence to us as well. Thank you very much.
Executive Summary

1. As the four nations of the UK evolve into increasingly distinct political arenas, the multi-national character of the Union should be more fully acknowledged.

2. Increased autonomy for the component nations should be balanced with more effective representation at the centre.

3. This could be achieved through a reform of the House of Lords into a ‘House and Nations’ in which Scotland, Wales and Northern Ireland would be over-represented.

4. Such a reform would also increase England’s autonomy by creating a de facto English parliament but not a separate English government.

5. It would combine greater autonomy with stronger representation thus helping to maintain the unity of the UK and the coherence of its government.

0. Submitter

I am Senior Lecturer in Comparative Politics at the University of Kent and the Acting Director of Kent’s Centre for Federal Studies. I have been working on issues of devolution, federalism, and state restructuring for over 15 years. I am the author of Restructuring the European State (manuscript currently under review) and of Between Two Unions: Europeanisation and Scottish Devolution (Manchester University Press, 2005), in addition to numerous articles in scholarly journals, chapters in edited books, and other works. I am also the joint editor of Routledge’s Studies in Federalism and Decentralization book series and a member of the Executive Board of the Federalism and Multilevel Governance research committee of the International Political Science Association. For more information please visit www.dardanelli.net. I am making this submission in a personal capacity.

1. Purpose

The purpose of the present evidence is to outline some ideas as to the principles that should underlie the governance of a devolved Union and the practical steps that could be taken to improve the way the country is governed. These ideas are based on an effort to adapt the lessons that can be derived from a comparative analysis of governing arrangements across the world to the particular context of the UK.
2. Long-standing commitment to responsiveness
As a country with a long-standing commitment to liberalism and democracy, the UK has always strived to govern itself in accordance with the desires of its population and, where these differed in different parts of the country, to adapt the exercise of government accordingly. The separate arrangements for Scotland in the fields of church, law and local government enshrined in the 1707 Treaty of Union were an early and prominent example. They enabled the UK to govern Scotland in a manner sensitive to the latter’s specificities within a unitary constitutional structure. Likewise, the process of devolution from the late 1990s has sought to accommodate the demands for different degrees and forms of self-government coming from Scotland, Wales, and Northern Ireland. This is a sound principle of democratic government and should be retained.

3. But trade-off with coherence
Given the significantly different contexts in the four nations of the UK and England’s overwhelming demographic preponderance, however, responsiveness to the demands for self-government have led to an increasingly differentiated and asymmetrical constitutional structure, which threatens to undermine the coherence of the way the Union is governed. There is a trade-off between responsiveness and coherence. The constitutional challenge facing the UK is thus one of how to optimise the trade-off so that responsiveness is maintained but incoherence is minimised. In these notes I put forward some reflections on how this could be achieved.

4. Four nations behaving politically in an increasingly differentiated way
England, Scotland, Wales, and Northern Ireland are behaving politically in an increasingly differentiated way. This is fuelling demands from each of them for wider self-government and a distinct constitutional position within the Union. The UK is thus moving in the direction of being a political system made up of four increasingly distinct units. In this respect the UK is coming to resemble the Kingdom of the Netherlands, which is made up of four, largely autonomous, countries. Such an evolution will have significant consequences for the parties, with England, Scotland, Wales and Northern Ireland likely to develop their own increasingly different party systems. The ‘English party system’ is already very different from those in Scotland and Wales due to the growing strength of Ukip as well as the absence of the SNP and Plaid Cymru, while the Northern Irish parties have always been exclusive to the province. The statewide parties themselves are likely to evolve in a similar direction, to the point where they might be more accurately described as a family of separate parties rather than branches of the same party.
5. Need to fully accept the multi-national nature of the UK
There has long been a tension in the UK between, on the one hand, recognising England, Scotland, Wales, and Northern Ireland as ‘nations’ and, on the other hand, behaving as if the UK were a nation-state rather than a multi-national state. When the ‘national’ character of the four countries had primarily a cultural, as opposed to political, connotation the above tension could be left unresolved without serious political costs. As the nations are becoming increasingly ‘political’ nations, however, the enduring tension needs to be resolved if the UK is to continue to be governed effectively. The time has come for the UK to accept fully that it is a multi-national state rather than a nation-state and that self-government for each of the four nations has to be complemented by their effective representation in the government of the Union as a whole.

6. Devolution within England should be kept distinct
Devolution within England is often included in discussions about devolution to the minority nations but ought to be kept distinct. The latter has granted autonomous law-making powers in many policy fields to the Scottish parliament and the Welsh and the Northern Irish assemblies while devolution within England would only be executive or administrative. The two processes are thus qualitatively different. The idea of devolving powers within England also needs to be clarified, particularly as to which units of local government would be granted additional powers. Would power be devolved to metropolitan areas only or to rural ones too? If rural areas are to be included, would this be done through the existing tiers of local government or would larger regional bodies be created?

7. Summary
The UK should remain responsive to the different demands made from its component nations while at the same time it should strive to maintain coherence in the government of the Union as a whole. Recognising that there is a trade-off between responsiveness and coherence, the UK should balance the increased autonomy granted to the minority nations with their more effective representation at the centre.

II. Practical steps to strengthening the Union

7. How to govern a looser Union?
Three options have attracted the most attention. The first would be to devolve additional powers to Scotland, as promised in the run-up to the referendum, but maintain the status quo as regards England. The second would be to exclude the Scottish – and possibly also Welsh and Northern Irish – MPs from voting on England-only laws or reduce their number so that the likelihood of ‘English
laws’ being enacted without the backing of a majority of English MPs would be minimised. The third would be the adoption of a full-scale federal system, entailing the creation of an English parliament and an English government operating alongside a British parliament and government. All three of them, however, would bring significant downsides that might put the Union at risk again in the medium term. The status quo is likely to raise English resentment at the ‘privileges’ being enjoyed by the other nations and fuel calls for their abolition. Marginalising Scottish, Welsh and Northern Irish MPs or reducing their number would further detach the minority nations from British political life and erode the bonds between them and England. While federalism is the classic constitutional device for combining ‘self rule’ and ‘shared rule’, it would be problematic to adopt in the UK due to the overwhelming preponderance of England. Nor would a more ‘symmetrical’ federal system constituted by Scotland, Wales, Northern Ireland, and a number of English regions be more viable due to the lack of popular support in England for regional bodies with comparable powers to those of the devolved assemblies for the minority nations.

8. A new bicameralism

The competing objectives of increased autonomy and representation for the minority nations, as well as for England itself, could be optimised through a rejuvenation of the bicameralism at the heart of the UK political system. The House of Commons could be elected entirely from English constituencies and could be competent for legislation only affecting England. The House of Lords could be transformed into a directly elected ‘house of nations’ and would have control over matters concerning the UK as a whole. While the lower house could continue to be elected by first-past-the-post, the upper house should be elected by a form of proportional representation such as the single transferable vote. In such a transformed House of Lords, Scotland, Wales and Northern Ireland should be over-represented compared to England so that the latter would not have more than, say, 60 per cent of the seats. The government as a whole would continue to be responsible only to the Commons and would be formed by the party or parties controlling a majority of seats there, as at present. In the upper house, by contrast, the government would have to rely on a different majority or seek one on a case by case basis. The House of Lords would have the power to force the resignation of the cabinet members holding ministerial portfolios within its oversight, through a vote of ‘individual no confidence’. As a matter of convention, some of these portfolios should be allocated to non-English members of the upper house.

9. Striking a balance
Such renewed bicameralism would thus deliver a *de facto* English parliament but not a separate English government. The different political make up and *modus operandi* of the two houses would match the different nature of their policy responsibilities as well as the diversity of political culture across the four constituent countries: the more partisan and adversarial (English) domestic policy in the Commons versus the more common-interest orientated and consensual (British) foreign affairs and macroeconomic regulation in the Lords. Although many aspects of such a reform would need deeper analysis than is possible here, it would have the advantage of delivering ‘English votes for English laws’ while giving the non-English parts of the kingdom a larger say in the way the UK is governed. It would thus provide some of the advantages of a federal set up but without the creation of new institutions and without the emergence of a potentially destabilising competition between an English and a British government.

10. **A partisan advantage?**

Proposals entailing the establishment of ‘English votes for English laws’ are often viewed with suspicion by many because they are perceived to be likely to create long-term partisan advantages. In the context of a more devolved Union, however, that is one in which the minority nations enjoy increasing autonomy and witness increasingly differentiated party systems, the distinction between governing England and governing the UK will inevitably become a sharper one and any party aiming to govern England will have to do so on the basis of its support there. Voters’ behaviour is likely to evolve in tandem with the evolution of constitutional structures, hence any partisan advantage brought by constitutional reform will likely be short-lived. The different proposals for reforming the constitutional structure of the UK should thus be judged in terms of their pros and cons for the preservation of the Union and the quality of its government and democracy, rather than from a narrow partisan perspective.

11. **Recommendation**

My central recommendation to the Committee is that the UK should balance increased autonomy for the minority nations with a more effective representation of them at the centre, within a fuller acknowledgment of its multi-national character. This could be achieved through a reform of the House of Lords and of its relationship with the Commons. A reform along the above lines would also deliver increased autonomy to England while binding the four components part of the Union more closely together.

2 October 2015
Andrew RT Davies AM, Conservatives—Oral evidence (QQ 255-263)

Evidence Session No. 19  Heard in Public  Questions 255 - 263

THURSDAY 21 JANUARY 2016

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

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Examination of Witnesses

Andrew RT Davies AM, Conservatives, Kirsty Williams AM, Liberal Democrats, and Leanne Wood AM, Plaid Cymru

Q255 The Chairman: Kirsty Williams, Leanne Woods, Andrew Davies, we are grateful to you for coming. We are late starting—not your fault, but our fault—but we have a full hour, so feel free to answer our questions as you think fit.

Let me start with a broad general one. We are talking about the union and about devolution. What do people mean by the union? How do you define it? Is it an abstract principle, or is it something with real specific benefits, whether in the social field or economic field or in some other way? What are the particular features that you think are important as regards Wales? Would you like to start, Ms Williams?

Kirsty Williams AM: Thank you very much for the opportunity to speak to you this morning, and I hope that you have a successful day here at the Senedd.

There are important reasons for Wales to remain part of the union, and there are aspects of the union that Welsh people value very much. It delivers advantages in terms of the economy, defence and security, a stronger voice internationally and an opportunity to have that voice heard in international bodies. It is important socially as well, as there is the opportunity to share social risk in terms of welfare and—perhaps you might come on to this later—there is the opportunity to share the risks economically as well through an element of redistribution across the union.

Depending on where you are in Wales, there may be to a greater or lesser degree a cultural sense of belonging. That may be felt at different levels, depending on which part of Wales you are from and perhaps differently even among the generations. I am not sure that the concept of the union is the same for my teenage daughter as it is for me, let alone what it is for my mother-in-law. Despite those differences, people often feel a value in being part of the union.

Andrew RT Davies AM: Good morning everyone, and welcome to Cardiff. It is a pleasure to come before you and support you in your evidence-gathering session.
Most of what Kirsty Williams has said, obviously, as a unionist, I would believe passionately in. I believe that there is a strong bond from Wales, Scotland, England and Northern Ireland on the principles of the union, which is a strength. Obviously, we benefit from being together. Especially from a Welsh perspective, it is economically important because of our land border and the way our economy has developed over the years. We have an east-west—or west-east, depending on which way you want to look at it—rather than a north-south, economic bond, as it were. Especially in north Wales, there is a huge economic footprint that is dependent on us having a strong bond as a union.

On the point that Kirsty introduced about age, for people of a certain age the union means different things. I get the sense when I go around, especially among young people, that Wales has far more grit in itself these days and an ability to determine much of what it wants to do via the devolved settlement. As someone who comes from a party that historically did not necessarily believe in this institution or campaigned actively against the setting up of this institution, I think that it is a good thing to see that change of mindset.

Looking around the rest of the United Kingdom, especially in England now, we see the devolution of responsibilities to cities and the creation of mayors. Bristol, for example, down here is an active economic competitor now, with the increased capacity that the mayor has brought to the city of Bristol. Very often, the representations that we receive here, particularly in south-east Wales, emphasise the way that localised decision-making has been passed down to regions and areas within England that have a direct economic impact on what is going on here in Wales.

The strength of the union is strong here in Wales. The belief in the union is very strong. It means a lot economically, it means a lot culturally and, obviously, for security as well it means a lot to people. We have a very strong connection with the armed services in this country, for which historically we have always provided over and above our population ratio vis-à-vis other parts of the United Kingdom.

The important thing to think about, when you are talking about the union, is that it is an age-related issue. If you ask certain sections of society, they would have a different view of what the union means to them, but I would suggest that, in each and every one of them, there is a clear majority that the union is good, it is beneficial for Wales and it is beneficial for all the component parts of the United Kingdom.

**Leanne Wood AM**: I would like to welcome you all to Cardiff as well. I see the situation slightly differently to my colleagues, as you would expect. Plaid Cymru’s long-term vision for the nations of these islands includes a social, rather than a political, union for Wales, and for Wales to be an independent state within that context. In the more immediate term, we want the UK to function in the best interests of all the people involved on these islands. We want devolution to be equal between the nations that make up these islands. We also want to see changes to UK-wide institutions to better reflect the wishes and the needs of the people within the nations that make up the UK.

In practice, that would mean significant changes to the Wales Bill that is going through at the moment so that it more closely resembles for Wales the devolution model that we have in Scotland and Northern Ireland. At a UK level, we would expect the Joint Ministerial Committee to become a UK Council of Ministers, where those non-devolved issues could be discussed and debated. That could be a space where differences of opinion are accommodated.

**The Chairman**: Thank you very much. On that last point, this Committee produced a report some time ago on intergovernmental relations in which we called for a change in relation to things like
the Joint Ministerial Committee and other vehicles for fair-minded negotiation and discussion between the different parts of the United Kingdom. We have not had a reply yet—it is still under consideration within the Government—but we are treating that as a positive sign that something useful may emerge soon, so we shall see. However, thank you for that general context, which is very helpful. We will move on to Lord Morgan’s question.

Q256 Lord Morgan: Bore da i chi gyd. As you will well know, Scottish and Welsh history are very different and the starting points were very different. The enthusiasm for devolution in Wales initially was very much less than in Scotland, but, nevertheless, with the passing of time the movement has been much the same, leading to the St David’s Day agreement of last year—that is to say that Scotland appears to be setting a pathway or example for Wales in a variety of areas. Do you all see that as continuing, with Wales continuing to follow that kind of progression, or do you think that there will always be constitutional, as well as linguistic, differences between Wales and Scotland?

Andrew RT Davies AM: I disagree with what you said about Scotland setting a pathway—and, obviously, that would mean I disagree with Leanne Wood on my right here—and I think that is a mistake. It is a very London view of things that “for Wales, read Scotland”. Wales is a very different part of the United Kingdom, as I said in my opening remarks, both economically and culturally.

There is not this appetite, I would suggest, in Wales for what clearly has a groundswell of support in Scotland, as we have seen in the referendum and the election of a considerable body of MPs and a Scottish nationalist Government in Holyrood.

There is an appetite for greater devolution here in Wales, but by that I do not necessarily mean greater powers for this institution as a parliamentary body. I actually believe that it is about pushing powers beyond this institution. The reason I used the example of mayors in England—in particular, Manchester, Bristol or any one of the other areas that you might care to pick up on—is that I do believe that we are moving into a new era of devolution, which should not just confine itself to talking about what goes from London to Cardiff or, in Scotland’s case, Edinburgh, or to Belfast. I think that, in Wales’s case, it needs to go on beyond Cardiff and actually empower, both economically and culturally, the areas of Wales such as north Wales, mid Wales and west Wales. It is interesting that, in the submissions that have come forward from many of the business organisations ahead of the Assembly elections this year, they, too, see it as an obstacle to economic growth that power is being concentrated here in Cardiff rather than in their own economic areas. Again, I refer back to north Wales as a good example of that.

I believe that there is an appetite for greater constitutional change and devolution, but I do not necessarily believe that that appetite and desire for change necessarily means that it all revolves around this place; I think it actually means moving beyond what we understood the settlement to be between 1997 and 2006, when the last Government of Wales Act came in. We have the Wales Bill going through Parliament at the moment. We have to look to try to push responsibility and powers out to other parts of Wales. That would hugely help to drive forward the agenda of decentralising the United Kingdom, while not unravelling the bonds that create the strong union.

Leanne Wood AM: There is nothing inevitable about Wales’s constitutional journey at all. It will be what people want it to be. It is the people who have the power in this, and that is absolutely right. But successive UK Governments have refused to treat Wales on the basis of equality with Scotland and Northern Ireland; that is why our settlements are different now. Plaid Cymru believes that our nations should be treated on the basis of equality. We think that could be best served through a written constitution for the UK that sets the framework for a more confederal model.
Kirsty Williams AM: Thank you. I think it is right that we have to acknowledge the history that has led us to the situation that we are in now. That has inevitably meant that the stages of devolution have been different for both our countries. That is why different levels of devolution were offered back in 1997. You are quite right to say that Scottish discussions about devolving power were much more advanced than they were here; we have to acknowledge that. Is there something in the Scottish people that makes them innately more able to manage their affairs than the Welsh people? No, I do not believe that there is, yet we continue to see devolution being offered to Wales in a way that I believe sometimes suggests that we cannot be responsible.

Look at the difference at the moment between the approach being taken in Scotland and Wales: licensing and the sale of alcohol devolved to Scotland, retained to London in the draft Wales Bill for us; safety at sports grounds devolved to Scotland, reserved to Westminster for Wales; late-night entertainment devolved to Scotland but reserved for Wales. Health is a devolved issue, yet issues about abortion are to be passed to Scotland but reserved for Wales.

To me, there has never been a serious or coherent argument about why that should be the case. It certainly has not been advanced in the current debates about the draft Wales Bill.

We have to acknowledge that public appetite for different levels of devolution is different between Scotland and Wales, and to understand the very practical difficulties of trying to just impose the Scottish model on Wales, which is another reason why we have problems with the draft Wales Bill. There is the issue of ministerial consents and the necessity test. It is written exactly as it is for the Scottish context, but of course we do not have a separate legal jurisdiction and the legal history that Scotland has. When you try to impose those words on the settlement for Wales, it does not work in the same way as it does for Scotland.

We have to acknowledge the different history that has led us to where we are and that there are different levels of support in Wales for greater devolution. I share Leanne’s analysis. The powers this place gets should rest with the Welsh people and are derived from the Welsh people. We should not necessarily believe that everything that Scotland has is right for Wales but, at the same time, I do not think we should settle for having less than Scotland either. Whereas Leanne’s party would look for an independent Wales, we would like the UK to develop along the lines of a written constitution that sets up a federal UK system, where it is very clear about where power lies within each of the nations, and which power the people of that nation offer up to the union because they believe that their interests in that area are best served by working across the UK as a whole.

Lord Morgan: Two of you have just mentioned the question of a federal United Kingdom. It is very difficult to visualise a federal system where 85% of the people would be in one part of that federation.

Kirsty Williams AM: I accept that that provides some challenges, but I do not believe that it is beyond the wit of us to create a system where power lies with the individual constituent parts and power is then offered up to a federal system. It is not beyond the wit of us to do that, but it would need to be written down, codified and very clear. One problem that we have with the devolution settlement at the moment is that it is about as clear as mud to the people.

Lord Morgan: I agree. Let us move from the mud.

The Chairman: The mud is what we are trying to sort out in our inquiry, I am afraid, but Lord Norton may clear some of it away.

Q257 Lord Norton of Louth: To look at it from a different perspective, we have the Scotland Bill going through Parliament at the moment and we have the draft Wales Bill. Each of you has
indicated support for further change, albeit different changes. Much of the discussion about what change will take place occurs at an intergovernmental level. How do we bring the public in? In looking at further change, is there a particular mechanism by which you can ensure that people’s voices are heard, or will it be imposed top down and people then realise the system of government that they have ended up with?

**Leanne Wood AM:** It is crucial for people to feel a sense of ownership of whatever political project they are involved in and not feel as though they are having something imposed upon them. Following on from the last question, I would say that there are direct comparisons to be made between public participation in the last Scottish referendum and the last Welsh referendum in 2011. There was a big difference between the turnout numbers and the numbers of people involved. I think that is down to the question being asked. In Scotland, people were being asked a very big question which was going to have far-reaching consequences, whereas, in 2011, in Wales, it was very difficult to excite people about the prospect we were asking them to vote for.

We can be more innovative in the way that we involve people in Wales in the discussion. It has been quite a dry subject to date. I put forward ideas in the past for creating the Welsh constitution through public participation and civic engagement, much like the constitution that was created in Iceland following the banking crash, which was crowdsourced and online. That had a very large participation rate from the population in Iceland. I think that kind of innovation could make politics interesting for people.

**Kirsty Williams AM:** I think it is important, but how you create effective mechanisms to do it is more difficult. Even having created those mechanisms, how do you have a genuine response to it by all parties, rather than the usual suspects? If you held an engagement exercise in Wales, I could probably write down before the evening started the people who would turn up: the usual suspects. They are important people and important voices to be heard, but it does not really get down to Mrs Jones in Tudor Street in Ystradgynlais. How do you get down to her? That is more difficult.

At a wider strategic level, my federal party included in its manifestoes in both 2010 and 2015 the need for a constitutional convention but, in the end, it comes down to real grass-roots work within communities, speaking to people where they are about issues and trying to make linkages.

The people who I speak to are not interested in constitutional issues until you make the linkages: how those constitutional issues translate into the ability to transform their economic prospects, the educational prospects of their children or their ability to see a doctor when they want to. I do not know whether we have been successful in making those linkages for people.

If we are constantly asking people small incremental questions about their constitution, as we have done in Wales, you do not get the enthusiasm that you saw in Scotland where there were high stakes and a very clear black and white choice, rather than the shades of grey that we constantly offer up to people in the Welsh discussion.

**Andrew RT Davies AM:** In the Scottish referendum, it was a simple enough question to understand—you were either staying in or going out—and that energised people. I take Leanne’s point and many other commentators’ points: it galvanised people to get involved in it. But it was a simple argument to put and some put it more effectively than others, in fairness. I do not think that is a fair benchmark to use, although it is an aspirational mark of turnout to try and get up to at election time. Assembly elections, historically, have at their highest achieved about a 44% turnout; at their lowest, I think it was about 37%. There is nothing on the ground indicating that we are going to break either of those ceilings. We will most probably be somewhere in the middle this time around as well. I came into the Assembly in 2007 and I can probably count on one hand the amount
of people who have come to my surgeries to talk about constitutional change and the role of the Assembly, although when I come into this building the people within it, and those who inhabit the bubble outside it, could spend every minute of their waking day—and rightly so, because that is politics—focused on constitutional change and the journey of devolution.

I think that parties need to be bolder and braver in their manifestos and I appreciate that at election time a whole whack of issues are vying for attention. But I am a big believer in parties, once they have something in their manifesto, being charged with delivering it and getting on with the job, rather than using the comfort blanket of saying, “We need a referendum on this and a referendum for that”. We saw in the law-making powers referendum that there was a 32% turnout. It was a comprehensive yes but a 32% turnout—a third of the electorate chose to vote. In the run-up to that, the commission that was looking into further law-making powers held curry nights and all sorts of incentives to try to galvanise people to come to its meetings and, as Kirsty said, you could literally have written on a piece of paper the people who were going to turn up to them. That just shows, in some respects, how comfortable people are in Wales with the union and with what we have got. They do not see a direct correlation with their everyday lives in the constitutional journey that we are going on.

Equally, when they are asked whether they want more powers for Wales, the polls clearly show that they say yes to that. It is for us as politicians to be brave and bold enough to shape that and then put it forward in our manifestos at election time, rather than keeping on navel-gazing and talking among ourselves over the issues.

Lord Norton of Louth: So it is really both the mechanisms and, as you say, then getting people to use them and be engaged. Particularly when it is not a big-bang issue and is more incremental, it is about getting people engaged and having some input rather than waiting to see what the effect is on them. So I suppose that there is a challenge, in a way, for politicians in what you put over to people in explaining what the consequences are for them in practical terms—I think this was your point—rather than just discussing it in broad constitutional terms.

Leanne Wood AM: It is very difficult to ask people to vote for something, though, that is just a tiny change and is going to have very little impact on their life, other than possibly, “Three years down the line, a law might be passed that has an impact on you but we can’t even explain what that is at this stage”. That is the kind of debate we were having in 2011. As you know, I can get quite passionate about politics but I really struggled to make it interesting, if I am honest with you—whereas in Scotland, nobody can say that what went on there was not interesting.

Kirsty Williams AM: I would make a plea really. That is why it is so important that the draft Wales Bill is got right. The Secretary of State is on the record as saying that he wants to create a long-lasting settlement. My fear is that if it goes forward in its current form, it will not create that stability and clarity of purpose. We will be back again discussing these issues, which Andrew says we spend too much time talking about. We have got to use this opportunity that we have to get it right, otherwise there will be yet more debates in the next Assembly about the constraints that we find ourselves in.

Lord Judge: I just want to put a supplementary. Mr Davies, forgive me, you have given us some figures about turnout but what was the turnout at the recent general election?

Andrew RT Davies AM: Off the top of my head, I cannot give you the exact figure but I think that it was 65% plus.

Lord Judge: Yes, it is just to give me a perspective.
Andrew RT Davies AM: It is always about 20% more at the general election. I think that the lowest general election turnout was in 2001, and that percentage was in the low 60s. I believe that it was in the top end of the 60s this time around. Over the elections, there has been about a 20% gap. When you think about health, education, the economy, local government and rural affairs, if you asked people to list their top 10 priorities that they wanted a Government or legislature to deal with, I would suggest that nearly all of those would be in the top five.

If I could make one point on the last question, I think that this institution and devolution will gain more punch with fiscal powers, and in particular by having responsibility around income tax. That is why I have put so much political capital into this. I came into the Assembly in 2007 and, I have to say, was bemused that as an institution it, and the Government who were by extension from it, just existed to spend money and were not held to account for the money that they were spending. To me, that had to be a political priority. I most probably have on my back the scars from the internal debates and discussions I have had within my own party.

Kirsty Williams AM: Ongoing debates and discussions.

Andrew RT Davies AM: But I believe in the connection and I have learnt to put the vests on now. Ultimately, I believe that we will gain far more punch in Wales, and with the people of Wales, when they come to look at the combination of politicians who they want to send here at our elections. That has been a missing block in the devolution settlement which will ultimately drive greater participation at Assembly elections and greater interest in the journey we are undertaking here.

Leanne Wood AM: But we have some Conservative MPs trying to put a block on us having those powers as well.

Andrew RT Davies AM: Ultimately, there are discussions in all parties and it is the Government in London’s view that they will be transferred without a referendum. That is the Government’s position and it is going to happen.

The Chairman: I think that we will move on before we develop into an Assembly debate.

Q258 Lord MacGregor of Pulham Market: I just want to ask a question about the social union, which follows on a bit from what you have just been saying. The sharing of risks and benefits in the social union is seen as important to the union. The Scottish Government advocate full fiscal autonomy for Scotland, meaning that all but certain core functions such as macroeconomic policy, the currency, foreign affairs and defence are devolved. With that, particularly in terms of social policy, welfare benefits and so on, if the Scottish Government decide to have higher welfare benefits or whatever else in the benefits area, they would have to raise the additional taxation to pay for them.

The Welsh Government believe that resource and risk-sharing in the interests of social protection for all UK citizens are at the heart of their understanding of the social union and would certainly not go down that way, as we have heard from the earlier evidence. What is your view?

Kirsty Williams AM: This is one of the most challenging aspects for somebody in my party who, as a Liberal Democrat, believes in greater devolution of powers. It is a very live issue at the moment. The Westminster Government have gone out to consultation on the devolution of attendance allowance to local authorities and proposals to hand that allowance to Wales. I am very cautious about doing so because of our experience with council tax benefit. We get the consequential from council tax benefit but we do not get the money associated with its distribution. Just as we have seen in Northern Ireland, money can come across but the costs of distributing that money and running your own welfare system can take a chunk out of the money that should end up in people’s
pockets. So I am very wary because of the experience that we have had to date and what has been happening in Northern Ireland on this issue.

For me, one of the strengths of the union is indeed that you pay into a national insurance system and get the same pension from the state, wherever you happen to live. If you lose your job and need to be supported while you find another, you get the same rate wherever you are. That is part of the contract which people feel they have when they pay into the system. At the same time, I believe in the principle of this institution being able to raise and spend some of its money. That is important for accountability; it is also a powerful policy tool. At the moment, there are no consequences to the Welsh Government whether their economic policy is a failure or fantastic, because we do not reap the benefits or the whirlwind if we get it right or wrong.

A dual system has an element of our raising and spending our own money, but we would still not divorce ourselves from a system that allows us to have redistribution in a Welsh context. It is slightly different for Scotland—maybe not so different any more, with the oil price collapsing as it is. But at the moment, I would be very fearful of a system that would cut Wales off from that because we are just not in a position to sustain our public services if there was not that element of risk-sharing across the piece.

**Andrew RT Davies AM:** I agree. We have a national insurance scheme, as such. The welfare state is one of the main bonds of the United Kingdom. Where one part of the union might find itself in difficulties—where the individuals of that part of the United Kingdom might find themselves in difficulty with long-term unemployment, high levels of sickness et cetera—the union comes together and redistributes support on a collective basis.

However, I have to say that I wrestle with the journey that devolution is undertaking, and ultimately, with whether it right that the regional and devolved Governments should have responsibility in some areas of benefits and welfare. My ear is open to that discussion and debate, but before we go too far down that road, we need to get tax-raising powers and the ability for whatever Government comes out of this institution to decide how they want to raise money and to spend the money that arises from the decisions that they take. That way they could craft a welfare model that is specific to their particular area, or not, as the case may be.

We need to tread with caution in this field, albeit I can see that in five or 10 years’ time, there will be greater fragmentation of the welfare state as we see it at the moment. That does not necessarily mean that I believe that that is the right journey to undertake, but I understand the logic of how that journey might begin and how it might end. Certainly, as we sit here today and for the foreseeable future, I believe it is in Wales’s best interest to maintain the welfare state we have at the moment, which is a unified welfare state for the whole of the United Kingdom.

I take the point you made about Scotland wishing to get more responsibilities. It is going to get more responsibilities. It is playing quite a dangerous game of poker. Eighteen months ago, Scotland was fighting an independence referendum based on the extortionate revenue it was going to get out of a high oil price and yesterday, if my reading of the Daily Telegraph is right, oil was $28 a barrel. Economies can turn very quickly indeed, and the vulnerable suffer in the end.

**Leanne Wood AM:** As I remember the debate, it was not dependent on what happened with oil, but let us park that for another time. Plaid Cymru believes that the best way to secure redistribution throughout the UK is by replacing the Barnett formula with a needs-based formula. That would end Wales’s historic underfunding. Here are historic reasons for the inequality of funding—heavy industry, rurality and so on are issues that need to be taken into account—but we are not equal now, are we? Wales’s GVA is 72% of the UK’s GVA. Currently, this redistributive
system is not working for us in the way that it should. We also want to see greater fiscal devolution so that Wales can find economic and social solutions that best meet the needs of the people in this country. Securing distributive mechanisms can help to close inequality, and that would be more effective than insisting that all the nations conform to exactly the same economic and social policies. We have different needs, so we should be able to tailor different solutions to those needs and problems.

**Q259 Lord Morgan:** I ask my question particularly of Ms Wood. I am very sympathetic to many of the individual points you make, but if you adjust the Barnett formula in the way that you urge, which I would agree with, does that not in fact make the bonds between Wales, the Treasury and the United Kingdom all the closer? It is a step away from independence, not a step towards it.

**Leanne Wood AM:** We have to get to the point where Wales is able to stand on its own two feet and is no longer reliant on handouts from the UK Government or the European Union, but we have a long way to go before we are able to do that. We have been at a funding disadvantage since the Barnett formula was introduced in 1978. In the interim, before we get to the point where we are able to stand on our own two feet, it needs to be addressed. We are now at a disadvantage, and we do not have the powers to shape our economy ourselves or the fiscal levers, so we are getting the worst of all worlds, which is why our GVA is stuck stubbornly where it is. We have no powers to affect that.

**The Chairman:** A committee was set up in the House of Lords six years ago to look at the Barnett formula and all the block grant and funding arrangements. I was a member. We reached a unanimous view that what you have just said is right. The Barnett formula is not fair. It is particularly unfair to Wales, but it is unfair to England as well, and Northern Ireland has special circumstances. We developed a needs-related solution which we believed was viable. I believe a similar exercise subsequently took place in Wales.

**Kirsty Williams AM:** I think you will find consensus among all Welsh political parties about the need to reform the Barnett formula. It is just about being able to convince the Westminster Government.

**Lord MacGregor of Pulham Market:** I think you will find a consensus in the same direction among a lot of us here. We have been advocating that for some considerable time.

**Andrew RT Davies AM:** The funding formula the Chancellor announced in his Autumn Statement is a step forward, but ultimately these debates around the Barnett formula will, regrettably, continue rather than be addressed. It is worth remembering that through the union Wales benefits from the Barnett formula with a greater amount of money coming in than leaving. One of the fundamental tenets of the union is surely that we benefit from it. We are not handicapped. We benefit from it.

**Leanne Wood AM:** But not to the same extent as Scotland.

**Q260 Baroness Dean of Thornton-le-Fylde:** Staying on the area of public policy on healthcare and welfare benefits, I am getting the impression from you that there should not be a set minimum. Devolution is taking place and there is provision in the Scotland Bill for a minimum that can be added to. Is your view that there should be a minimum level set which none of the devolved nations can go below, but can go above if they chose, so there is a basic minimum?

**Leanne Wood AM:** Who would decide that?

**Baroness Dean of Thornton-le-Fylde:** That is my second question. If that is the case, who decides?

**Andrew RT Davies AM:** Are we talking about welfare or funding in general?
**Baroness Dean of Thornton-le-Fylde:** We are talking about general welfare, social benefits and probably healthcare, too.

**Andrew RT Davies AM:** I refer again to the funding floor that will be introduced. The Holtham commission recommended a parameter of £114 to £117 of GB spend, and it has been set at £115. There is that floor for the first time in the overall funding that will come into Wales. That is set for the lifetime of this Parliament. I hope it will continued beyond it, but that will be for an incoming Government to determine. In relation to welfare, I repeat that I believe that the universal nature of welfare and the national insurance principle that we pay into a national pot serves Wales well. I do not believe we are at a stage where we should fragment the welfare system now, but I believe that as the journey continues, especially with income tax powers, a Government here will have greater fiscal flexibility, if they wish, to create different parameters in the welfare system.

**Baroness Dean of Thornton-le-Fylde:** So it could go down as well as up.

**Andrew RT Davies AM:** That would be for the Government to determine.

**Baroness Dean of Thornton-le-Fylde:** The Government being the Welsh Government.

**Andrew RT Davies AM:** Surely that is what democracy is about. People could vote accordingly then. I do not think we are at that stage at the moment. My view is that the universal nature of the welfare system we have in the United Kingdom serves Wales well at the moment, and we should protect it.

**Kirsty Williams AM:** As I expressed in my previous answer, issues around welfare are very complex. With regard to healthcare, it is a devolved issue and it is for this elected body in Wales to decide minimum standards for healthcare. Any rolling back from that would be a rolling back from devolution which I would not see as acceptable. In those areas where we have decided that national Parliaments are best placed to make decisions on behalf of their people, it is for them to decide what the minimum is and to justify it to their populations. As I said, welfare is a different issue from health.

**Leanne Wood AM:** Clearly, my party is about maintaining the integrity of devolution and resisting any attempts to row back from it, so there should be clear delineation between the roles of the national Government and the UK Government. Having minimum provision in devolved fields dictated by Westminster would not give harmonious relations between the two Governments. We have also seen an erosion of the welfare state over recent years, since we have seen the cuts and so on. Nothing should prevent Governments in the devolved nations putting in place provision to ensure that there is a level of social protection for the population, but they should be determined by those national Governments, not imposed.

**Baroness Dean of Thornton-le-Fylde:** How would they fund that?

**Leanne Wood AM:** I go back to the last question about funding, which is clearly a huge one at the moment. Given the cuts, it is all very difficult and I question the need for this level of cuts at the Westminster level, but that is a completely different debate from the one we are having now.

**Baroness Dean of Thornton-le-Fylde:** Can I just press you on that? You said in your introductory remarks that you want devolution to be equal across the nations. That is a pretty clear and direct statement. You then said a few moments ago that actually, yes, we should stand on our own two feet, but we are so far away from doing it that it is going to take a long time to get to that position. What we are looking at is not a long-term solution, but at the changes which are taking place now. As we speak we have the draft Wales Bill and the Scotland Bill going through the House of Lords. In that period, changes are coming through in the provisions already in the Scotland Bill about which...
the Scottish Minister, Fiona Hislop, said that to have a minimum entirely opposes the principles of devolution because it is far too bureaucratic; they do not want it. That is not the view we are seeing from Wales, although I would accept that it is not necessarily your view. How do you see the situation as between now and the move towards the changes in Scotland—do you want the same as Scotland? What about the intervening period? Should a minimum be set before Wales could change?

**Leanne Wood AM:** I would oppose any minimum being set.

**Baroness Dean of Thornton-le-Fylde:** At any point?

**Leanne Wood AM:** Having it imposed by Westminster. If we want to create minimum standards here in Wales, that is a matter for the Government here, but having anything imposed by Westminster on the Welsh Government would be a roll-back on existing devolution. My party is all about maintaining its integrity by extending it and not allowing it to be rolled back in any way, shape or form.

**Baroness Dean of Thornton-le-Fylde:** If the Wales Assembly sets the level and it is different from that set by Westminster, who funds the difference in the intervening period? Where would you get your money from?

**Leanne Wood AM:** Our funding is totally from the block grant at the moment. It comes from Westminster. There is an ongoing debate and disagreements within the Conservative Party as to the extent to which income tax powers are devolved, for example.

**Andrew RT Davies AM:** There is no disagreement; it is happening. I fail to see what the disagreement is. It is the Government’s policy that it will be transferred.

**Leanne Wood AM:** That is good, but a number of MPs have just made representations for those powers not to be transferred.

**Andrew RT Davies AM:** That is part of democracy.

**Leanne Wood AM:** Fine, but there is a question mark over it. It is not absolutely clear what the Government’s position is on that.

**Andrew RT Davies AM:** The Chancellor has confirmed it on the Floor of the House.

**Leanne Wood AM:** One of the reasons we want to have powers over income tax is so that the Government would have a direct incentive to create good-quality jobs. They would then see the benefit from that expenditure in the form of revenue coming back into the tax pot. That does not exist at the moment and has not existed at all since devolution. This gives us a new opportunity to shape things differently in the economy and to raise more revenue if the job creation side of things is done correctly.

**Baroness Dean of Thornton-le-Fylde:** I have finished my questions, but I notice that two colleagues wish to come back.

**Andrew RT Davies AM:** Perhaps I may make two points to clarify my answer to your opening question. I thought that we would continue on the welfare front, but you broadened it out to all services when you talked about minimum standards. From our point of view, once a system or responsibility is devolved, it is for this legislature, and by extension the Government, to set their parameters of working. I would be loath to have another legislature impose minimum standards because ultimately that is what devolution and democracy is all about. Going back to the point about how we would pay for it, two things have to be done. One, as I said in my earlier remarks, is the transfer of fiscal responsibility to this institution—a considerable responsibility, if I might say—
Andrew RT Davies AM, Conservatives—Oral evidence (QQ 255-263)

to the value of £2 billion. That will be a game changer. Secondly, the Welsh economy and the Welsh nation have to start making more money. It is as simple as that. I was and I am in private business because I am a farmer. I was self-employed before I came into this institution. If I did not make the money in the day, then basically I could not invest in my business or do the things I wanted to do. As politicians we have to have the same mind-set, which is that of actually making money here in Wales so that that money can be used to generate the services we want to provide or stimulate a growing economy by lowering taxes. That is the political argument.

Baroness Dean of Thornton-le-Fylde: You have said that you would like more control over benefits.

Andrew RT Davies AM: Yes. That is a genuine discussion which will continue, but I do not think that you can have fundamental change in the national structure of benefits and welfare—as I see it, national insurance—unless you have a considerable plank of fiscal responsibility such as income tax powers. But we are two to three years away from even getting them at the moment because it has to go through Parliament via the Wales Bill. In terms of implementation, we are talking about 2020 or 2021 at the earliest.

Kirsty Williams AM: Not all benefits are created equal, though. We can have a homogenous lump of welfare and benefits, but there may be elements within that which are easier to devolve than others. We have already seen it with council tax benefit. The decision to devolve it to local government meant that we have to do it ourselves now. Independent Living Fund money has been devolved to Wales and we have to administer it. There is merit, actually, in attendance allowance being devolved, given that we are responsible for social care here in Wales. So there is an issue about it and an argument can be made. The problem is this: how do you make a deal with the Treasury on the amount of money that would come with it? At present, because we do not have a needs-based formula that actually devolves money to Wales, the money that potentially would come to fund attendance allowance is calculated on a broad population basis, not on need. What we know in Wales is that we have an above-average older population; there are more old people who drive demand for that kind of benefit. Our nation is sicker than that of England. We have a high proportion of disabled people. All the drivers for qualification for that type of benefit are greater than potentially would be reflected in a broad distribution of resources. I do not have a principled objection to attendance allowance coming here, it is just that my experience of dealing with the Government over council tax and the Independent Living Fund makes me very wary. There are sound public policy and social care policy reasons why we might want to do that, but it is about the nature of the deal that you can agree with the Treasury. In my experience of dealing with the Treasury as part of a coalition Government, believe me that that period of five years was one of the toughest of my political life. It is not easy dealing with the Treasury.

The Chairman: Let us move on to another easy question.

Q261 Lord Judge: The immediate response of the Westminster Government to the large influx of SNP Members of Parliament was to get carried away with English votes for English laws. In a federal system, of course, each of the four nations would have its own Parliament and its own arrangements. Can you give us some idea of how English votes for English laws looks to you?

Leanne Wood AM: Plaid Cymru is not opposed in principle to English votes for English laws as long as we get Welsh votes for Welsh laws as well. That would introduce the anomaly of England and Wales votes and laws, but I would argue that it could be done through strengthening Welsh devolution. A better way to ensure fairness for England is for there to be an English Parliament and for the UK Parliament to be the Parliament in which reserved UK matters are determined by a more equal agreement between the nations.
**Kirsty Williams AM:** What does it look like to me? It looks like a mess and a failure to get to grips with the fundamental problem about what should be done for England.

**Lord Judge:** In that case, what is the better answer?

**Kirsty Williams AM:** It is for England to get on and sort out a permanent solution to the issue for England. It is something that we have not talked about a great deal when we look at devolution. Scotland dominates the discussions while Northern Ireland and Wales get the dregs. But if you at the polling, in England there is a growing sense of “What about us?” and that needs to be addressed. I think that politicians continually forget to talk about England in the wider discussions. It is not for me to tell England how it should govern itself, but a mechanism needs to be found. Whether Parliament does that and you look again at the issues around regionalisation—depending on where you are in England, it looks more attractive or less attractive—there needs to be a proper debate about what happens to England in this changing constitutional settlement. If I was English I would feel aggrieved about the dominance in the discussion about the needs of Scotland, Wales and Northern Ireland. There has not been a proper debate about what English devolution would look like, and I do not think what we have come up with is adequate. For a start, what constitutes an English matter? Because of the confusion and lack of clarity about devolution, especially in the Welsh context—what constitutes England and Wales or England only?—it is impossible to decide in the current circumstances what is an England-only matter. I would argue that simply leaving it to the Speaker to decide whether something is an English matter is not acceptable. What solution the English come up with for themselves is not for me to dictate, but they need to come up with something.

**Andrew RT Davies AM:** One thing that we have learnt in this institution is that there is nothing more resented than someone from another legislature or Parliament trying to tell you how to run your affairs and what you should be doing. It causes quite a bit of friction, to say the least. I go back to my opening remarks: you should not read Wales for Scotland. In mid-Wales, for example, where Kirsty comes from, there is no district general hospital, so virtually everyone would rely on an English district general hospital to provide their services. There are many other examples that you can highlight. In north Wales, cancer services, for example, are very often cross-border, as are maternity services and cardiac services in south Wales, which is a big economic area. A large number of people live here, with an extensive range of health provision, but there are very strong links between Bristol and south-east Wales, for example.

There is a key role and link for Welsh MPs to be participating in the discussions and votes in the House of Commons because that directly impacts on constituents here in Wales. I accept that they have a different arrangement from Scottish MPs, but the elephant in the room is what will happen in England over decision-making and how democracy will move forward there. The idea of assemblies was pretty comprehensively pushed out by the referendum in the north-east, I think it was, in the early part of the 2000s. The current Government obviously have a model of devolution revolving around directly elected mayors, and you have the police and crime commissioners, which have devolved a huge amount of responsibility on policing matters. It is a question of exactly what type of model will be adopted for the part of the United Kingdom that has 85% of the population. There is no easy solution because if I had it, I would most likely jack it in here and become a constitutional expert and charge a fortune for lecturing and delivering the model.

**Lord Judge:** You might do it for nothing.

**Kirsty Williams AM:** Andrew never does anything for nothing.
Andrew RT Davies AM: I have four kids. I believe that it is the beginning of the process of recognising the democratic deficit where decisions can be driven through on parts of the United Kingdom where other parts have no say at all. The way the devolution settlement is going between England and Scotland is dramatically different from what is going on here in Wales. The fundamental principle of the services that many Welsh people rely on in England really is the banker for Welsh MPs to be included in many of the decisions that are taken in the House that on the surface look as if they are exclusively English.

Lord Judge: What I think you are saying—correct me if I am wrong—is that there should be English and Welsh votes at Westminster for English and Welsh laws.

Andrew RT Davies AM: Surely the principle of democracy is democratically elected individuals voting on issues that affect their constituents. That is the bond; that is the deal. When you stand before your constituents you say, “This is what I will do on your behalf”. If you break that ability to execute that bond, you are attacking democracy.

Lord Judge: Forgive me, but as we stand today, devolution in Wales is not very far down the road; devolution in Scotland is much further down the road, quite apart from the fact that the roads are different. Where, as things stand, does the issue get addressed? Do you do it within the current government proposal—English votes for English laws, the Speaker certifies and that is it? Help us. You can sympathise with somebody who is English living in, shall we say, Norfolk, who is worried about the English laws question. What should be happening in Westminster now?

Andrew RT Davies AM: I think it is a start. It is not the end of the journey. I hear your point about separate roads. I would say that one is on a motorway, the other on a country lane. As I said, I am loath to put forward the solution because it should ultimately emanate from Parliament itself. We do not need to overcomplicate this. There are many examples around the world that you can look at, in Europe and across the world, and that can be taken. We are not inventing something completely new. As we move forward with devolution and responsibilities, that argument will continue, but I certainly do not have the silver bullet to solve the question.

Lord Judge: Do either of you ladies want to comment on how things stand now?

Leanne Wood AM: A separate legal jurisdiction would go a long way to resolve some of these issues.

Kirsty Williams AM: I think that the reason why England has perhaps not come up with the solution to date is that there is not a consensus in England that would satisfy people. Putting all the power into London would make people in the south-west, in Cornwall, feel very jumpy. If I was in the north-east I would be very worried about an English Parliament dominated by the interests of the south-east.

Leanne Wood AM: We have those issues in Wales, too.

Kirsty Williams AM: Yes, we have. We have not solved the English question because a consensus has not developed about what the answer to it is. Until there is that consensus, we will not get clarity. One of the things we could do is have greater clarity of the devolution system at the moment, which would at least assuage some of my concerns that Welsh interests potentially could be overlooked under the English votes for English laws system. I guess that people in London think that health is devolved, but as Andrew rightly pointed out, for very many of my constituents their nearest district general hospital is an English hospital. Despite what Jeremy Hunt might think, we are not refugees: they do not go there to escape the Welsh system, but because it is their nearest hospital. We pay for them to go there. Having Welsh people in Hereford hospital helps to keep that
hospital open. Some people might think that this whole issue of the negotiations over the contracts for junior doctors is purely a Department of Health, English issue, but my constituents had their operations cancelled, too. When you are the Speaker, perhaps you are sitting there thinking, “This is a matter that concerns only the English”. It does not. It concerns Welsh people, too.

The Chairman: We have five minutes left and two questions that we are keen to ask you. I hand the chair to Lord Cullen, because he wants to ask both of them. I should warn you that he is a retired judge, so he will get short, concise answers out of you.

Q262 Lord Cullen of Whitekirk: You have spoken before about the difficulty of creating interest in constitutional change among members of the public. I will ask you about a related matter, which is simply the public understanding of the relative responsibilities of the UK Government on the one hand and the Welsh Government on the other. Is there a similar difficulty in creating interest in this? Have you anything to suggest as to the way public interest could be stimulated—if you think it is a good idea to stimulate it at all? What should be done?

Leanne Wood AM: I will be brief on this. There is confusion, some of which is about the point made, say, about junior doctors. The way it is reported does not differentiate and make the point that the junior doctors’ dispute affected only England, with the caveats of the cross-border issues mentioned earlier. So few Welsh citizens get their news produced from Wales for Wales, and until that situation is addressed this confusion as to which institution is responsible for what policy area will remain. So it is a media question, largely.

Andrew RT Davies AM: I agree up to a point that this is a media question. In the last Cardiff University study on where people get their daily news, 80% plus said that they get their daily news from a London source. Other than maybe a footnote in one of the papers or on the late-night news, very much of what goes on here is not reported. Secondly, I agree about doing a simple thing such as changing the name of this place to a Parliament rather than the Assembly because in the early days, the Executive and the Assembly were one and the same. I had so many meetings and engagements where somebody said, “You lot at the Assembly have done blah blah blah”, whereas in fact the Welsh Government had done that. In the third silo, as it were, is the huge mix of you who actually runs the services: is it Westminster or Cardiff? The BBC St David’s Day poll last year or the year before indicated that 49% of people in Wales still believe that the health service is run from London.

When you have those sorts of numbers, I suggest that three issues need addressing. The media one is probably the most complex, because we have seen a collapse in the media footprint here in Wales. There is a real difficulty in punching out what this place does. I know that you want us to be brief but there is just one other thing. I was watching something on the Parliament Channel the other day and the only programme that the BBC under its charter is compelled to produce is “Today in Parliament”. I never realised that that was in its charter. In a devolved United Kingdom, perhaps a simple step like getting some focus on what is going on in the other Parliaments and Assemblies of the United Kingdom might be one small way of getting greater awareness of what is going on. Again, I offer you those three examples. Slowly but surely we are chiselling away at it, but a simple thing like creating an understanding of the difference between the Government in this place—which is now a completely devolved, executive responsibility over at Cathays Park—and the legislature, us as the Assembly, would go a long way to helping people understand where responsibility lies.

Kirsty Williams AM: It is a massive issue. While broadcasting bears some responsibility, we are being naïve if we think that suddenly broadcasters and print media will change their ways. In terms
of media, there are some very interesting local media initiatives that are being funded by the Welsh Government that use online presence to try to develop very local news coverage. There is much more that we can do with political education, so that we are equipping our young people with the skills and understanding when they are in school to be active citizens. One of my great regrets is that this country is now the only country, I believe, that does not have a youth parliament. The Welsh Government scrapped funding for their youth parliament initiative, which was called Funky Dragon, and nothing has replaced it. My party would like to see a strong emphasis on political education for the next generation of voters coming through so that they know the difference between an MEP, an MP, an Assembly Member, a community councillor and county councillor.

Q263 Lord Cullen of Whitekirk: Finally, would you support a new charter or statute of the union setting out principles underlying the union and devolution that would assert the voluntary nature of the union and set out principles for the relations between the Governments of the nations of the UK? Some have suggested that it would not serve a useful purpose because of the differences between the different nations. What are your comments briefly?

Leanne Wood AM: You ask for brief comments when you have opened a huge can of worms. Plaid Cymru believes that there should be a written constitution setting out clearly the multinational nature of the state. We favour a confederal model, as opposed to a federal model. We argue that the confederal model is where the authority is determined by its constituent members, whereas a federal model would derive its authority from the centre—so confederal would be the preferred option. But we are concerned about the proposals that we have heard come forward from Lord Hain on this. I do not know whether the Committee is familiar with them. Lord Hain’s proposal is for new Acts of Union. We would say that that proposal is divisive and that using such terms is intentionally seeking to exclude significant numbers of people in these islands who believe that sovereignty rests with the people and not with Westminster.

Andrew RT Davies AM: I will say two things there, if I may. The point that the Silk commission made about intergovernmental relations—because obviously that was the last part of the point that you put to me—does need to be addressed, and should be as a matter of urgency. It cannot be right that different Governments of different hues put different emphases on those relationships. There is little formal structure. It seems to me slightly ad hoc and to depend on whatever level of Minister happens to be available to go along to those meetings. There needs to be more robustness and structure around that engagement. Silk identified that and put forward recommendations about how that could be achieved. We have signed up to Silk II on that particular point. We would hope that, as we go forward now, all Governments will engage in that process.

Do we need a constitution, which I think is what you are aiming at here? As someone who is a big believer in small government and the ability of things to be flexible, I am not a big fan, as an individual, of that type of concept. I think that the United Kingdom has done pretty well to date and has been pretty successful in the way that we have run things. I do not necessarily see the need for such a move.

Kirsty Williams AM: As Welsh Liberal Democrats, and indeed as Liberal Democrats, we believe in a written constitution. Anything that sets down clearly and codifies the relationships between Governments would be welcome. We need a Welsh intergovernmental committee—an arbitration mechanism—for solving some of the issues that we have seen in relation to legislative competence. We support the proposed statutory code of practice for intergovernmental relations and a new Government of Wales Act. Ultimately, I think that this country needs a written constitution that
clearly sets out the distinctions between nations and the relationships between those individual nations and the union.

The Chairman: Thank you very much. We have an extraordinarily interesting and informative session and it has been very stimulating having diverging views on some aspects but a degree of harmony on others. I think that you would recognise what we have long recognised, which is that we have a difficult report to prepare as a result of this inquiry. However, your contribution to it has been very useful and we are extremely grateful, so thank you very much indeed.

Kirsty Williams AM: Diolch yn fawr.
2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

I write from the perspective of writing the text books and learning material for those students studying Welsh Government and Politics and AS/A2 and undergraduate level. Writing about the constitutional position of Wales is a complex process to undertake and even more complex for students to understand. I have only address question 2. I have set for questions with some discussion beneath each, all of which cause anomalies in national life and in comprehension of devolution:

What is a nation and what is a region?

Whether or not Wales is a nation is continually confusing. Is the UK the nation? Is Wales a region? Can you have a nation within a nation? Internationally Wales is recognised as a nation in sports such as Football, Rugby and in the Commonwealth Games but not in other areas such as Cricket or the Olympic Games. This makes England, Wales, Scotland and Northern Ireland unique in this respect as no other nations within a wider nation or federation are so recognised internationally. Yet at the same time Wales does not have its own jurisdiction despite having a legislature unlike England, Northern Ireland and Scotland. This is a difficult and complex situation to understand for Welsh students studying the UK constitution. How can Wales be at an equal level with other sovereign nations yet at the same time have no sovereignty itself? Students find this confusing.

Wales is a principality in name only

Wales is deemed to be a principality and has been so for several hundred years. Yet the Prince of Wales has no constitutional role in the nation, it is also the only nation in the UK without a royal palace and there is no formal role for the prince in Welsh politics. This needs to be rectified and about fifteen years ago I wrote a booklet entitled God Bless the Prince of Wales, which details how this may be done. The royal role in the devolved nations is also one that needs to be clarified, particularly as the First Minister and Cabinet Ministers are now appointed by the crown and Welsh laws receive royal ascent.

There is no constitutional protection for the nations being abolished

As there is no codified constitution for the UK, there is nothing to guarantee that unlike in other federations Wales could retain its distinctiveness and nationhood. Westminster Parliamentary sovereignty means that any Act seeking to do so could be over turned at any time. The existence of the Human Rights Act is a prime example of this, what is meant to be a supra-act, above all others and entrenched, the current government is going through the process of scrapping. The same could be done of any act which seeks to guarantee Welsh nationhood.

You cannot formally become a Welsh citizen

With respect to nationality we are all regarded as a British citizen and at the same time after were we are born within the UK, Welsh, English, Scottish etc. There is no formal process of residency by
which a person is born in one UK nation can then claim to be a citizen of another nation, with some exceptions in Northern Ireland. Thus David Lloyd George, the most famous Welshman of all time in British politics is regarded by some as English because he was born in Manchester. Yet at the same time the Welsh populous will generally accept as being ‘Welsh’, many in the Welsh rugby team who only have one Welsh grandparent and have spent their whole life living outside of Wales. The ability to be able to formally change citizenship inside the UK should be accepted and facilitated, if only technically. For example, after three years residency you can formally regard yourself as Welsh, English, Scottish etc.! This would help end this internal non British citizenship conundrum.

September 2015
Brendan Donnelly, Federal Trust for Education and Research—Oral evidence (QQ 68-82)

Transcript to be found under the Federal Trust for Education and Research
WEDNESDAY 27 JANUARY 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclean of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witness

**Mark Durkan MP**, Social Democratic and Labour Party

**Q305 The Chairman:** Mr Durkan, we are very grateful to you for coming. You are third in hand, but we are all the more grateful to you for being in a position to wind things up. We have had two interesting sessions, one with Lord Empey and the second with the three professors whom you have just met. It is clear that there is a separate perspective in Northern Ireland that is very important to us, as we must look at all aspects of the United Kingdom. The word “union” has a resonance in the Province that is different from elsewhere in the United Kingdom, but it is also stronger for different reasons. How do you see the union in Northern Ireland?

**Mark Durkan MP:** I am not one of nature’s unionists.

**The Chairman:** We understand that.

**Mark Durkan MP:** The inquiry is a very interesting one. As someone who, in the last Parliament, spent a few years on the Select Committee on Political and Constitutional Reform, I am conscious of a number of the conundrums and issues that you are looking at. I was increasingly sensitised to those, not least the variety of issues and arguments coming forward from within England about what the post-devolution landscape is.

As someone who is not a fan of the original Act of Union, as an Irish nationalist, I am not sure that what I want is a new Act of Union, which some people have been proposing, but I believe that what we need in all parts of the United Kingdom, and maybe more widely, is a new parliamentary charter or charter of representative democracy that allows people to make sense of all the different people they are being asked to elect to office, whether it is in local government, devolved government or the Westminster Parliament. People are getting increasingly confused as to where powers lie and how powers shift. They are also, of course, confused and concerned about where power lies as between the UK and the EU, and about the various roles of the European Commission and the...
European Parliament. As someone who has supported the arguments that have been made previously for a broader constitutional convention, I certainly believe that we need a democratic colloquy that comes up with some sort of coherent guide or statement for citizens as to who represents them, at what level and on what issue, and that sets out clearly, in a way that is comprehensible and accessible for citizens, the various roles and responsibilities of the different bodies, what citizens’ rights are under those bodies and what the rights and relationships of each of those bodies are. That means sorting out a number of issues such as resource and revenue—we are on a roll of Rs. Because things will be subject to change, and policy issues change just with technological developments and other things, there has to be responsiveness. We have to fine-tune and adjust where responsibility lies, where the right interventions or new collaborations are needed and where there needs to be a realignment of devolution or, in some cases, possibly realignment from devolution.

The Chairman: Thank you very much. That is a very good and comprehensive answer, if I may say so. Perhaps we can explore aspects of it a little further.

Q306 Lord Maclellan of Rogart: As you are not speaking as a unionist, this may be an importunate question. What do you think are the common values between the United Kingdom and Northern Ireland? Should we pull them together in some form of charter?

Mark Durkan MP: I do not speak as a unionist, but I am not here as an aggressive anti-unionist in any sense. I speak as a democrat and as someone who has always been, in Irish terms, an absolutely constitutional nationalist. I am someone who always believed, as a member of the SDLP, that the only solution to our problem was going to be within a British-Irish context and within a British-Irish framework. John Hume’s old adage was that the framework of the problem would have to be the framework of the solution. Just as we said there would not be a purely internal settlement in Northern Ireland, so I do not believe that there is a purely internal settlement in Ireland either. We share throughout these islands a number of wider values. Those have been underpinned in many ways for people in Northern Ireland by the Good Friday agreement and the way it helped to create new institutions, and allowed us to agree that the issue of constitutional status would be resolved on the basis of consent, but that differences on those issues would not prevent us having shared institutions to which we could give common allegiance, because those institutions are legitimate from everybody’s point of view. They are legitimate for unionists, because they were endorsed by the majority of people in Northern Ireland. They are legitimate for nationalists, because they have been endorsed by the majority of people in Ireland as a whole. Of course, the agreement also rests strongly on human rights provisions. The more those understandings can be reflected and understood in other parts of the UK, not least in London, the better. When there are strains in understanding around those things—around issues like the entrenchment of human rights provision—there will be difficulties, and the sense of those shared values and that shared basket of protections and principles diminishes and some of our own more local contentions start to emerge again.

Q307 Lord Judge: There has been a separate Northern Ireland Civil Service for, roughly speaking, 100 years. My question is directed to that. Does the fact that there has been a separate Northern Ireland Civil Service affect its relationship with the United Kingdom Government and indeed with the other devolved Administrations within the United Kingdom?

Mark Durkan MP: As someone who served as a Minister in Northern Ireland—when we finally got our Executive set up I was the first Minister of Finance and Personnel, which meant that I had responsibility for working with the Civil Service and responsibility for the Civil Service because I also
served as Deputy First Minister—I would have to say that a separate and distinct Northern Ireland Civil Service is a resource that you want as a devolved Minister. You want to think that the Executive has the resource of their own Civil Service and you want to think that the Assembly is able to call that Civil Service to account alongside its Ministers.

However, the experience of many of us is that even this long into devolution the default position in the Northern Ireland Civil Service seems to be that it still sees Whitehall as the mother ship. Even if it is notionally separate, it seems to be very conditioned by things that are happening in Whitehall. Even in circumstances where local politicians, or indeed people involved in different local policy communities and sectoral interests, point to policy innovations south of the border or policy developments or innovations in Scotland, there still appears to be a very Whitehall-oriented perspective on the part of the Northern Ireland Civil Service.

Lord Judge: Why do you think that should be after 100 years or so?

Mark Durkan MP: The long experience of direct rule itself created a different relationship. We had a Northern Ireland Civil Service that became hugely powerful because it was advising, and in many cases managing, Ministers who were not from Northern Ireland and who were representing policies that were not particularly supported in Northern Ireland. Civil servants became the governmental Sherpas in that peculiar territory for Ministers. It meant that they had quite a powerful role in interpreting and reinterpreting, or re-nuancing, government policy. In many ways the Northern Ireland Civil Service got used to being quite powerful. It also developed bad habits during direct rule, which are now being worked out.

I will give you an example. The Assembly is meant to be a legislative Assembly but in the early days of devolution, there was very little legislation coming forward from departments or Ministers. In the first full session of the Assembly there were 18 Bills. Nine of them were from me as the Minister of Finance and Personnel, four were finance and five were law reform. There was very little elsewhere. Part of the reason was that during direct rule civil servants had got very used to the Order in Council system of legislation. They got used to having the first and last word on legislation. They got used to the idea that legislation had to be absolutely perfect from their point of view, so that when it was tabled it could not be amended. There was an aversion to tabling legislation in an Assembly whose job it might be to proof or improve that legislation. We used to get Ministers coming to us at the Executive who regarded it as a crisis that a departmental committee in the Assembly was contemplating a combined amendment. It was regarded as a fundamental challenge. The working experience and conditions for the Northern Ireland Civil Service have been different. Some in the Civil Service have been learning new practices and approaches under devolution; others seem to have been slower to do so.

Q308 Lord Norton of Louth: In part, this follows on from something you have just said. You have experience of both an Assembly and a Parliament. You have served in a devolved Administration. It has been suggested that intergovernmental relations may be eased or helped if, instead of referring to legislatures and Administrations, we move to more collective terms, simply referring to Parliaments and Governments. Do you see any merit in that? Would it be a problem from the particular perspective of Northern Ireland?

Mark Durkan MP: I do not think there is a particular problem from the perspective of Northern Ireland. I see merit in it, in the sense that during the Commons stages on the Scotland Bill, although I did not involve myself too much in the Scotland Bill, I made a number of observations. One was that so many of the key references in the Bill to the delicate area of welfare reform and welfare powers all related to Scottish Ministers and not to the Scottish Parliament. In a Bill that was meant
to be about resolving the status of the Scottish Parliament, many clauses referred to the Secretary of State and Scottish Ministers, not to the interests of the respective Parliaments. I believe that there should be more reflection of the status of the Parliaments. We have a similar issue in lots of Bills relating to Northern Ireland that go through the House; they refer to the Northern Ireland Executive or Ministers in Northern Ireland, or a different route of reference might be used. Sometimes it is the First and Deputy First Minister, and they are then taken as the postbox for the Administration, but rarely is it for the Assembly itself. There have been times when I have been involved in amendments here that involved reports being produced or tabled, and have said that those reports should be remitted to the Northern Ireland Assembly, among others, or referred to the Speaker. For good relationships and good standing, those relationships should not be seen as purely intergovernmental, as though they are the property of Ministers who are themselves meant to be respectively accountable to different Chambers; they should reflect and respect the Chambers to which they are meant to be accountable.

Q309 Lord Morgan: We have heard a great deal, Mr Durkan, about the extraordinary difference in history and process in the way that Northern Ireland has come to devolution. Do you feel that the historic and policy differences between Northern Ireland, Scotland, Wales and, indeed, England make it difficult to think of a coherent approach UK-wide towards the next stage of devolution, or do you feel that it is nevertheless possible and desirable that such an approach should be carried through?

Mark Durkan MP: I am not sure that it is going to be possible to take a line-dancing approach to devolution, where everybody now takes the same next steps and should only take the same next steps. I do not think that will fit for different places. The character and the culture of politics in different parts of the UK will be different. The balance of politics within Wales, Scotland and Northern Ireland will clearly be different from Westminster. It is not going to be the case that whatever next might happen in Northern Ireland should equally and simultaneously happen in Scotland or vice versa. We have to do more than take the dolly mixtures approach to devolution, which is very confused and confusing, not least for the public but increasingly, as we have seen, within Parliament itself. People now get confused as to what is or is not already devolved or is on its way to being devolved. Of course, in the Northern Ireland situation we have complicated that further. We now have a picture where some things are un-devolved, or are simultaneously un-devolved and devolved, such as welfare reform. On paper, the Assembly has kept its powers of legislative competence over welfare, but at the same time it has handed competence to the Government in London to legislate until the end of this calendar year. There is a bizarre dual control arrangement for legislation. That is something that has come about in the peculiar circumstances of Northern Ireland. I am not going to make my own party political comment on all of that, but in the context of the changes that are afoot in relation to Scotland on welfare, I doubt that you could have an Administration in Edinburgh or a majority in the Scottish Parliament envisaging a similar sort of reversion to dual control such that, in the absence of Scotland being able to decide things in the way they wanted, they were going to hand control back to London to make decisions.

That example shows that there are still a number of uncertainties, even about what is happening at the minute. I still have not found clarity from Treasury Ministers as to whether the welfare spending that goes to the Scottish Parliament will count as part of the UK welfare cap, or whether it is outside the UK welfare cap. People might think that that is a small and pedantic point, but somebody should know and one would think that a Treasury Minister should know. Given that, in the future, things such as the welfare cap could be used as a clear instrument of imposing policy
limitations by virtue of the expenditure seal that it creates, it could become politically quite a vexed issue. There are differences and there are also confusions.

**The Chairman:** It is not a small pedantic problem. There are lots of things we are waiting to hear about from the Government regarding the Scottish fiscal framework. Lord Lester had a supplementary question.

**Lord Lester of Herne Hill:** The Good Friday agreement envisaged reforms north and south of the border, but a common set of values in the north and the south. Does that idea give hope that it would embrace nationalism and unionism? Could you imagine citizens’ rights, duties and interests being brought within a framework that embraced the Republic and the North of Ireland, and, for that matter, this side of the Irish Sea?

**Mark Durkan MP:** I think it does. As someone who was involved in negotiating the Good Friday agreement, I obviously think it set out a hugely positive prospectus for everyone, so that people could fully engage in and embrace the political emancipation that it offered without being any less unionist, no matter what position they held, and without being any less nationalist, no matter what position they held, and without having to concede to either unionism or nationalism to a degree that they did not want to do. As I said earlier, it was about making sure that we could all give allegiance to institutions that we regarded as legitimate, whichever light we held up to it. It had a holographic quality. Depending on which light we wanted to hold it to, we could see legitimacy from our point of view.

As you say, it also provides key common principles. Some of them have not been developed or articulated in the way that was envisaged in the agreement. For instance, the agreement committed us to bringing forward a Bill of Rights that would be very particular to the circumstances and experience of Northern Ireland. That has not happened. Although it was a disappointment to many of us that we were going to have to work towards that Bill, we took as at least a key reference point in the context of the agreement the fact that we were going to be able to rely on the Human Rights Act. At that stage, it at least provided a working floor for rights. There are concerns in case that floor is knocked out.

In the context of the human rights example in particular, the agreement also provided for the idea of an all-Ireland charter of fundamental rights that could be signed by political parties on both sides of the island. It did not purport to be an Ireland-wide version of a Bill of Rights. It looked at addressing some of the issues that a society in the process of change and seeking reconciliation on both sides of the border would have to look at, including statements as to how it would treat the rights not just of the respective traditions in Ireland but of different minorities and incoming communities. It is a pity that, as well as not having taken forward the Bill of Rights, we have not moved on that all-Ireland charter, which would have brought broader understanding. That conversation would not have created any particular tension for unionists as opposed to any conversation they might have about rights in a UK forum.

**Q310 Lord MacGregor of Pulham Market:** I want to go back to what you were saying just a moment ago about welfare benefits and so on. As the Chairman said, we are waiting for the fiscal framework of the current Scotland Bill, and unsurprisingly it looks as though it will take rather longer than was hoped. The question relates to welfare benefits, pensions, tuition fees and all of that, and what follows from the payment of them. Some see the sharing of risks and benefits in what is described as a social union as extremely important to the union. Is the UK-wide sharing and redistribution of resources seen as continuously important to Northern Ireland?
**Mark Durkan MP:** It is for many people, but there is now also concern and confusion about what it means or does not mean. Many people would have been very committed to the principle of parity between benefit systems when devolution was happening, so that there was no risk of a diminution of benefit entitlements or access in Northern Ireland compared with other parts of the UK. In circumstances where we have a welfare reform agenda that many people see as cutting benefits or where some benefits are being disappeared, people could decide that parity in those terms is not what we want if we are to represent people best and if we want to be able to reflect their own particular needs. There is also the peculiar issue around welfare per se, whereby on paper legislative power over welfare was devolved to the Assembly but it was on the basis of parity, meaning that the Assembly’s powers of legislation were to pass what I would call karaoke legislation—you had to follow the words and music as set in Whitehall and by Westminster. Of course, when the Assembly did not do that, we ended up with the difficulties and the Treasury then acted, saying, “If you are not passing this legislation in the way we want it passed, we are going to take money out of the block grant. We are, in effect, going to fine your Barnett formula allocation to the value of what we think is roughly your notional overspend on welfare”. Even though the Treasury is in a position, particularly now that it has the welfare cap, to control the flow of welfare spend to Northern Ireland, it seems a very clumsy way to go about achieving something that it could have achieved anyway.

From some perspectives in the Scottish point of view, I would have thought that the Scots would have raised concerns about that: if the Treasury can basically intervene using its allocation powers under Barnett as a way of enforcing its will when there is a clear policy disagreement between Whitehall and Stormont, what is to prevent it trying the same thing whenever there is possibly a disagreement between Scotland and Whitehall on welfare? Although the Scotland Bill uses a lot of language about reasonable efforts and best efforts being made to get agreement, and on a lot of things it presumes agreement, it makes no provision for what happens if there is no agreement or if there is a stand-off or stalemate. Would what has already happened in Northern Ireland come into play, or is there something to prevent that?

**Lord Hunt of Wirral:** Should there be a minimum level of welfare benefits set across the UK that devolved Governments could supplement but never, ever reduce? Responsibility over welfare would in those circumstances, as has been argued and as some say is in the Scotland Bill, be split between the UK and the devolved legislatures. If that is the case, who should be involved in setting that minimum level and how?

**Mark Durkan MP:** In essence, what we seem to have arrived at in the context of Northern Ireland is a position that would see benefit rules and rates as determined by Westminster and Whitehall holding for Northern Ireland, with some mitigating measures available to the devolved Administration using moneys from the Northern Ireland block. In some cases that has been easier to establish than others, because for some benefits there have been administrative differences anyway; in Northern Ireland, housing benefit has always been administered differently. In other cases, the idea of such mitigations, differences or top-ups—whichever people want—seemed to cause more choking on the part of Whitehall Ministers, but something has been arrived at. In Scotland, there has been a different course; it has drawn the difference more between classes of benefits. In Scotland, the Smith commission said, “We want to have particular regard for benefits that are going to people with disabilities and long-term conditions and to particularly address their needs”. I think, and have argued in our own context of talks in Northern Ireland, that we need our own conversation about whether we realign our welfare settlement or understanding towards something that is not exactly the same as that but is more akin to it. Inevitably, we will come up against strains and difficulties later on, particularly if in future years the Treasury uses the welfare
cap in a very aggressive way. When the welfare cap was introduced, it was bubble-wrapped as a neutral budgetary tool, but things that are bubble-wrapped as neutral tools by the Treasury usually become weapons at some stage. I do not think that we have pre-proofed for some of those consequences. We have overcome and patched up the difficulties that affected us in Northern Ireland when the Treasury’s punishment of Stormont’s recalcitrance on welfare created budget stresses. Those budget stresses became a budget crisis. That budget crisis became part of a political crisis. Although that has been resolved, we are not in a situation where it will not potentially be revisited whenever other serious decisions are being made and used on welfare. We might regret not having more of a colloquy with Scotland, Wales and Whitehall about a more sensible system so that we all know where we stand, and can tell our citizens where they stand. To my mind, the biggest difficulty for all of us in the current situation is that it is very hard for citizens to understand where power lies and where the buck stops. That is very bad for democracy. We are giving people all sorts of layers of democracy and they cannot understand who is responsible for what. We all appear to point the finger at each other.

The Chairman: You have been very forthcoming, Mr Durkan. Thank you very much indeed. We have a couple of questions that we have not quite reached. If you can undertake to answer them in one minute each, we will ask them in less than one minute each and then we will all go for lunch without missing the one o’clock gong.

Baroness Taylor of Bolton: I think you have answered my question, Mr Durkan. It was about public perception of the arrangements. I was interested in what you said about a charter of representative democracy as a way of clarifying some of that, and which might have other wider implications, but I do not think you need to add anything on that.

Mark Durkan MP: In a devolved context, it is bad whenever politicians standing for election, for instance this year, point the finger at Westminster, and meanwhile Westminster points the finger at devolved politicians. We blame each other and then we wonder why the public are disengaged and disillusioned.

Q311 Lord Brennan: You have made it pretty clear that you think the devolution methods that are being applied legislatively are confused and confusing, and that ordinary people do not understand them. What is your remedy for doing it better?

Mark Durkan MP: We used to have a story at home about a priest in the town who went into one of the boys’ schools or classes. He had a very serious throat problem and talked very gutturally. He was explaining an aspect of Catholic teaching and at the end of his presentation he said, “Right, have you all got that?” One young fellow said, “Father, could you say that bit again because I couldn’t understand?” The Father said, “You are not supposed to understand; it’s a mystery”. There is an element of mystery around this issue. People in the British tradition are used to that, with the whole sacrament of the unwritten constitution and all the rest of it. Some of us come at it differently, and we have to work at it. It could be something that tries to present it from a citizen’s point of view that makes sense, something that says who is accountable for what and is clear about the different institutions and what their relationships, rules and rights are in respect of each other.

I would like to make a supplementary point to an earlier answer about the Civil Service. One of the issues about the Northern Ireland Civil Service is that it is too departmentalised. In the Northern Ireland Civil Service code of ethics your loyalty is to your Minister. Obviously here it is to the Government because the character of government here is different. We need to change that. In Scotland, the Civil Service operates in more of a faculty system and on a more collegiate basis,
which makes it much more creative. Civil servants are not as bureaucratically turf-defensive and are not orientated policy-wise by what the big department in London is saying.

The Chairman: Mr Durkan, you have made yourself very understandable. We are extremely grateful. You have been forthcoming and extremely helpful to us. I am sorry we had to rush at the end, but it was worth it. Thank you very much indeed.
Executive summary of key points

- The referendum on Scottish independence was seen to have a lasting impact for their respective countries by a majority of respondents both in Scotland and in England in a survey conducted in February 2015 (and for about one third of respondents in Wales and Northern Ireland respectively)
- There is great variation in the satisfaction with the current constitutional arrangements in the UK, with Welsh respondents being least satisfied with their share of government funding
- Welsh and Northern Irish respondents feel much less represented in discussions about constitutional change than their English or Scottish counterparts
- The process of constitutional change is seen largely as elite-driven with little perceived efficacy for ordinary people
- Contrary to many commentators, there is great public interest in discussions of how the UK is governed across all of the UK and a general willingness to engage
- Regarding English devolution, “English Votes for English Laws” is the constitutional preposition that has the highest support across all English regions
- However, “English Votes for English Laws” is not a comprehensive solution to address the West Lothian question, as there is also majority support for other options (regional assemblies and power for city regions), suggesting that for most people alternatives for English devolution are rather complimentary than exclusive
- There is substantial variation between English regions in the relative preference for different combinations of constitutional options
- There are also substantial differences in support for different alternatives for devolution by age (most pronounced for “English Votes for English Laws” with support increasing continuously with older age)
- Enfranchising 16-year olds to vote in the Scottish referendum had strong positive effects on youth civic engagement and attitudes
- To successfully engage younger people in politics across the UK early enfranchisement could achieve positive outcomes, but needs to be coupled to strong formal civic education in schools and explicit discussions of political issues in the classroom

1. Background for evidence base of this submission

1.1. Unless stated otherwise this evidence submission draws on data from a large-scale project conducted in the period between the Scottish independence referendum and the 2015 General Election, a period filled with extensive discussions about constitutional change across the UK. The project was funded by the Economic and Social Research Council and carried out by researchers at the University of Edinburgh’s School of Social and Political Science (Lindsay Paterson, Jan Eichhorn, Daniel Kenealy and Richard Parry from Social Policy and Alexandra Remond from Politics & International Relations).

1.2. At the core of the project was a large scale representative survey conducted across all four constituent parts of the UK to allow for meaningful comparisons. The survey was administered online for over 7,400 adult respondents and over 800 further respondents aged 16-17 in February
2015. In addition to ensuring sufficient sample sizes in each of the four parts of the UK, the survey also contained sufficient samples to investigate differences between English regions. The questions contained in the survey largely focussed on issues of constitutional change, political attitudes towards the processes governing these changes and the perceived satisfaction and efficacy of respondents.

1.3. The sampling design employed a stratified approach across the key geographical units within which random sampling from a large online panel population was used, applying relevant further within-geography stratification and monitoring variables. Weights were applied to all analyses to account for deviations from known population parameters.\(^\text{11}\)

2. Evaluations of the current process of constitutional change

2.1. The referendum on Scottish independence had an impact on civic engagement and attitudes beyond the vote on 18 September 2014 in Scotland. Voting turnout in the General Election increased to over 70% and levels of non-electoral political participation are now also higher in Scotland than elsewhere. The differences are particularly strongly pronounced for younger age groups, while the differences between Scottish respondents and those elsewhere diminish for older age groups.\(^\text{12}\)

2.2. There is also a perception within the Scottish public that the referendum continued to affect their country. 82% of Scottish respondents (excluding “don’t knows”) agreed or strongly agreed that there was a lasting impact on Scotland. Interestingly, a majority of respondents in England thought the same about their country: 52% agreed or strongly agreed that there was a lasting impact of the independence referendum on England. People seemed to feel that current changes were partially occurring as a consequence of the referendum. There was also a sizable proportion of people who felt the referendum had an impact on Wales and Northern Ireland respectively, though the numbers here were smaller (31% and 28% respectively).\(^\text{13}\)

2.3. There is great variation between the four constituent parts of the UK in terms of the satisfaction with the current devolution settlement. When asked to evaluate whether their part (England, Scotland Wales or Northern Ireland respectively) received more than, less than or a fair share of total government spending, levels of satisfaction varied substantially. While 38% of respondents in Northern Ireland said that they received “a little or much less than their fair share” (excluding those who expressed no view), the degree of dissatisfaction was slightly higher in England (43%) and Scotland (44%), but markedly higher in Wales with about two thirds of evaluations being negative (68%).\(^\text{14}\)

\(^\text{11}\) A summary of the methodological approach can be obtained here: [http://www.aog.ed.ac.uk/__data/assets/pdf_file/0012/171111/Briefing_-_Project_Overview.pdf](http://www.aog.ed.ac.uk/__data/assets/pdf_file/0012/171111/Briefing_-_Project_Overview.pdf)


\(^\text{14}\) Ibid., p. 4 (see table 4)
2.4. Significant differences do not just exist for evaluations of devolution outcomes, but also for the perceived degree of representation of the interests of the different parts of the UK in the process of constitutional change currently taking place. While satisfaction was highest in England and Scotland, with 48% and 44% of respondents respectively stating that the interests of their parts were represented “rather well” or “very well” in the “discussions of how the UK is governed”, only 28% of respondents in Wales and 25% of respondents in Northern Ireland thought the same (excluding those not expressing a view).\textsuperscript{15}

2.5. These findings illustrate two important conclusions: i) we need to take substantial differences in evaluations of devolution across all parts of the UK seriously and ii) evaluations of the outcomes of devolution (2.1.) and of the process of constitutional change (2.2.) are not always fully congruent (see for example public opinions in Northern Ireland).

2.6. Especially regarding the latter issue many commentators assert that the majority of people do not care much about issues related to constitutional change. Our research shows that such assertions are incorrect, not just in Scotland, as may be expected after the referendum, but across the whole of the UK. When asked to evaluate whether they thought that too much, too little or the right amount of time had been spent discussing ideas put forward about changes to how the UK is governed, respondents across the UK showed high levels of interest. Only about a quarter of respondents stating a view said that too much time had been spent discussing these issues. A clear plurality in each part said that too little time had been spent (50% in Wales, 48% in Scotland and 44% in both England and Northern Ireland). The often-claimed disinterest in the population to discuss how their country is governed is not backed up by our survey results.\textsuperscript{16}

2.7. When asked however, about their own ability to influence the debate on constitutional change people across all parts of the UK showed low levels of self-perceived efficacy. When asked to evaluate for a range of groups of actors to what extent they could influence the debate on how the UK was governed, respondents across the UK saw ordinary people by far as least able to shape the debate – with 17% in Wales saying that they were “able to influence somewhat” or “greatly”, compared to 18% in Northern Ireland, 21% in England and 25% in Scotland (excluding “don’t know” responses).\textsuperscript{17}

2.8. There was little variation between different parts of the UK in assessing the influence of other key actors. On average 32% thought campaign groups could exert some or great influence compared to 38% for trade unions and 55% for businesses. The greatest extent of influence was clearly attributed to political parties (73%) and politicians in the UK parliament (77%). These findings suggest that people across perceive the process as largely elite-driven, by party-political processes with little space for the involvement of ordinary people.\textsuperscript{18}

2.9. Public perceptions regarding the influence of politicians in the devolved legislatures (Scottish Parliament, Welsh Assembly and Northern Ireland Assembly) differed substantially however. While only 29% of respondents in Northern Ireland thought that the politicians in their assembly could

\textsuperscript{15} Ibid., p. 8 (see table 11)
\textsuperscript{16} Ibid., p. 2 (see table 1)
\textsuperscript{17} Paterson, L., et al. 2015. (see above: p. 10, table 15).
Available at: http://www.aog.ed.ac.uk/__data/assets/pdf_file/0011/172010/UPDATED_Briefing_-_Democratic_engagement_and_the_process_of_constitutional_change.pdf
\textsuperscript{18} Ibid.
exert some or great influence on the process of constitutional change, 42% of Welsh respondents held a positive view on this issue about their Assembly members. While the perceived ability to influence was still significantly lower for Scottish Parliament members compared to their UK counterparts, Scottish respondents held the most favourable view about their devolved parliament members with 57% saying that they could exert influence in this process.  

3. Evaluations of proposed changes to the constitution of the United Kingdom

3.1. The interest in constitutional change discussed earlier also translates into a willingness of most people to be involved in discussions about the topic if the opportunity was given to them. In each part of the UK 60 to 61% of respondents ("don’t knows" excluded) agreed or strongly agreed with the preposition to hold a constitutional convention “to develop proposals for how the UK should be governed”, while only 8 to 9% respectively opposed it. The vast majority of people – 70 to 76% in each part of the UK – would be willing to give up at least a few hours to take part in such a convention if they were invited to do so.

3.2. While evaluations on the current devolution arrangements differ across the UK, there is less variation regarding the question whether devolution should be a project that affects all devolved administrations in the same way or not. In England, Northern Ireland and Wales roughly six out of ten respondents (58-59%) said that the three devolved administrations should have control over the same powers ("don’t knows" excluded), while in Scotland a slightly lower proportion (50%) agreed with the preposition and equally many respondents say that they should be able to have different powers. So while there is quite some division on this issue across the UK, for many people changes in the devolution arrangements for one part of the country should be associated with changes elsewhere.

3.3. A majority of people in each part of the UK agreed that further devolution should be linked to the ability to pay for it by the relevant devolved administration. However, the extent to which people agreed with this principle varied greatly. While 82% of those expressing a view on this question agreed in England, a smaller percentage did so in Scotland (67%) and Northern Ireland (64%). In Wales there was nearly an even split with only 54% agreeing.

3.4. England is of particular interest as – in contrast with the other constituting parts – it does not have a comprehensive devolution structure in place. A range of proposals have been presented for how the West Lothian question could be addressed to enable targeted decision making mechanisms for issues relating to concerns in England specifically. As other researchers have already demonstrated, the proposition to have an "English Votes for English Laws" decision-making mechanism in the UK Parliament is evaluated very favourably by English survey respondents. As this specific suggestion received more support than alternative proposals in previous surveys,

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19 Ibid.
20 Eichhorn et al. 2015a. (see above: p. 6, table 7)
21 Ibid., p. 5 (see table 6)
22 Ibid., p. 4 (see table 5)
several researchers have suggested to choose this as the option best suited to address the West Lothian question.

3.5. Our survey also finds that “English Votes for English Laws” has the greatest support of any constitutional option across all regions of England (lowest in Greater London with 66% of respondents agreeing and highest in East Midlands with 75%, excluding “don’t knows”). However, considering our survey results further, suggesting this particular policy proposal as a single, comprehensive solution to the question of English devolution is problematic and would most likely be unsuccessful.24

3.6. For the majority of respondents different proposals for constitutional options for England are not mutually exclusive, but rather complimentary, as they address different concerns. In addition to the high support for “English Votes for English Laws” we also found that at least 50% of respondents in each region supported regional assemblies (ranging from 50% support in five English regions to 56% in Yorkshire and Humberside, excluding “don’t knows”). Furthermore, there was also extensive support for giving more powers to city regions, albeit with slightly more variation (ranging from 49% in East Anglia to 60% in Yorkshire and Humberside, excluding “don’t knows”).25 Presenting alternative approaches to devolution as fully distinctive alternatives, rather than potentially complimentary, does not allow for a clear reflection of public attitudes.

3.7. Given the above findings, it may not appear surprising that when artificially asked to select a singular, best option for how England should be governed that “English Votes for English Laws” was the most popular option. However, it fails to reach 50% of respondents choosing this option in all English regions. There was a substantial amount of variation with 34% selecting it as best choice (excluding “don’t knows”) in the North West and Yorkshire and Humberside at the lower end and 45% choosing it in the East Midlands, East Anglia and the South West at the higher end.Treating it as a comprehensive way of addressing English devolution therefore seems not appropriate.26

3.8. When asked to select only one option for English devolution, what was selected second most varied greatly between regions, further highlighting that the specific preferences for how decision making in England should be organised differ between regions and are not addressed comprehensively through simple, singular mechanisms. While the current status quo is the second most selected response in Greater London, the South East, East Anglia and East Midlands, respondents in the North East, North West, and South West selected Regional Assemblies as their second preference.27

3.9. Support for different constitutional options in England respectively did not only vary by region, but also strongly by the age of respondents. Support for regional assemblies was rather uniform across age groups (48-53%), but varied significantly for city region powers and in the most pronounced way for “English Votes for English Laws”. Support for city regions was greatest in the “middle” age groups (35-44 and 45-54 with 63% and 68% respectively) and lowest in the youngest


25 Ibid.

26 Ibid., p. 4 (see table 4)

27 Ibid.
(18-24) and oldest (65+) age groups (52% and 54% respectively). Support for “English Votes for English Laws” increased continuously with age. While 52% of 18-24 year olds supported it, the support steadily rose to 84% for the oldest age group. For the youngest age group, there was no significant difference in support between the three prepositions presented here.  

3.10. In terms of public engagement in these discussions, several actors have proposed to reduce the voting age to 16 across the UK in order to engage younger people in politics earlier. With the experience of the Scottish independence referendum and the reduced voting age there, we were able to conduct a comparison between a boost sample of over 400 16-17 year olds respondents in Scotland and over 400 of their counterparts in the rest of the UK in a natural quasi-experimental setting in our survey to assess the effect of the lowered voting age.

3.11. The effect has to be evaluated as positive. Political participation (in representative and non-representative forms), confidence in making political decisions and levels of political information amongst 16-17 year olds were significantly higher in Scotland than in the rest of the UK five months after the referendum.  

3.12. The research shows that there were many influences beyond the referendum itself that contributed to the higher sustained engagement of 16-17 year olds. These influences are non-specific to the referendum and applicable more generally. A successful strategy to engage young people in politics more extensively would combine an earlier enfranchisement and utilise the opportunity to reach nearly all young people through schools to enable them to participate. Our research demonstrates that civic education generally increases political knowledge, but specifically discussing political issues in the classroom had many positive civic payoffs for political engagement that could not be replaced fully through other mechanisms of early socialisation (for example through parents).

3.13. The earlier enfranchisement of young people is publically evaluated in a positive way in Scotland. Support for 16-year olds being allowed to vote in all elections is at 50% there (excluding “don’t knows”). This is far greater than support elsewhere in the UK (30-34% in England, Wales and Northern Ireland) where there are no experiences of comprehensive earlier enfranchisement.

3.14. Our research on young people has been cited and used extensively by the Scottish Parliament’s Devolution (Further Powers) Committee to inform their conclusions in the report on the Reduction of Voting Age Bill, passed in June 2015.

October 2015

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28 Ibid., p. 3 (see table 3)  
30 Ibid., p. 7 (see table 3)  
31 Ibid., p. 2 (see table 1)  
Transcript to be found under Professor John Curtice, University of Edinburgh
Evidence for Parliamentary Enquiry on the Union of Great Britain and Northern Ireland
By Adrianne Elson, a member of NI21 political party in Belfast

- Remodelled UK Parliament, Federal, more balanced number of MPs from Constituent Countries of the Union
- English or English Regional Parliament
- Reform House of Lords, allow representatives of other major faith groups
- Reform Monarchy – Ceremonial role
- Include Wales on Union flag
- State of Union Address
- Union Day
- Positive promotion of Union

1. I believe there should be a remodelled UK Parliament based on the Federal system, with a more balanced number of MPs from Constituent Countries of the Union.

2. I think there should be an English or English Regional Parliaments.

3. The House of Lords should be reformed and it should allow representatives of other major faith groups, other than the Church of England.

4. The monarchy should be reformed, it should just have a ceremonial role, with less governmental power.

5. Wales should be included on the Union flag, as a dragon or St. David’s cross.

6. The Prime Minister of the UK, should give a State of the Union Address, similar to the US President’s State of the Union Address.

7. There should be a UK National holiday called Union Day.

8. There should be positive promotion of the Union in schools and colleges, accompanied by adverts when the UK government have funded certain projects.

September 2015
Sir John Elvidge, former Permanent Secretary to the Scottish Government—Oral evidence (QQ 141-148)

Evidence Session No. 10  Heard in Public  Questions 141 - 148

FRIDAY 11 DECEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan

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Examination of Witness

Sir John Elvidge, former Permanent Secretary to the Scottish Government

Q141 The Chairman: For me, this is a sentimental journey, because I keep meeting people whom I knew when I was in the Scottish Office. We had Ken Thomson earlier, who was my Private Secretary. Sir John, welcome very much to the meeting. You know what we are on about: the union and devolution; the relationship between the nation state and the nations, if I can put it like that, and how we can stabilise and strengthen the relationship in various ways. We are very grateful to you for coming along, because one of the areas that we are interested in is the Civil Service, and we have always thought of it as being a United Kingdom Civil Service. We appreciate that in Scotland civil servants have to be loyal to their immediate masters, but there is nevertheless an overriding—as I see it, personally—duty to the United Kingdom. Therefore, when existential issues are at issue, it may be that their duties lie in a slightly more UK national direction. How important do you think it is that different Governments across Great Britain are served by a single Home Civil Service and to what extent is that Civil Service genuinely a unified service?

Sir John Elvidge: Can I take the second question first? It is easier, in a sense.

The Chairman: You may dilate as you wish.

Sir John Elvidge: There is no meaningful sense in which the UK Civil Service is not unified. Its leadership is still managed in a very coherent way. Personally, I regret the fact that we no longer have a National School of Government, which was one of the devices used to create a sense of collectivity at all levels of the Civil Service, but especially at leadership level. The UK Civil Service is bound by some clear shared arrangements of various kinds but, more importantly, it is still very clearly bound by a shared ethos as to the purpose of a Civil Service in our democracy.

It is, I suppose, implicit in what I have said, to some degree, that I think having a unified Civil Service has proved an important piece of glue in our very unusual constitutional settlement, in that it provides a channel which contributes ease of communication and a shared professional grounding. One cannot stop disagreements existing, but it helps if everybody is working from a shared
understanding of what is being disagreed about. One of the functions a unified Civil Service provides is that it makes it more likely that that work of trying to establish an objective common ground, within which political disagreement can be played out, is a useful contribution.

If I look at some other countries I spend time in—take Germany, perhaps, as an example—I see less communication between the federal level and the Länder level, at civil service level, than I have observed here.

The Chairman: If I can dwell on recent history as an example of how the concern has arisen recently, I think Peter Housden was your immediate successor.

Sir John Elvidge: He was, yes.

The Chairman: He had to handle an incoming SNP Government, first in coalition and then in absolute power, and to fight a referendum. A number of things happened in and around that referendum that, to put it bluntly, horrified those of us who regard the Civil Service as one unified organisation. I am not asking you to retrospectively criticise your successor, but do you think, looking back at it, that that sustained or undermined the unified nature of the Civil Service?

Sir John Elvidge: The unified Civil Service withstood the strains of that experience pretty successfully. As an observer, and naturally as an empathiser, of the circumstances that Peter had to deal with, the thought that struck me was that nothing in our prior understanding of how the Civil Service is intended to operate, and nothing in what passes for a rule book, in the Civil Service Code, contained any obvious preparation for a challenge of that kind. It is not as if there was anywhere one could go and say, “This is what the Civil Service should do in these circumstances”.

The Chairman: Do you think the code should be revised to build in something that would refer to the threat of existential change, such as a referendum of the kind that we had last year?

Sir John Elvidge: In various ways, it might be helpful if there were more explicit recognition of the existence of devolution in the code and in various other places. One cannot ever prepare for every eventuality, but giving people more in the way of milestones that they might use as reference points would be helpful.

Lord Hunt of Wirral: I suppose, Sir John, that this is a confessional, as the Civil Service Minister who introduced the code. I saw the introduction of the code as underpinning the basic principles of independence, integrity and impartiality. Therefore, it never crossed my mind that I needed to deal with the sort of conflicts that you are now talking about. Should not the impartial nature of what a civil servant does fit neatly into these situations, without having to adjust it because of the conflicting pressures?

Sir John Elvidge: The principle of impartiality is an essential and valuable reference point. I do not think it answers all the practical questions that people had to face in the circumstances. Civil servants are faced with a very clear statement that their loyalty to the Crown—and it is useful to remember that there is a unifying concept behind our different political Administrations—is for all practical purposes expressed through their loyalty to the sovereign’s Ministers of the day. On the one hand, civil servants are given a very strong message about not interpreting the interests of the Crown for themselves, and, on the other hand, there is an equally clear statement about impartiality. As is often the case, neither of those things is ambiguous in itself, but, when you encounter a situation which requires both of them to be weighed together, there is a space, which civil servants have to navigate.

The Chairman: A devolved Parliament is devolved by the United Kingdom Parliament. I do not think you are equating the status of the Ministers of those respective Parliaments.
Sir John Elvidge, former Permanent Secretary to the Scottish Government—Oral evidence (QQ 141-148)

Sir John Elvidge: But it is not the Parliaments. The Civil Service Code is explicit that it is Ministers, and the First Minister is Her Majesty’s Minister, just as the Prime Minister is. I am not sure it is obvious that there is a hierarchy of Ministers through which the civil servant can perceive their loyalty to the Crown.

The Chairman: We are getting into metaphysical territory.

Q142 Lord MacGregor of Pulham Market: Mr Thomson said in answer to this question that of course civil servants are used to dealing with different political masters, as the Governments change after an election and so on. I take that point, but I wonder whether, in the increasingly devolved situation that we now look to be facing, to what extent officials working in the Scottish and Welsh Administrations should serve the UK as a whole, rather than the devolved Administrations, which will themselves be taking on much more responsibility.

Sir John Elvidge: As a matter of practicality, most of what most civil servants do will very clearly be in the service of the devolved Administration. There is an observable territory where civil servants think of themselves as serving both the devolved Administration and the UK and where there is no discernible conflict of intent between the two political leaderships. The rub comes only where there is an unmistakeable difference of political intent between the two leaderships, and that takes us back. It is easy, and indeed right, to say that wherever possible civil servants should be seeking to serve the interests of both, but, where there is a conflict, we come to some practical issues of trust between Ministers and civil servants.

One of my perceptions is that civil servants cannot effectively do their job if they do not have the trust of the Ministers they work for. If civil servants were to behave in ways that broke that trust, then there would be a considerable price to pay. That invites the question: “Are there circumstances in which that price would be worth paying?”. But close on its heels comes the question, “What is the legitimacy of civil servants themselves answering that question?”.

Lord MacGregor of Pulham Market: I take all your points about the ministerial, the code, the ethics, the training, and all that. But, if I can use a practical example that may be arising in relation to the fiscal framework, that is clearly going to be a rather crucial element where there are going to be a lot of difficult decisions and controversy, as I would guess is happening at the moment. A civil servant with a strong Treasury background, going to the Scottish Office, has to serve that political master. If there are profound arguments coming from, let us say, the Treasury, about certain parts of the fiscal framework—which he knows is fundamental—he will have to argue against those on behalf of the Scottish Government.

Sir John Elvidge: Yes. Scottish Ministers are entitled to the services of someone who will put their argument, are they not? One might say, in the context of a fiscal framework, that the point of having an agreement is to try to reach a situation in which it is not an endless political fight, but actually a system that is capable of being interpreted. But the concept that civil servants have to advance the arguments that the Ministers they serve at that time wish to see advanced is not a new one. In my second job in my Civil Service career, I worked for someone whose job, while I was working for him, was to undo all the work he had done in the previous three years, for a different Government.

Lord MacGregor of Pulham Market: I completely understand that. But now we are dealing with two different Governments and, in Scotland’s case, a Government that has got much more power, so there is a difference there. To what extent are exchanges still taking place within the Civil Service from the UK Government and the Scottish Government?
Sir John Elvidge, former Permanent Secretary to the Scottish Government—Oral evidence (QQ 141-148)

Sir John Elvidge: It is not the strong tide that it was early in devolution. There was a strong flow from Whitehall to Scotland in the early years of devolution, and a bit of flow the other way. It has settled down, as one might expect. There is not, in my view, a sense of barriers. It is probably invidious to personalise this, but I cannot quite resist the fact that we have a case of an individual who was, in the not too distant past, the First Minister’s Principal Private Secretary, and is now the director of the Scotland Office, responsible for advancing the UK Government’s view of how the relationship between the two Governments should work. The fact that that can happen is an indicator of a system in good health around exchanges.

The Chairman: Is that not an example of a much more diminished situation? In the past, Scottish Office Ministers went to London every week; their private office team went with them. Senior officials from the Scottish Office came south to deal with their counterparts in other departments. The Ministers sat on endless committees of a United Kingdom nature, so there was huge exposure there. They all recognised and understood that Scotland had to fight its battles with the Treasury; it had to seek allies in other departments to achieve some results, and so on. All that is disappearing now, and more and more Scottish government is handled in an isolated way within Edinburgh. How do you see us countering that? You mentioned possibly tightening up the Civil Service Code. Are there any other ways that you think it could be done?

Sir John Elvidge: The Scottish Government work quite hard at making sure that officials get that understanding of how the UK Government function in a different way. You are absolutely right that it is no longer absorbed by osmosis from frequent visits. There needs to be a more deliberate attempt to make sure that at least senior civil servants understand the functioning of the UK Government, and that is done in a structured way. It is a fact that, on a whole range of topics, civil servants here in Scotland are in regular contact with colleagues in the south. There is still quite a lot of jumping on trains and planes.

The Chairman: But the animus is slightly different now. It is confrontational.

Q143 Lord Judge: Sir John, I have understood you to say that, largely, it is possible for a senior civil servant in Scotland to serve both the master in Scotland and the master in London, but you also accept that he or she cannot always do that. What I am worried about is whether each individual senior civil servant will choose which to prioritise. Is there a system by which they are told which they must prioritise, or is it left to the relationship between the civil servant and the individual Minister?

Sir John Elvidge: It is certainly more collective than that. It is not a series of random individual decisions.

Lord Judge: But it does not sound as though it is totally structured either.

Sir John Elvidge: It is structured within the limits that it can be structured. I can speak only for my own time there.

Lord Judge: Of course.

Sir John Elvidge: We spent a considerable amount of time discussing these issues with a reasonably large group of the leadership of the Civil Service, so that, as far as we could, there was a shared understanding and shared practice around these things. By and large, that understanding followed some of the lines we have touched on: an ethos of mutual professional respect with the colleagues one was dealing with; an ethos of attempting to recognise the interests of both Governments and to avoid unnecessary confrontation, but at the heart of it was the recognition that there is no legitimate basis for civil servants to decide that Ministers are acting wrongly, except in limited
circumstances where they are clearly acting unlawfully—and it is helpful that the Scottish Government, in that sense, are a statutory creation and therefore bound by the law more explicitly than a sovereign Government are—and in the well-worn territory of financial propriety, where we have longstanding processes. But, outside those definable territories, there was a shared understanding that it is not within the constitutional legitimacy of civil servants to say to Ministers, “I cannot pursue that policy on your behalf”.

Lord Judge: Have I understood this correctly: “Notwithstanding that the United Kingdom Government say this, I am going to follow what you wish me to do”.

Sir John Elvidge: Yes. That would be my understanding of the Scottish Civil Service Code.

Lord Hunt of Wirral: Is there a separate one?

Sir John Elvidge: Yes, there is a separate one.

Lord Hunt of Wirral: I see.

Sir John Elvidge: They are virtually identical in text, but they are separate.

Lord Hunt of Wirral: When I was Conservative Secretary of State for Wales, I had to accept that the overwhelming majority of Wales was run by the Labour Party. There were occasions on which my civil servants slightly rapped my knuckles and said, “Our Civil Service Code says we cannot possibly promote the agenda of a political party”. Yet I am getting the impression now that you think you can use public funds to promote the agenda of the Scottish National Party in Scotland. Can you help me through this jungle?

Sir John Elvidge: I would like to be unequivocal that I am not saying that. The challenge comes—and your experience is relevant—when one tries to decide where the authority and interests of Government end and the interests of the party that happens to form the Government begin. That is not an easy judgment to make. I have to say, since I am a long way away from your conversations with civil servants in Wales, I am surprised that they found much occasion to advance that argument, because it seems to me that it is quite difficult to find the territory that is not the legitimate business of the duly elected Government of the day and is clearly only the business of the party.

Q144 Lord Morgan: Can I just ask about asymmetry, a word hitherto unknown to me, about which we hear a great deal? As you very well know, there is a considerable degree of asymmetry between the nations of the United Kingdom, in terms of their powers and perhaps in terms of what the Governments do. Wales and Scotland, for example, are very different. Does this create particular problems, do you think, for the governmental structure of the United Kingdom?

Sir John Elvidge: It presents a challenge for civil servants in the UK Government, who have to hold in their minds a professional understanding of quite a complex set of arrangements. I do not suppose I would be the only person who said to you that the understanding of the structure of the devolution settlement and its asymmetrical nature is not as thorough or widespread in the UK Civil Service as it might be. For fairly obvious reasons, it tends to be nearer the front of the minds of civil servants in the devolved Administrations, but I think it is a challenge. It is not a challenge that causes fundamental difficulty to anybody. Of course, it causes friction, which has to be resolved, when people do not understand it. It is probably less of a problem in Scotland than it is elsewhere because, when you are at the top of that hierarchy of asymmetry, it is unlikely that any powers that the Scottish Government have are not understood. It is more a
problem for those elsewhere in the UK, getting people to understand that Wales is not Scotland, for example.

Lord Morgan: Thank you. A sombre answer.

Q145 Lord Hunt of Wirral: Is there merit in a statute or charter of the union, setting out principles underlying the UK’s territorial constitution?

Sir John Elvidge: That is an interesting question. I am by personal preference an enthusiast for the UK’s habit of flexing and adapting before it attempts to put things in stone too rapidly. Taking an international view of constitutional arrangements, we are less than 20 years in. This is a young system. One day it would probably be helpful to try to get greater clarity about the motivating principles, the guiding principles, of the set of arrangements we have come up with. But, while they are all busy moving about, I probably would not try to codify it just now. People in other countries would be horrified by this approach, would they not? In other nations, the idea that you go into the territory and see where you get to would seem very messy to them. I freely confess that it is not a definitive answer of what is right; it is just an affection for the way we do things.

Lord Hunt of Wirral: “Yes, but not yet”.

Sir John Elvidge: Yes.

Lord Judge: The other point, surely, is that, if you decide on it now, or in 2019 or 2025, you produce a constitution that is reflective of the conditions as they stand, which might not be a constitution that is appropriate for 10 years or 20 years later.

Sir John Elvidge: Indeed. I was, at one stage of my life, a historian, and I am an admirer of our constitution’s ability to adapt itself over centuries to the changing circumstances of the nation that it needs to serve.

Q146 The Chairman: There will be many shared elements resulting from the legislation now before Parliament, bringing forward a whole range of policies that will be devolved, but there will still be a need for wider consultation and better intergovernmental relations. As you may know, this Committee has produced a report on that, which is still awaiting a reply from the Government. Do you see that as a possible vehicle for improving the understanding within the Civil Service between Scotland and the rest of the United Kingdom?

Sir John Elvidge: Yes, I do. As a broad judgment, I would say we have not built quite enough of a robust framework to support the integration and co-operation that everyone wants to see. My affection for the ad hoc does not take me to the point of thinking that a little more structure around this would not be a helpful thing.

The Chairman: Does the Treasury have any presence in Scotland, as an office or as individuals, or is all that work done from London?

Sir John Elvidge: They come, occasionally.

The Chairman: How occasionally, in what numbers and at what seniority?

Sir John Elvidge: Very occasionally and very senior. By and large, we see only very senior Treasury officials.

The Chairman: We cannot anticipate the fiscal framework and what it is going to lead to, but it is going to lead to a lot of—say I, immediately trying to anticipate—communication between the
Sir John Elvidge, former Permanent Secretary to the Scottish Government—Oral evidence (QQ 141-148)

Scottish Government and the Treasury. Might it be sensible for the Treasury to establish a permanent office in Scotland?

Sir John Elvidge: Maybe. There are two ways to approach that. That would be one. The approach to the Scotland Office, as I understand it, is that it should flex its capabilities to reflect what the UK Government need from a presence in Scotland. Just as the Scottish Government are having to learn to do some things that they have never done before, it may be that the other way of approaching this would be to extend the capacity of the Scotland Office into the areas of expertise of the Treasury.

The Chairman: A lot of its work would be public relations rather than substance. It would need a big budget, would it not?

Sir John Elvidge: There might be plenty of substance in the early years of the fiscal framework.

Lord MacGregor of Pulham Market: Those civil servants would be responsible to the Scottish Government, presumably.

Sir John Elvidge: No, not in the Scotland Office. They would be responsible to the UK Government.

Lord MacGregor of Pulham Market: The Treasury ones, I mean.

Sir John Elvidge: Yes, the Treasury ones.

The Chairman: They would be regarded as a foreign embassy.

Sir John Elvidge: That is harsh.

The Chairman: A little harsh, perhaps, yes.

Q147 Lord Cullen of Whitekirk: Could I ask you about public understanding in Scotland of the respective roles of the UK and Scottish Governments? On the one hand, the Scotland Bill makes life a bit more complicated, and, on the other hand, it is said that it will bring a greater sense of realism as to who is responsible for doing what. Do you have any views as to what can be done to promote greater public understanding of the respective roles in the future that faces us?

Sir John Elvidge: To be constructive, this is an area where shared endeavour between the UK and the Scottish Governments, to try to express in simple and accessible terms what the relationship now is, would be helpful. To inject a note of pessimism, it is not a post-devolution phenomenon that citizens do not understand the internal arrangements of central government. I remember, and Lord Lang may remember, that, back in the days of the Scottish Office, we discovered that less than one-third of the population of Scotland knew that the Scottish Office existed. They knew that there was an Agriculture and Fisheries Department, and they knew that there was an Education Department. They did not really know that there was this other thing that was actually the umbrella.

We have to be realistic about how much understanding of these issues citizens will absorb without quite a lot of effort to convey information to them. Also, many of the things that interest us and that we talk about are quite difficult to render in terms that are easily understood by someone whose level of interest in the topic should not be overstated. Yes, it is worth doing. I do believe it would be best done as a joint effort. I do not think we should get carried away by optimism about how much progress one can make.

Lord Morgan: I am just wondering whether things have got worse. One has a feeling, as an outsider, that to ask about where responsibilities lie is perhaps to question where responsibilities lie, and to that extent might even be quite dangerous, or thought to be dangerous.
Sir John Elvidge, former Permanent Secretary to the Scottish Government—Oral evidence (QQ 141-148)

**Sir John Elvidge:** No, I do not think so. Everyone in the political and government structure has an interest in there being clarity of understanding about these things. Irrespective of which side of the constitutional debate one is on, there are arguably advantages to be obtained by better understanding of where we have got to. If one believes in democracy, it is quite dangerous for people to carry significant misapprehensions about the consequences of their voting behaviour as citizens.

**Lord MacGregor of Pulham Market:** I may be wrong about this, but it seems to me very likely that, as we move to stronger devolution, and all the powers in the Scotland Act and so on—because the pressure is still for that to continue—two separate civil services will develop between the rest of the UK and Scotland, sharing the same values, the same ethics, the same training and work practices, but serving two different Governments.

**Sir John Elvidge:** Yes, that is fair. There are differences of ethos without disturbing the commonality of ethics, and it has always slightly been so. The Civil Service in Scotland has always felt slightly different in terms of its working ethos from the Civil Service in London. The question is: is that damaging and does it threaten the things that need to be common? I would say that the evidence is that it has not necessarily been damaging so far. Could it become damaging? Yes, of course. It is a perfectly realistic risk to pose.

I cannot quite remember Tam Dalyell’s words about devolution, but I do not think we are on a motorway with no exits. I do not think it is in any sense an inevitable consequence of the arrangements that we have. There is another way of looking at this. Lord O’Donnell said, when he was Head of the Civil Service, that the UK was a remarkably lucky country in having established a permanent basis for the comparative study of public policy, in a broadly homogenous economic and social context. The positive view of this is that you can see the opportunities for the Civil Service to be engaged in shared professional learning from the differences, rather than being pulled apart.

**Q148 Lord Hunt of Wirral:** I know that a week is a long time in politics, but we now have several months before the elections in Scotland. Looking ahead, if a very pro-union Government were to be elected next year in Scotland, what effect would that have on the impartiality and independence of the Scottish Civil Service?

**Sir John Elvidge:** I am not sure it would have any. In so far as one worries about the strains, then by definition the strains would be diminished. If one took a microscope to the working relationships, one probably would not see a difference.

**The Chairman:** Sir John, we have just about run out of time. You have been extraordinarily helpful and forthcoming, and fascinating to listen to. Thank you very much indeed. Is there anything you think you should have said or we should have asked you?

**Sir John Elvidge:** No, I think you have asked all the difficult questions.

**The Chairman:** A very sensible civil servant’s answer. Thank you very much.
WEDNESDAY 27 JANUARY 2016

Members present
Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord MacClenan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witness

Lord Empey, Ulster Unionist Party

Q289 The Chairman: Good morning, Lord Empey. This inquiry into the union and devolution has taken us to Scotland and to Wales, but most of our evidence sessions have been held here in London. We would happily have come to Belfast. However, two of the sessions involve people who come to Westminster regularly, including yourself, so overall it is for the convenience of all of us to have these sessions here. Perhaps on another occasion we shall have the chance to come to Belfast. Thank you for coming to see us. We much appreciate it. We recognise that the concept of union probably has stronger resonance in Northern Ireland than it has elsewhere in the United Kingdom. One of the things we are trying to get a feel for is what people mean by union. Does it mean different things to different people? How do you feel Northern Ireland’s union differs from the union of Wales or Scotland?

Lord Empey: Thank you very much, Lord Chairman, for the opportunity to speak to the Committee today. Like everything else, there is no single definition. Neither is there a single definition of nationality. Sometimes people regard their identity in different ways. Historically, of course, there are differences. There is a geographical difference; we are an island off an island off a continent, so there are those issues. The Committee will be more than familiar with the history.

Fundamentally, the Belfast agreement of 1998 made absolutely clear that Northern Ireland is an integral part of the United Kingdom. That was accepted by the Irish Republic. In fact, you will recall that the negotiations focused on what were then Articles 2 and 3 of its constitution, which we felt laid claim to our part of the United Kingdom. That was resolved. It was voted on, on both sides of the border, and a settlement was agreed, by a very substantial plebiscite. Therefore, as far as we are concerned, we are an integral part of the union, but that does not mean that we cannot have and should not have relationships elsewhere, because resolving the identity issue was the critical
point of the whole process. I very strongly believe that we feel ourselves to be part of the union, albeit that the union does not have to be an absolutely one-size-fits-all concept.

The Chairman: That is recognised in the agreement that brought peace a few years ago. Can you define how the relationship with Ireland adds a distinctive perspective to how you see union with the rest of the United Kingdom?

Lord Empey: The first thing, of course, is that a very large proportion of the population of Northern Ireland feels its identity drawn more to Dublin than to London. That said, polls over a long period of years show that the number of people who support the union is larger than the number of people whom traditionally one would have identified with the Irish Republic and, indeed, who would vote for parties that seek to break the union. The way things have developed since the agreement was reached has been to settle the issue such that more people feel content with the constitutional framework. They can see that they have a relationship with the Republic with which they tend to identify, but it is not one that is inconsistent with the constitution of the United Kingdom, including Northern Ireland.

Q290 Lord Maclennan of Rogart: Thank you, Lord Empey, for that clear statement. If we attempted to set out common principles for the union, would that upset the people who feel part of the union in Northern Ireland? If not, would a new charter for the union be an appropriate vehicle for those principles? It has been suggested to us by the Bingham Centre and others that that might be a way of embracing all four nations of the United Kingdom.

Lord Empey: You raise what is probably an even more fundamental question, in so far as we are struggling at the moment to find a definition. Because we have an unwritten constitution, I have a fear about developments in the last few years. We seem to be changing things quite radically, but not within an overall envelope that has a plan as to where we intend to take those changes and what we are trying to achieve. To some extent, they are haphazard. We have had very significant changes made. We saw that even a couple of weeks ago, when the House of Commons radically changed the constitution of the United Kingdom by means of a Standing Order.

If you are asking me whether we should try to define things, I think that we have to decide fundamentally as a nation how we treat our constitution. If we are going to change it, there should be some kind of process in our minds as to how that can be done. It seems to me that we are doing things here and things there; things are done on the hoof in response to a particular political situation. I need hardly tell you, as someone representing Scotland, that we ran ourselves into considerable difficulty a couple of years ago, for understandable reasons. We are now living with the downstream consequences of that. I would be reluctant to see something unsettle what I think we have settled in our part of the United Kingdom. Rather than overdefining things, you need a degree of flexibility, so that people can feel comfortable. The more you define a thing, the more you start people saying, “I could cope with this bit, but I am not so keen on that bit”. The danger is that one moves to a position where, at the end of it, more people feel that they do not fit. Maybe I am not describing it terribly well, but that is one of the risks we run.

Lord Maclennan of Rogart: There are certain common values between Northern Ireland and the rest of the United Kingdom, and there are certain areas of policy that are decided by Westminster and Whitehall. If we articulated those, would it make people feel uncomfortable?

Lord Empey: No. I have a wider issue with devolution issues and the way we do them. We have this “devolve and forget” principle, which is incorporated in the Sewel convention. I do not agree with that. I said in a debate recently that I felt that, to the general public, local assemblies felt like giant ATMs. They produce money, and nobody cares or even knows where it comes from. There is
certainly no accountability for the money. If you look at our history, it was precisely because we devolved and forgot in the 1920s that we ended up in difficulty in the 1960s. We were pushed to a desk at the back of the Home Office and forgotten about. Parliament has an overarching responsibility to see that certain things are maintained and standards set. Given the fact that Parliament votes the money to make these things run, there has to be some quid pro quo so that Parliament gets some kind of feedback on what is happening. The departments seem to want to push it over, so that it is off the table, in a way, and they can forget about it and go on to something else. We made that fatal mistake, and it cost us dear. I do not think it should be repeated.

Q291 Lord Lester of Herne Hill: If I am allowed to say this, I sympathise very much with everything that you have said so far. Do you think that one of the flaws in our present system is that we rely too much on a European treaty, the European Convention on Human Rights, rather than some constitutional instrument? When we are dealing with problems with Northern Ireland that are current—normally about sex or abortion or, sometimes, about euthanasia: matters of that kind where feelings run high—the only real limits on the powers of the devolved institutions in Northern Ireland are direct rule, which is heavy handed, or the European convention. Do you think that it would help in principle if one had a charter of the kind that Lord Maclennan mentioned? Would that give more support than a European treaty, with all the problems of relying on something European and a treaty to do a job of work that it was not intended to do?

Lord Empey: That is a very incisive question. I know what you are getting at. When I started on a political career there was a famous article in the Sunday Times that described Northern Ireland as “John Bull’s political slum”. That was a very hurtful thing to read from a unionist point of view, but it drew its source from the fact that Parliament devolved and forgot. There are certain national situations that require to be maintained by Parliament. Certain standards and values could come into that category. There is widespread support for the European Convention on Human Rights. Whether that translates into support for the Human Rights Act is a different issue, but there is widespread support for the treaty. If you start to define things, you have to accept that the Sewel convention, if it is applied to devolved issues, will have to be set aside in certain circumstances. I know that the theory is that it can be done, but departments are very reluctant to do it.

The other thing, of course, is that if you have a situation where an awkward decision can be pushed back to London and local politicians do not have to take it themselves, they get a free ride. In other words, they can say to you, “You have the power to do it—you do it. It is too difficult for us”. We had an example of that a few months ago, when the Northern Ireland Assembly had to pass back its legislative responsibility for welfare. London had to deal with that and pass it back again. That was one case where local politicians had an exit strategy for themselves. Having said all that, we have to think of the citizen, the circumstances they are living in, the laws they have to obey and so on. “Supervisory” is not the word that I am looking for, but Parliament will always have to keep an eye to the big picture. Sometimes it is not possible for that to be dealt with at local level, because of various pressures, belief systems and so on.

Q292 Lord Judge: May I ask some questions in relation to the Civil Service? The Civil Service in Northern Ireland has been separate for nearly 100 years, but there are still some reserved matters. My question is directed to that issue. In relation to reserved matters, what are the advantages and disadvantages of a separate Northern Ireland Civil Service?

Lord Empey: In my experience of working for many years in departments with the Northern Ireland Civil Service, it is a very professional organisation. It is about 30,000 strong. There is a difference; it may be an obtuse point, and you may or may not be aware of it. In a Whitehall department, the
Secretary of State of the day is effectively responsible, and if that person is out of office, the department has nobody to take decisions for it. In Northern Ireland, the power resides in the department, as opposed to being with the Secretary of State, so a Northern Ireland department can function without a Minister. That is not something that is widely understood. Although devolved Ministers have power under the Act to direct and control the department, the department is quite self-sufficient. If it is not given policy directions, it can do a lot of things itself. It can make public appointments; the Permanent Secretary can sign them off. During the troubled period when we did not have devolution, I have to say that departments in Northern Ireland kept the place civilised, in as much as that was possible, so I have a lot of regard for them.

It is a separate organisation, with different structures, but during the direct rule period the head of the Civil Service in Northern Ireland was also a deputy secretary in the Northern Ireland Office. That person was given two posts, so they had a link. That situation no longer applies, although it is the case that we have swap-overs, where civil servants from Northern Ireland departments serve in Whitehall departments. That is an important thing to do.

I do not think there is a huge issue. My experience of civil servants is that if you give them a direction they do their best to carry it out. At the end of the day, even if devolution is not functioning, there will still be a Secretary of State who is able to direct the organisation. Ministers and Whitehall would be perfectly capable of doing that, and showed through the direct rule years that they can do it. I would not be of the view that it has created a big problem.

Thinking about the Civil Service in Scotland, the only thing I would be concerned about is that it gets too introspective. In view of the conversations I have just had in answer to noble Lords on this side of the room, I think that there should be a formal mechanism for having civil servants from Northern Ireland and the other devolved regions in Whitehall, and vice versa. That exchange of information, ideas and how policies can be implemented would avert or offset the issue that I think you are concerned about.

Q293 Lord Norton of Louth: Names are important. It has been suggested that it might aid intergovernmental relations if we moved from calling devolved institutions “legislatures” and “Administrations” to using the terms “Parliaments” and “Governments”. Do you see any merit in that? Would that terminology cause problems in the context of Northern Ireland?

Lord Empey: I do not see it as a Northern Ireland issue, but I do see it as an issue. For example, journalists have to use language and terms that people understand; the Northern Ireland Executive are not a Government, but they are frequently referred to as the Government. Given that a very wide swathe of day-to-day life for ordinary citizens is dominated by issues that are devolved, ordinary citizens see the Executive as the Government. They are called an Administration; sometimes their opponents may call them a regime. It confuses people.

The link between London and the devolved Administrations is not understood, because there is no requirement on the devolved institutions to account to Parliament for the money they receive. That is a fundamental flaw. It creates an impression that many of them are very happy to foster and promote. Indeed, it happened this week, when the Deputy First Minister at home was asked whether he was going to stand for a Westminster seat. He said, “I am not going to go back there to stand again, because all the decisions are made here”. No account is taken of where the money comes from, and there is no accountability for it. Where else could you give people billions of pounds with absolutely no feedback? Parliament has to recognise the fact that the money it is giving is UK taxpayers’ money, and I would have thought that the representatives of UK taxpayers were entitled to some kind of feedback on whether we are getting value for money.
It goes back to Lord Lester’s point. If things veer off beyond what we would regard as our national sets of values or things like that, currently there is no mechanism in place to do anything about it. That devolve and forget process is wrong. Although I have always supported devolution, it seems to me that we are in danger of not simply creating a United Kingdom but of heading inexorably into federalism. That, of course, brings up the role of this House.

Q294 Lord MacGregor of Pulham Market: I would like to ask a question about the social union aspects. The sharing of risks and benefits, particularly welfare and equivalent benefits, in what is described as a social union is seen by many as important to the union. It has, of course, the concomitant pooling of resources for those benefits. Is this UK-wide sharing and redistribution of resources seen as important in Northern Ireland?

Lord Empey: For us it is pretty critical, for the simple reason that we are so heavily dependent on the public sector, sadly. Largely as a result of 30 or 40 years of disturbances and trouble, as we call it, our private sector was very severely weakened. You will know, because as a Cabinet Minister you implemented them, that there have always been national policies of redistribution to the regions. In our particular case, and in recent years in the Scottish case, those have become focused on the relevant elected institutions, but the principle has always been there. Although I am a great supporter of Stormont, my biggest disappointment is that to date it has not fully exploited its powers and ability to promote the economic recovery that is needed to rebalance our economy. On the social side of things, until last year we had a policy of parity on welfare issues. Although the power was there to deal with them, we merely incorporated the UK-wide things to keep social cohesion, but also because of the sheer scale of the sums of money involved.

I support the principle of regional policy, but there is a tendency not to have regional policy defined. It works in practice, but there does not seem to be a big picture. We have the Barnett formula, Barnett consequentials and so on. The ordinary person in the street does not get any of that, so we have an opaque process, again without any accountability to Parliament. I am in favour of regional policy. I see no alternative to regional policy throughout the United Kingdom.

Lord MacGregor of Pulham Market: Regional policy including welfare benefits?

Lord Empey: Yes. I have to say that I supported the principle of parity, because, if you start any significant change on the social side of things, we get the agitation that we have seen between England and Scotland over student fees, for example, where people say, “We are paying for this, yet my son or daughter goes there and has to pay. If somebody comes from Stuttgart, they do not have to pay”. There is a danger that, if we do not have some overarching envelope within which we operate, we cause destabilisation of the relationships. Maybe that is what you are getting at.

Lord MacGregor of Pulham Market: It is interesting to take the Scottish case, where they are arguing for full fiscal autonomy. We still have to debate that in the Bill, but it means that all but certain core functions—the obvious ones being macroeconomic policy, currency, foreign affairs and defence—are devolved. They accept that what goes with that is the fiscal competence to pay for those services. Indeed, a Scottish Minister, Fiona Hyslop, rejected the idea of social union as described by some other witnesses, along the lines you have proposed, as fiscal redistribution amounting to central control. I take it that that is not where you come from.

Lord Empey: All I can say to you is that if you asked me, “Should the Northern Ireland Assembly have more fiscal powers?” I would say no. My party would totally reject that. The ATM analogy is that, when the money runs out, local people do not get the blame; they just say that London has not put enough money into the machine and that if it had put in more money they would be able to spend it. The danger is that we loosen the links completely. The taxpayer generally is already
becoming frustrated about a lot of things. That would make it even worse. We have more than enough powers at the moment. We should be making an effort to use the powers that reside in Belfast properly and effectively, rather than acquiring more. There are disagreements between the parties because of our mandatory coalition. Some people would have tax at 99p in the pound. I do not think that we should go any further down that road. There might be three or four completely separate tax regimes in one country and it would become so complicated that people would give up. I would take great care about going down that road.

**Q295 Lord Hunt of Wirral:** I greatly enjoy your constant references to ATMs, because I have just led a legal team in a governance review of the 60,000-plus LINK machines. It is important to get a simple formula, which is what we decided as far as hole-in-the-wall machines were concerned. To go back to welfare benefits, how are we going to deal with them? Do you believe that there should be a minimum level of welfare benefits set right across the United Kingdom, which devolved Governments could supplement but never reduce? In other words, responsibility for welfare would be split between the UK and the devolved legislatures. If so, who should be involved in setting that minimum level, and how?

**Lord Empey:** First, the reason we in Northern Ireland have kept a policy of parity since the welfare state was introduced was not simply that it was a national service but that the sums of money were so enormous. We have power in that area. Indeed, the changes that took place last year mean that Stormont is doing some things differently now, but it is taking the cost out of the block grant. Whitehall is not giving it any more money, but it has chosen to spend some of that on things on which money is currently not spent here, for instance. That is fine, in so far as it is paying for that. However, when it comes to things like pensions and so on, which people have earned over their lives—they may have been working in Scunthorpe and gone back to Belfast to retire—devolved Governments will soon learn. To take the Scottish example, when they start to total the cost of doing certain things, it will be a very sobering experience. My sense is that they may do a lot less than they are talking about doing, because of the sheer scale.

Your point was about a minimum level, and no involvement with pensions and things like that. I do not think that you can leave a completely empty space, so there may be merit in what you are saying. Yes, you should have a certain degree of flexibility to deal with particular local circumstances. For instance, we were very unhappy about the idea of housing benefit being paid to tenants themselves, rather than to landlords. We had particular local reasons for that; we felt that certain organisations—ex-paramilitaries—would pounce on a lot of people if they were getting large sums of money at the end of the month, because they run money-lending rackets and so on. We felt that at least if the landlord was paid there would be a roof over the person’s head. You can have differences, for perfectly good local reasons, but ensuring that there is at least a coherent minimum level, particularly for things like pensions, may be something worth pursuing.

**Q296 Lord Morgan:** In this session, as in every other, we have heard about the differences in history and policy between Northern Ireland, Scotland and Wales. At the same time, although there are those observed long-term differences, there have been suggestions from many sources, including this Committee, that there should be a more coherent vision for the shape and structure of the union. Do you feel that it is feasible or desirable for Northern Ireland to be considered alongside Scotland and Wales as part of a more coherent scheme of development, or are the history and background of Northern Ireland so different that that is not really feasible?

**Lord Empey:** I feel that it is essential that it is. We went into this literally for years during the negotiations in the 1990s. As you may recall, we had a three-stranded approach. We came to terms
with our neighbours, we came to terms internally with our colleagues, and we have a structure, a framework and an agreement that recognise that the constitutional position of Northern Ireland is as part of the United Kingdom and that it will not change without the consent of the people. In those circumstances, if you follow through to the logical conclusion, you include Northern Ireland in the wider picture of the union. The union is no longer a one-size-fits-all constitution in any event.

The bigger question that you pose is: what are we trying to achieve? My anxiety, as I said earlier, is that we are doing bits and pieces here and there in reaction to events, but there does not seem to be a plan. I know that the idea of a constitutional convention has been rejected by the Government. We all know that it could take years, which is an issue in and of itself. At the same time, you cannot ignore the implications of doing things in Scotland, for instance. Last week we debated the Scotland Bill in Committee. Issues were raised regarding the fact that certain things were being devolved, but what was forgotten was that there would be implications for other parts of the UK. It is essential that all parts are involved in the discussions and in the move to get some kind of coherent outcome with which people can feel comfortable. The fundamental point is that we want people to feel as comfortable as they can. If you are a Scottish nationalist, you do not want to be in the United Kingdom. We understand that. If you are an Irish nationalist, you do not want to be in the United Kingdom. The reality is that the people in both those territories voted to stay in the United Kingdom, so you have to honour that, respect it and follow it through to its logical conclusion.

Q297 Lord Lester of Herne Hill: I would like to give an example to illustrate my question, which is about whether or not we should go on giving separate and special powers to the Northern Ireland legislature. The example is what has happened to libel reform. Our Parliament spent three years enacting a Defamation Act, but Northern Ireland politicians refused to apply the Act in Northern Ireland. At the moment, there is a great deal of prevarication, which means that a publisher in London trying to publish a newspaper or a book across the Irish Sea and here faces bad old law in Northern Ireland and modern law, balanced by Parliament, here. Does it make sense for that kind of situation to prevail and for the Northern Ireland legislature and Executive to go on being able to do something of that kind, given that until this happened the law on libel was always the same in Northern Ireland and England?

Lord Empey: Lord Lester, you will get no argument from me on the principle of amending the law. From a purely party-particular political stance, we are in favour of change. Indeed, Lord Black of Brentwood came over to a meeting that we organised to promote the changes. We tried Private Member’s legislation, but the relevant departmental Minister thwarted it, effectively. It was put in for review to the local law people, for them to look at it. Then their money was taken away, so the whole thing collapsed. As you say, we have the ridiculous situation that publications are subject to very different laws.

We know that Scotland has its own law—a wonderful tradition of law—and I do not think that anybody would want to see that changed. However, you are coming to the whole point of fundamental rights in all of this, where the Sewel convention collides with some of the bigger issues. I am entirely for a change in the laws; they are hopelessly outdated and quite dangerous. However, if the devolve and forget philosophy is ingrained in central government, from top to bottom, none of that will change. People will argue that devolution means what it says—that you give somebody power. The question is: for how long and to what extent, and are there limitations? The only limitation at the moment is our international treaty obligations. It might be difficult to make a case that the libel laws come into that category. The question is: do we confine it to international treaty obligations? I am sure that is something that your Committee will want to consider.
The Chairman: We are running short of time. We still have time to squeeze in a question from Lady Taylor.

Q298 Baroness Taylor of Bolton: It is a brief question; I am not sure about the answer. In all that you said, you have made it clear that you think that there is real lack of clarity in the public mind about the Administration and Whitehall. You have your giant ATM, which will hover in our minds all day, but what is the answer? How do we change those public perceptions? How do we educate the public? How do we make them realise that devolution is a reality and not something where we devolve and forget?

Lord Empey: One thing that might change would be for the relevant First Ministers and Finance Ministers to sit before the Select Committee in the House of Commons annually to explain how they had spent the money and to submit reports that the relevant Secretaries of State would publish, again annually. During consideration of the Armed Forces Bill a few years ago, we managed to get in a clause requiring the Secretary of State to report to Parliament on what each devolved Administration was doing with regard to the Armed Forces covenant. That is now published. In fact, the Northern Ireland Executive’s contribution was that there was nothing, because they could not agree on a response, but at least that was reported to Parliament. The concept would be that an Administration at least had to inform Parliament what they had done with the money—what the stresses and strains were. The Bank of England has—or used to have—an agent in Northern Ireland who regularly goes around the country assessing the economy in different areas and reporting back. Why could we not have some mechanism like that? At least people would see the link.

Baroness Taylor of Bolton: That might stop us at Westminster forgetting that we had devolved, but how do you get the division of responsibility across to the public in Northern Ireland?

Lord Empey: The fact is that, if you have devolved Ministers speaking to a parliamentary Select Committee and so on, it will be on television. People will see it. It will be written about. They will be quoted. What people see is very often how they are informed. It seems to me that one of the ways is for them to see those Ministers telling Parliament what they have done and being asked questions by you and other colleagues. You will never get all the labyrinthine processes of what is and is not devolved across to people, I suspect, apart from those who are particularly interested.

Ministers could even say how well they have done and what they are doing. This morning I attended a breakfast that dealt with exports and how the different job promotion agencies work throughout the UK. We can learn from one another. It is not reporting to the headmaster; it is about sharing ideas. Good ideas come from the regions, and we can all learn from them. It is similar to moving your civil servants and, on a reasonable scale, having people move around the different Civil Services. It means that people share ideas and procedures. The more devolution gets entrenched, the greater the differences will become, and the culture will change. That is the point Lord Lester was getting at, I suspect. If we do not have some interchange, things in local areas will atrophy: “Oh, we only do it this way”. There are things we can learn from one another, and that is where devolution could play a role.

The Chairman: Lord Empey, it is a real source of regret that we have to draw stumps there, because we have been learning from you all morning. It has been absolutely fascinating and very lucidly and clearly expressed. We are very grateful to you. We had to pass on the last two questions. Would you be willing to put something on paper to us on those—just a paragraph or two on each?

Lord Empey: I will do that.
The Chairman: That is very kind of you. Thank you very much for coming to talk to us. It was most informative.
WEDNESDAY 18 NOVEMBER 2015

Members present

Baroness Taylor of Bolton (Chairman)
Baroness Dean of Thornton-le-Fylde
Lord Lester of Herne Hill
Lord Norton of Louth

Examination of Witness

Alun Evans, former Director of the Scotland Office

Q93 The Chairman: Mr Evans, welcome to the Committee and thank you for coming. We have a relatively short session and a small membership today because we have just come from a parliamentary recess and people are engaged in other events. You have had an interesting background and some interesting things to say about this whole area. Do you want to say a few words by way of introduction or go straight into questions?

Alun Evans: First of all, thank you very much for inviting me to come here today. I will make a very brief introductory statement, which will, hopefully, set the scene. You referred to my background. I had 30 years in the Civil Service in a range of departments, finally spending three years as head of the Scotland Office—the UK Government’s Office for Scotland. As such, in that time I obviously viewed the referendum quite close up and watched Scottish politics.

I have now moved to the British Academy as chief executive, leaving the Civil Service. I should stress that the British Academy does not have a position on this issue. I am speaking in a personal capacity in the comments I make. But I am concerned about how to preserve the union while recognising the legitimate demands for further Scottish devolution. That was the point and the main thrust of my inaugural lecture at the Academy, a copy of which I sent to the Clerk to the Committee and which you may have.

During the referendum my view is that the no campaign had far stronger economic arguments, particularly given the fall in the oil price recently, but that the yes campaign had both a stronger emotional appeal to many Scots and a more united and organised campaign. The no campaign was united only in its opposition to independence. The no campaign, Better Together, has been virtually non-existent and invisible post the referendum. So I believe that there is a strong case to be made for the union and the benefit it brings to the countries within the United Kingdom. That has not been done and is not being done. My lecture sought to set out why the SNP and the case for independence had attracted such support at the referendum, and since then in the general election.
It is quite important to recognise that the Smith commission, which followed the referendum, and thus the Scotland Bill, was by definition, given that it was all-party, somewhat of a lowest common denominator. It was inevitable to me that the demand for further devolution and more devolution would continue beyond the current Bill, which is why I said in my inaugural lecture that I thought the time was ripe for a big, bold and generous offer to Scotland. I defined my solution as home rule for Scotland within the United Kingdom, which I still believe is the best way to pre-empt a successful second referendum on independence. The definition I use for home rule is much the same as the Scottish Government use for so-called full fiscal autonomy. We can discuss that if you want. It is contained in the lecture, and I set out what I saw as three important conditions.

The first was what I called the economic condition; it must mean an end to the Barnett formula, which was only introduced as a short-term fix 40 years ago. Secondly, there is the political condition. My strong view is that one needs to address the number of Scottish MPs as a quid pro quo for further devolution/home rule, and that that is the only meaningful solution to the West Lothian question. Finally, I suggested what I called a constitutional condition; we need to put this to bed by agreement, by law, by treaty or whatever, so that it is for a generation and not just for a year or two.

I believe that the case for the union needs to be made forcefully and powerfully, and it is not happening. I quoted in my lecture the words of Lord Hennessy: one needs to identify the issues that bond the union and celebrate them more effectively: the Queen, the Armed Forces, the welfare state, the National Health Service, economic stability, the BBC, the UK passport and the Olympic Games—and, I might add from personal experience, the idea of a unified Civil Service across the whole of the United Kingdom. That is the way the case for Scottish home rule within the United Kingdom and the case for the union can be most effectively and powerfully made.

The Chairman: You have given us something to think about there. I do not want to spend too much time looking backwards, but during the referendum campaign, as you say, the yes campaign had the emotional appeal, and on the no side it was the risks that came across. Could more have been done at that point to explain the benefits of the union? Could the Better Together campaign have been more positive? Would it have had any resonance or was the mood after two years of campaigning moving so dramatically in one direction?

Alun Evans: I feel that the emotional mood, if I can call it that, did move in one direction but the Better Together campaign missed too much of a trick by not celebrating the very great ties that the union gives. The elements of the union I referred to did not feature in the campaign because the campaign was very much on the hard economic facts of life; it was a somewhat negative campaign, as you alluded to.

One of the big problems was that, because you had three parties that agreed on nothing other than their opposition to independence, there was no stepping back to think, “What are the best arguments that we can make in defence of the union?” As a result, they retreated to rather negative arguments. I am slightly depressed looking back on it. I am not sure that it could have been done differently, but it should have been done differently if it could have been.

The Chairman: Across the board, the parties would have agreed on some of the emotional points that you were making about the value of the passport, the welfare state or the BBC. That could possibly have had some resonance.

Alun Evans: I agree, although the yes campaign was very clever, shall I say, in that whenever there was an element where people pointed out the importance of the union—the Queen, the single economic area, the UK higher education system and research, for example—the SNP and the pro-
independence response was, “Well, that will be preserved under independence”. Cynically, someone said that it was the one independence movement in history that argued that everything would be the same after independence, not that everything would be different.

The Chairman: As with the pound.

**Q94 Lord Norton of Louth**: I want to look at it from a slightly different perspective, which is from within government itself. How much was there a problem of co-ordination—looking at it as a union? To some extent it seemed to be driven by Scotland and what was happening there. During your time was there adequate co-ordination among the different territorial offices and do you see the situation improving? Could it be improved so that there is more unity within government in dealing with issues of the union?

**Alun Evans**: I agree with the import of what you are saying. The great advantage that the yes campaign had was that the yes campaign, the SNP and the Scottish Government—who are a very effective and unified Government in the way they operate—were all as one, whereas obviously the parties, the Better Together campaign and the UK Government were not as one. In terms of your specific question, the four key government departments were No. 10, the Treasury, the Cabinet Office and the Scotland Office, of which I was head. The Scotland Office was by definition the smallest, the weakest and the least powerful of the four, but I argued that it was the one that knew most about Scotland. One of the difficulties was that a lot of decision-making was made in London on behalf of Scotland, if you like—sometimes on behalf of the Scotland Office—and I never felt that we got a fully integrated and deep understanding of Scotland when some of those decisions were made.

Could co-ordination have been better? It probably could have been better. It got better during the campaign, but one always had the problem that there was this departmentalitis based in London trying to decide things for Scotland, and it was not nearly as effective as it could or should have been.

**Lord Norton of Louth**: Going forward, what more could be done? Obviously there should be better co-ordination, but how do you achieve that co-ordination? Should there be some unifying element within government that would draw those elements together, and indeed draw in the Wales Office and the Northern Ireland Office?

**Alun Evans**: I am not a great one for machinery of government changes on the whole, but my personal view before the election and after it, although it was not something that the Government chose to do, was that one needed something like a Department of the Nations with a senior figure, be it the First Secretary of State or, if there were one, a Deputy Prime Minister, whose responsibility was, and who was for, the union. Then she or he could also speak in all parts of the union on behalf of Her Majesty’s Government. In terms of what would happen in Scotland I always argued, and we tried to do some of this, for a much more united UK Government presence in Scotland. I always remind people that there are many more UK Government civil servants in Scotland than there are Scottish Government civil servants. If you look at some of the departments based in Scotland—the MoD, HMRC, DfID and DWP—there are lots of functions that take place in Scotland that people in Scotland do not even realise are UK Government ones. During the campaign, I remember going out to the Isle of Skye and to the jobcentre there and hearing what a good job it does. The assumption of most people there was that this was part of the Scottish Government as opposed to the UK Government, because there is no celebration and no real branding of what the UK Government do for Scotland in Scotland.
Lord Norton of Louth: Indeed. Over a decade ago this Committee produced a report on devolution and institutional relationships in the United Kingdom. Essentially we made the points that you are making, recognising the need for co-ordination, and perhaps for a Minister who could look at the whole of the union rather than disparate departments.

The Chairman: And indeed branding what the UK Government do, in the way that you get an EU brand when you have a new road being built that is partly funded. Nothing is actually UK Government-branded as having been provided from the centre.

Alun Evans: The UK Government are very bad at that in the UK and everywhere. The EU is spectacularly good at it, but in Scotland it would be very important.

Q95 Lord Lester of Herne Hill: Mr Evans, as I understand it, you have advocated devo-max or a home rule solution as a way of consolidating and stabilising the United Kingdom. Have you talked to SNP members about that? Can you tell us how you think they would react to what you call a bold offer of that kind?

Alun Evans: I have not specifically spoken to SNP Members of Parliament, if that is your question. I have spoken to SNP activists and people I have met at various conferences. I suspect that their reaction would be that they do not agree with it, but it is considerably better than what is on offer at the moment.

Lord Lester of Herne Hill: Would it not be crucial, if you want to stabilise the union, to have strong support for home rule, or whatever you call it, from Scotland?

Alun Evans: Yes, it would, but I would make a distinction between having strong support from Scotland and necessarily from SNP members. My understanding of Scottish opinion—I have done some study of this, although people like John Curtice at Strathclyde University are much more skilled than I am—is that within Scotland there is a large, possibly an enormously large, majority in favour of what I would call home rule, or full fiscal autonomy, devo-max or whatever you care to call it. Had that been an option on the ballot paper, it would clearly have been more popular than the other two options. If there were a second referendum, and I do not particularly hope that there is one, I do think that it should be between independence and a much larger form of devolution than we have at the moment or that is given by the recent Scotland Bill.

The Chairman: Can I follow up on that? Why should Scotland stay in the union if everything is on offer with home rule?

Alun Evans: Because the benefits from the union, particularly the economic benefits—economic stability, international clout, the benefits of a defence system in the United Kingdom and all the things that I would argue should still remain reserved to the UK Government—are vastly more important than the benefits one might get from independence. One only has to take the economic case and look at the contribution of oil to GDP. In the UK it is about 2% but in Scotland it is about 16% of GDP, so you are totally reliant on a factor over which you have no or very little control, and which can make or break the success of the Scottish economy. At the moment, if the Scottish economy were trying to act independently, it is fine if it wants to do that, but it would not be able to balance the books without subsidy from the UK Government.

The Chairman: But earlier you said it was the emotional appeal and not necessarily the figures that won people over to wanting devo-max. It was not just the practicalities—it was the emotion. Why would the SNP settle for what you are suggesting?
Alun Evans: You probably need to ask the SNP rather than me, but you have to distinguish what the SNP wants and what the majority of the people of Scotland want. As I said in my lecture, the SNP has been extremely effective in putting forward an extraordinarily attractive all-embracing image or vision of what Scotland could be like. It has a very big emotional appeal, but that emotional appeal can best be addressed, in my view, by giving a form of home rule that gives control over domestic policy in Scotland, extending the controls the Scots already have from the devolution settlement of 1998, and adding control over the domestic economy, most of welfare and aspects of energy, while preserving foreign affairs, defence policy and overall macroeconomic stability within the union, which I firmly believe, and I suspect that most Scottish people, if not the SNP, recognise, is of great benefit to Scotland.

Q96 Baroness Dean of Thornton-le-Fylde: If you had devo-max or full fiscal devolution, and therefore all decisions over welfare and related social issues were taken in Scotland, what would happen to the social union? At the moment we share risks and there is a national system throughout the union. One could argue that it goes against the outcome of the referendum as such, but is it not just a stepping stone to independence? If you get full fiscal devolution and you decide entirely on welfare and the related issues around the whole of the welfare budget, why would you not then have separation completely?

Alun Evans: For the reason I gave the Chairman in answer to her previous question. I will answer your question: does it end up with a more fragmented welfare system? Yes, it does, but that is the nature of devolution. It has been the nature of devolution since 1997; arguably it has been the nature of the relationship between Scotland and the union from much further back. They have always had separate legal and education systems. It seems to me that one is just recognising the direction of history and the need for greater asymmetry by continuing devolution into other areas. But if you ask me why that necessarily leads to independence, I do not think that it does or should. There is a powerful argument that giving people control, particularly over their domestic affairs, and the responsibility that means in raising the money to pay for it, rather than relying on getting disproportionate sums of money from the UK, is a perfectly legitimate discipline to apply to Scotland. But I do not think there is necessarily a corollary that therefore it has to lead to independence. I know that some people want it to lead to independence, but I come back to this point: I believe that the majority of Scots do not want independence—we know they do not want it—but would like a system of home rule, devo-max or whatever you call it.

Baroness Dean of Thornton-le-Fylde: Can I probe a bit further on that point? Looking at higher education, you can almost compartmentalise it. If you go to university in Scotland there are various conditions, and similarly with the health service if you go to hospital in Scotland. There has been the opportunity to raise tax but it has not been taken. But the welfare structure, the welfare system, the state pension and all those related issues are the same throughout the union. I would argue that that is a much bigger step than having ring-fenced areas.

Alun Evans: I agree. The devolution of welfare would be one of the biggest steps one would make under my proposals. You could end up with different rates of welfare north and south of the border. But I come back to the point that that is a function of devolution. Recognising that seems to me the sign of a mature democracy; it recognises the way in which the union has evolved in different parts. Not to do that runs the risk of saying, “We are not listening to the desire of the Scottish people for further devolution”, and also runs the risk that if there is a further referendum it would be between a vision of Scottish independence, albeit independence light with some aspects still shared with the union, and the current system of devolution that many people in Scotland do not think has gone far enough.
Lord Lester of Herne Hill: I understand exactly what you are saying, Mr Evans, but in your view what would happen if one of the devolved countries—not only Scotland; it could be Northern Ireland or Wales—were to adopt a welfare policy that effectively involved inhuman or degrading treatment, or something of that kind? In other words, without starving people to death, it fell well below what you and I would regard as the minimum. In your idea of home rule or whatever, what would be the limitation on the devolved institutions to ensure that the safety net was not set so low that something appalling would happen to our fellow citizens in that part of the United Kingdom?

Alun Evans: I could say that that is a very hypothetical question that I choose not to answer, but I will answer it. The whole point of devolution is that there is a democratic mandate for the people within the three parts of the United Kingdom other than England. I am not ducking your question, but what is more likely is that people would seek to increase welfare payments, particularly in Scotland, and that has certain implications in terms of both where you raise money and how you manage it. That is something that people can vote on at the election. If somebody introduced a more degrading system, apart from the media backlash there would no doubt be, there would surely be a political backlash the next time there was an election.

Lord Lester of Herne Hill: Perhaps I have not put it clearly enough. The South African constitution has safeguards built into it about fundamental economic and social rights, as well as civil and political. What I am asking is whether or not you regard your scheme as needing to be buttressed by a similar guarantee of basic rights of citizenship throughout the union.

Alun Evans: Whether you change human rights legislation? I do not think it is a necessary condition for what I am proposing. I suspect it could be something that Scottish politicians would like to introduce.

The Chairman: In a sense my question follows from that. If we were to go down the route of more fiscal autonomy, as you suggest, what do you think the implications would be for other parts of the United Kingdom? A lot of what has happened already has been demand-led. Would your proposals lead to others wanting to leapfrog or do more? Do you see implications for other parts of the United Kingdom?

Alun Evans: Yes, I do, and that is quite healthy if it comes about. Indeed, it plays into what the Government are currently trying to do with the northern powerhouse and elsewhere by devolving more resources and tax-raising powers, one hopes, lower down; but it leads to certain implications and certain responsibilities. One of the risks, or challenges, I foresee for Scotland under home rule, or indeed Wales, Northern Ireland or parts of the United Kingdom if they were given more responsibility, is how they go about raising the money. I am not sure that the Scottish Government would agree with this, but at the moment Scotland gets more per head than the United Kingdom; there were figures out from the Treasury last weekend. If that were equalised, the Scottish Government, to take the Scottish example, would have to make a decision on whether they raised more money from taxation, which would probably have to be from most standard rate taxation because there are not many higher-rate taxpayers in Scotland, or whether they would seek to make it by borrowing money on the open markets, which again would have implications in terms of higher costs of borrowing. That comes back to my point that there is quite a benefit from the overall macroeconomic stability of the UK financial model.

Q97 Lord Lester of Herne Hill: I want to ask you about the territorial implications of what you are suggesting, especially the English problem—that England is so big compared with the rest. What you are advocating, whether you call it federal or home rule, would have implications for England.
Do you envisage a way of solving the problem of the huge size and importance of England compared with the rest of the UK?

Alun Evans: As you rightly suggest, the problem is the disparity in the size of the four component parts of the United Kingdom, which is why a traditional-type federal model is not appropriate for all sorts of reasons. The best answer I can give to your question is that a quid pro quo, as I said, of giving further devolution or home rule to Scotland is that by definition you have less political clout within the United Kingdom Government. I proposed that that should be done by reducing the number of MPs that Scotland has at Westminster, in the same way that previously in Northern Ireland there used to be fewer MPs in recognition of devolution at Stormont.

Personally, I think that is a better solution to the problem you set out, Lord Lester, than the current English votes for English laws procedures, which I think will run into difficulties. I suspect that the SNP would not approve of what I am proposing, but there is a compelling logic in it. If you had independence, you would lose all your seats at Westminster. If you have a much higher level of devolution/home rule, you will lose a proportionate number of seats at Westminster. That seems to me to be defensible logic.

Lord Lester of Herne Hill: Trying to get a coherent framework for the country as a whole, would you be against or in favour of a rolling programme, Spanish style, in which parts of England could opt in to a more devolved system in England when there is a demand in that area to do so, as other witnesses to us have suggested?

Alun Evans: In theory, I would agree with that, without knowing the exact details. But I suspect that the issue for the northern powerhouse, if it works, is to increase the level of devolution to a particular region of England, just as the introduction of more mayors in the London model will do the same. If it can be made to work fiscally and fairly, it seems a perfectly legitimate direction in which to go—and, I suspect, one that people would welcome.

Q98 Lord Norton of Louth: I want to follow up on your point about asymmetry. I was going to ask a normative question but I think it is inherent in what you have just said. Some witnesses said that they see it as a virtue; others say it underpins instability. As we proceed along this route, how do we actually cope with it in terms of the Government and the departments? How well geared are the Government to coping with asymmetry and keeping abreast of it?

Alun Evans: I think that the UK Government are very bad at coping with asymmetry. But one of the challenges and one of the strengths of devolution is that it leads to asymmetry, and that should lead to greater stability because there is greater acceptance of the process within the different parts of the United Kingdom. The challenge for government is to move away from the traditional model, which is London-based or Whitehall-based government, to loosen ties, to celebrate devolution and asymmetry and as a result to move to a much more devolved system of power, which works perfectly well in other countries but has never really worked particularly well in Britain—but it could do.

Lord Norton of Louth: So stability would come from popular acceptance; that would underpin it. So it is then making sure that the structures are in place in the way you have just outlined. How do we get from here to there? How straightforward would it be?

Alun Evans: One of the ways, just picking up what I said in my final remarks, is by ensuring that one gets greater movement within the Civil Service of people working within different organisations. One of the downsides over the last 30 years, while I was in government, particularly in the 20 years after devolution, is that many fewer civil servants move between the two Administrations. Indeed,
there is very little movement between central and local government. If one had a system that encouraged people to move between the systems—obviously we would need to support it in some way—you would get a much greater exchange of expertise and much greater understanding of new approaches. I will give one example to prove it. The Scottish Government have been exceptionally good in the way in which they join up horizontally in terms of policy-making and policy delivery. The UK Government, although we have talked about joined-up government, have been far too departmental and vertically based. There is a lot that we could learn from the way in which the Scottish Government have addressed cost-cutting issues. Introducing that type of approach to the way some UK Government departments analyse policy could be much better for policy-making and delivery in Britain.

Lord Norton of Louth: Were you indicating earlier that that should be within the context of a unified Civil Service?

Alun Evans: Yes, I believe in a unified Civil Service and the benefits that it brings.

Lord Norton of Louth: You indicated your preference for reducing the number of MPs—the Northern Ireland solution—if you go down the route you are indicating, but for the moment we have English votes for English laws. What problems will that create from the point of view of civil servants? Do you envisage any?

Alun Evans: There are quite a lot of problems. I would not say I am an expert on EVEL. It is being introduced quite quickly, because it was introduced as a concept the morning after the referendum rather than being given more considered thought in terms of the reshaping of the constitution. Leaving that to one side, we are already seeing the potential pressures and bottlenecks that will face the Speaker in terms of making decisions. To take the example of Sunday trading in Scotland versus England, an argument could probably be made that any policy in England could theoretically have implications for Scotland. So you will get this problem in every policy area apart from some of the most trivial, non-important ones.

Q99 Baroness Dean of Thornton-le-Fylde: I am going to ask you a question that you could take all morning to answer, but please do not. You might want to follow up afterwards in writing. Because of your background and your experience, with the extension of the Scotland Bill and the Wales Bill, in your view how will Government departments have to adapt and change? Will the Scotland Office and the Wales Office also require change?

Alun Evans: As I said in reference to Lord Norton’s question, probably the days of individual departments for Scotland, Wales, Northern Ireland and the Cabinet Office have passed. I would be happy to follow up in writing. The more important issue is to get a different culture within UK Government departments, to recognise and build on what has been achieved in the devolution model rather than somehow, if not fighting against it, being slightly grudging in celebrating what goes on. That would be a good thing.

Baroness Dean of Thornton-le-Fylde: It would be interesting to get your view on what changes would be needed.

Alun Evans: I am happy to follow up if you would find that useful.

The Chairman: Thank you very much. I am sorry that we are short of time this morning, but that was very interesting. If you would follow up, we would be very grateful.

Alun Evans: Thank you for your time. I enjoyed it.
1. This Memorandum is subsequent to my evidence to the Committee on 18 November 2015 and addresses the future of the three territorial departments covering Scotland, Wales and Northern Ireland; and associated issues.

2. There are three territorial departments of the United Kingdom Government: The Scotland Office (formerly the Scottish Office - established in 1885), the Wales Office (formerly the Welsh Office - established in 1965) and the Northern Ireland Office established in 1924. These three departments were originally established to transact the large amount of government business when the three territories were directly administered from London. The substantial changes that have been made since 1997, following the devolution settlement, have not yet been mirrored in Whitehall. Devolution has presented a challenge to Cabinet government at Westminster and the organisation of Whitehall, which has been only partially been addressed in machinery of government changes since 1997.

3. Despite substantial devolution of powers and budgets to the administrations in Belfast, Cardiff and Edinburgh, there remain three Cabinet-level Secretary of State posts for Northern Ireland Scotland and Wales. (I have discussed elsewhere the related issue of the size of the Cabinet33) Each Secretary of State has a seat at Cabinet. Each department also has at least one junior Minister (the Wales Office has two), so there are eight Ministers at Westminster for Departments whose main business has been devolved away from London. That includes the Advocate General for Scotland whose Office of the Advocate General (the UK's Government department advising on Scots Law) also comes under the budget of the Scotland Office.

4. The Northern Ireland Office is headed by a UK civil servant of Permanent Secretary rank, reporting direct to the Cabinet Secretary, while the Scotland Office and the Wales Office is each headed by a UK civil servant at Director level and report to a second Permanent Secretary, the Head of the UK Governance Group in the Cabinet Office. So the three territorial departments are not managed in a consistent fashion.

5. As well as the work of the three territorial departments of the UK Government, there are substantial other parts of the UK Government which are based in Scotland - in particular some of the major operational functions. For example the MoD, DWP, HRMC and DFID all have large numbers of UK civil servants based north of the border. This includes both those parts of the UK Government which serve the Scottish population directly, such as the network of DWP Jobcentres; and parts of the UK Government that have been relocated to Scotland (e.g. parts of DFID). Indeed it is little known fact that the UK Government has more civil servants based in Scotland, than does the Scottish Government.34 There is, however, very little UK government co-ordinated action to manage this activity or brand it in a unified way.

6. In addition, at present, there is great deal of activity to devolve powers to the regions within England under the Northern Powerhouse initiative. While the powers and budgets involved range across the responsibilities of several departments, formal responsibility for co-ordination rests with the Minister for the Northern Powerhouse - a Parliamentary Under Secretary of State in DCLG - while financial oversight is provided by a Minister of the same rank in the Treasury.

33 Alun Evans: "Want a more streamlined and effective Government? Then cut the Cabinet down to size": The Independent - Friday 24 April 2015
34 2011 figures
7. The current Chancellor of the Exchequer, in addition to his Treasury role, is now also the first Secretary of State, making clear his position as de-facto second in command to the Prime Minister. The Chancellor is undoubtedly the UK Cabinet minister with overall responsibility for financial devolution to the regions of England and, by extension, for further devolution to Northern Ireland, Scotland and Wales.

8. I believe that there is also, in principle, a strong case for strategic co-ordination of policy for the nations and regions of the UK to be handled by a senior Cabinet Minister - although not necessarily by the Chancellor of the Exchequer. There is also a case for that Cabinet post to take on responsibility for devolution to the English regions as well as the current responsibilities of the Scotland, Wales and Northern Ireland offices. Such a Cabinet post - Secretary of State for the Nations and regions of the United Kingdom - would, by definition, be a very senior post and the obvious choice to chair major Cabinet Committees, certainly in the sphere of domestic policy and legislation relevant to the Nations and regions of the UK.

9. The Cabinet Minister with oversight of the three territorial departments should also take on responsibility for oversight of the constitution, including issues such as reducing the number of Scottish MPs at Westminster, EVEL or a possible English Grand Committee - as well as being Secretary of State for the Nations and regions of the United Kingdom. Determining which bills are EVEL may not, of course, be simple and will almost certainly not be free from contention. Opposition parties may seek to challenge the Government’s view that a particular piece of legislation is EVEL. In these circumstances the House of Commons (rather than the Government of the day) would need to identify a system for adjudicating in such cases. The Secretary of State for the Nations and regions would be responsible for providing the Government’s view on whether a Bill fitted the EVEL criteria or not.

10. Incidentally, bringing these functions together under one single cabinet post could also absorb the little-understood and largely ceremonial posts such as Chancellor of the Duchy of Lancaster, Lord Privy Seal and Lord President of the Council posts currently held by the Minister in charge of the Cabinet Office and the leaders of the House of Lords and House of Commons respectively. (The new post could also take on responsibility for relations with the Channel Islands and the Isle of Man - which currently lie with the Ministry of Justice - and are ripe for modernisation.)

11. Bringing responsibility for territorial departments and regional policy under a single senior post in the Cabinet would streamline arrangements which currently involve four Cabinet Ministers and four departments, would improve coherence and coordination of government policy and help to reduce the size of Cabinet and Whitehall. Such a move would also contribute to the current target of reducing the cost of central Government by between 25% and 40% over the Spending Review period. It could also provide the impetus and mechanism for much needed coordination of UK Government activity in Scotland. It would bring political weight from the Westminster government to relationships with the devolved administrations. I believe it would lead to more effective Cabinet government and governance.

December 2015
Introduction

1. The Federal Trust is a charity for the purposes of education and research. It is concerned with interconnections between different levels of governance, from local to global. We welcome the present inquiry by the House of Lords Select Committee on the Constitution. It offers the possibility of exploring how authority is distributed between different governmental tiers within the UK, how the balance between them is changing, and what are the implications of these changes.

2. Since the late 1990s, the introduction and expansion of devolution to parts of the United Kingdom (UK) has seen the UK increasingly take on some of the features associated with a federal system. The devolved institutions introduced to Wales, Scotland and Northern Ireland (and perhaps Greater London also) resemble in some senses the structures of ‘states’ found within a federal country. Moreover, the Human Rights Act 1998 has some of the quality of a federal Bill of Rights, and the UK Supreme Court (operative since 2009 under the Constitutional Reform Act 2005) has some similarity to a federal constitutional court.

3. But the UK constitution is not yet fully federal in nature, nor is it clear whether it is destined to become so. Most of England, including the bulk of the UK population, has no devolved governance and therefore lacks the equivalent of a ‘state’ tier. Moreover, there is no written constitution, such as would be found in a federal system, to entrench the respective rights of the central and devolved levels. In its place is a principle of parliamentary supremacy, with – in legal theory at least – all other tiers at present ultimately subject to the authority of the Westminster legislature.

4. Nevertheless the pattern of British constitutional development in a partly federalising direction makes federal concepts useful as a tool for analysis of the changing UK polity. Accordingly, the following evidence submission uses a federal perspective as a means of addressing the questions posed by the Committee in its inquiry into the union and devolution.

5. Furthermore, since the idea of a federal UK is gaining increasing support as a possible solution to some of the difficulties of the UK – including the lack of devolution within most of England and uncertainty surrounding the future status of Scotland – it is apt, in a discussion of the condition of the UK constitution, to explore the federal model and its applicability to the UK in greater detail.

Principles underlying the Union and devolution

The Union

1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

6. The key characteristic of a nation state is that its institutions are underpinned and legitimized by a widely, ideally universally accepted sense of shared national identity, based on varying mixtures of shared history, language, culture and economic interests. This general statement admits however a wide variety of history and structures for
individual ‘nation states’. A country such as France, for instance, though often regarded as a nation state, contains within it powerful regional sub-identities that arguably come close to being, or actually are, nationalities in their own rights. The UK for its part came into being through successive combinations, on different terms, of four different nations: England, Wales, Scotland and Ireland (one of which, Ireland, partially left the union nearly a century ago). The national identities making up the UK have remained distinct and have had their own constitutional-administrative expression. In the case of Scotland in particular, specific provision was made at the outset to preserve distinctive institutions such as the legal and educational systems and the established church. Northern Ireland had its own system of devolved government from the 1920s through to the 1970s. The devolved institutions introduced to the UK from the late 1990s, then, though a dramatic and powerful constitutional development, arose from the underlying quality of the UK as a multinational state rather than a unitary, nation state.

7. To return to the general question of the connection between devolution and nation states, there are a number of undoubted ‘nation states’ that are unitary in structure, that is to say they do not allow for an entrenched ‘state’ level of government, between national and local, possessing firm constitutional protection for its status. Unitary nation-states include the aforementioned France, Poland, Portugal, and Sweden. Some states that are more multi-national in character have adopted systems that are partially or fully federal. Among them are Belgium, Canada, and Spain. But the correlation is not precise. Some of the most well-known federal systems exist in countries that seem to fit the traditional nation-state model, such as the United States, Australia, and Germany (though once again, there are significant sub groups in each, including aboriginal peoples and powerful regional sub-identities verging on the national, such as that prevailing in Bavaria in Germany). If federalism is compatible with the maintenance of the unity of these nation states, then devolution – which implies a less definite separation of power from the centre – is surely compatible with nation-statehood. Moreover, it is surely possible to reconcile federalism with multi-national statehood. Indeed there are cases of countries that, to better reflect their multinational quality, have moved increasingly in a federal direction, as with Spain and Belgium from the 1970s. The UK is seemingly following a similar path, though how far along this route it can and will progress remains to be seen.

2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

8. The proposition that there are any ‘principles’ underlying the Union is open to question. Even if there are such ‘principles’, their precise nature is likely to be contested. From a philosophical perspective, the idea of a state resting in principles does not fit comfortably with UK or English intellectual traditions. From a practical point of view, it is not clear whether there exists anywhere a statement of such principles that could command consensus. In a federal system, one ‘principle’ might be that of a sharing of power between different tiers, and that different authorities should be located at their appropriate level. The arrangements of such a polity would be included in a written constitution, which might contain statements of fundamental systemic principles, perhaps in a declaratory preamble. The UK has no such text, which could, if it existed, provide the opportunity for a definition of its ‘key principles’. The Treaty and Acts of
Union, though retaining legal validity, are surely anachronistic as sources of principle, with their focus on protecting against religious and security threats from the continental mainland. Any attempt to infer such principles in the contemporary era is therefore exceptionally vulnerable to the charge of being arbitrary and partial.

Devolution

5. On what principles are the UK's devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

9. Once again it is difficult to identify a coherent set of principles that might command wide assent. Perhaps in the case of Northern Ireland they are contained in the Belfast (or 'Good Friday') Agreement of 1998 and St. Andrew’s Agreement of 2006. In Scotland, the Claim of Right of 1989, the Vow of 2014 and the report of the Smith Commission of the same year possibly provide core principles. In Wales the task of identifying principles is more difficult; possibly the St. David’s Day Agreement of 2015 is relevant in this context. It is important to note that, even if there are discernable principles, they differ in important ways in each case. For instance, the Northern Ireland system is the outgrowth of a peace process with an important international dimension. Scottish devolution has, in the Claim of Right, an assertion of sovereignty on the part of the Scottish people, and the Vow seeks to assert that the Scottish Parliament – in an apparent challenge to the doctrine of parliamentary sovereignty – has a permanent existence. The asymmetrical nature of devolution is matched by an asymmetrical set of principles.

6. Are there applicable examples from other countries with multi-level governance structures?

10. As already discussed, federal systems, numerous examples of which exist worldwide, offer a model whereby the dispersal of power can be combined with clearer principles that might apply to all levels of government. These principles could be stated explicitly in, or inferred from, the constitutional text. Moreover, under this approach, the written constitution and the values it contains are the supreme legal entity within the system, which the judiciary is responsible for upholding, giving them real force.

Implementation

7. How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

11. At the risk of repetition, the surest way of entrenching values, whatever they may be, would be through the establishment of a federal, written constitution. A process that could help reach this outcome and discern the clear set of principles that is at present lacking is a constitutional convention of some kind. Ideally it would take place outside Parliament and beyond Whitehall, and involve a wide range of political parties, other interested groups, and members of the public, seeking as far as possible to reach a
consensus about what are the appropriate constitutional arrangements for the UK and what should be the values that underpin them.

Practical steps to strengthen the Union

10. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

12. In a sense, asymmetry has always been inherent in the Union, whether it has been devolved or otherwise. The primary source of this quality is the relative size and related prominence of England. This characteristic, which has become more pronounced over the history of the union, means that asymmetry is unavoidable. The need to offset the potential dominance of England has in turn prompted further asymmetries, such as special provisions for Scotland in the terms of the union, secretaries of state for Ireland, Scotland and Wales (but not England), and, latterly, uneven devolution. Devolution has now triggered complaints from within England about the lack of institutional expression for England, and encouraged proposals such as English Votes for English Laws (EVEL). EVEL would entail providing MPs elected from constituencies in England with a heightened role in legislation that was deemed to be English-only, since it dealt with matters that were handled by devolved institutions in other parts of the UK and therefore not considered at Westminster.

13. EVEL is intended to respond to the complaint that Members of the UK Parliament from constituencies in devolved areas should not be able to determine decisions about English-only matters that do not directly concern them. However, it is advisable to remember that the ultimate motive for apparently asymmetrical arrangements that some in England may find objectionable is the need to accommodate a unit as large as England within a multi-national state in a way that is acceptable to the other participants.

14. To speculate on the impact of further devolution to the nations, regions and localities of the UK is to enter into vast and uncertain conceptual terrain. One possible outcome of further such dispersal of power is that it may lead to increasing calls for the introduction of a federal structure to provide coherence to the overall system, and establish more clearly both the authorities it is appropriate to devolve, and the competencies that need to remain at the centre in the interests of constitutional and political cohesion.

15. As already suggested, asymmetry is in some senses inherent within the UK. To ‘address’ asymmetry by new constitutional arrangements within the United Kingdom will probably not be to eliminate asymmetry, but to alter the precise way in which it manifests itself. At the moment, the most prominent form of asymmetry is the existence of devolution in Northern Ireland, Wales, and Scotland, but not in most of England (limited devolution has been introduced to Greater London, and shortly to some city-regions in northern England). One proposal to offset this asymmetry in its impact on the UK Parliament is EVEL. Another plan is for devolution within England, for instance, as previously mentioned, to northern city-regions.

16. The Federal Trust believes that most satisfactory way of managing asymmetry, if it can be achieved, would be a fully federal constitution for the UK. It could ensure that every
part of the UK possessed the same rights of national, regional and local autonomy, and was at the same time incorporated into the whole with the same status as its counterparts, perhaps via a federal upper chamber in the UK Parliament. This approach could avoid some of the potential problems of EVEL, which might well alienate the non-English parts of the UK, through giving ‘English’ MPs the ability to destabilise a government that had a parliamentary majority within the UK as a whole, but not in England.

17. The idea of a federal UK has substantial attractions, as is increasingly being recognised. But it would still need to take into account the same basic issue with which all schemes relating to the territorial governance of the UK must contend: the size of England. A federal UK that included England as a single unit would risk English domination, and might in turn be unacceptable to the other participants. Offsetting mechanisms designed to limit English hegemony within the UK might not be palatable to the English. A model that involved incorporating into a federal UK a series of English regions, none of which was large enough to predominate, would seem to be more likely to succeed. Those seeking to follow this path need to establish what all of those regions should be, what powers they should possess, and how to bring them into being as functioning units of democratic governance.

11. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?

18. The current pattern is for the asymmetrical devolution of these policy competencies. Some areas receive more powers than others, while other areas receive none at all. A risk inherent in this approach is that those in possession of powers will use them to pursue a competitive advantage over others. One means of helping to avoid this outcome could be to make the same powers available to all within a federal system, backed up by protocols and mechanisms intended to ensure that authorities are deployed with common interests in mind. The creation of a federal constitution might also provide the opportunity for careful consideration of those powers it was and was not appropriate to exercise below full federal level.

12. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

19. As already discussed, federal models offer a variety of means by which the post-devolution UK might become a more stable polity. They seem to be the best means of handling the asymmetries of the UK constitution, and of establishing a set of principles on which it can rest. Perhaps most importantly, federalism could provide the chance to bind together the different identities that comprise the multi-national UK state. Under federalism, attachment to a nation such as Scotland might sit comfortably alongside a shared UK identity, both of which would be subsumed within a constitutional system that guaranteed the rights of each. It might be possible to avoid the perception of a competition between the UK centre on the one hand and sub-UK autonomy on the other hand.

20. The constitutional convention that would probably be necessary to establish a federal written constitution for the UK might, as well as producing this document, act as a
unifying focus for the UK. It could facilitate a UK-wide debate about the configuration of the system. To some extent a convention might play a public educative role, encouraging greater understanding of both the benefits of a federal system, and the compromises that it necessitates in areas such as redistribution of funds. If a convention was effective in incorporating as broad a range of inputs as possible, it could promote a wider sense of ownership of the written constitution that it produced.

Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

21. A federal UK constitution would necessarily overturn some key traditional concepts associated with the UK constitution. Chief among them is the doctrine of parliamentary sovereignty. It would not be compatible with the existence of a federal constitutional text to which all governmental institutions, even the UK Parliament, were subject, upheld by the judiciary and founded in popular sovereignty. Even Acts of Parliament would be held void if the courts decided that they were incompatible with the constitutional text. The definite abandonment of parliamentary sovereignty would be a major step for the UK. However, it would be in line with certain recent trends in the UK constitution. Various changes in the UK system, including membership of the European Union, the Human Rights Act 1998, and devolution have in different ways served many to question how far the parliamentary sovereignty concept is practically and even legally viable. A complete break, entailed by the adoption of a written federal constitution, would be a confirmation of these already existing perceptions. Moreover, it would bring the UK into line with the practices of nearly every other democracy internationally.

22. As already suggested, the adoption of a federal constitution would necessitate the establishment of a written constitutional text. The introduction of this document would be regarded as a dramatic departure for the UK. As we have noted, it would probably contain within it statements of fundamental principle, a concept to which some strands of English political thought have been resistant. However, we should not overstate the extent to which a written constitution is alien to the UK. It has its own long tradition of constitutive documents, including Magna Carta (first promulgated in 1215) and the Bill of Rights (1689). These texts have in turn wielded substantial influence on written constitutions around the world, some of which the UK had a direct hand in drafting. Furthermore, federalism itself is to a substantial extent an outgrowth of political thought originating in the UK. A variety of federal schemes, pursued within states and at supranational level, have also derived important inspiration from ideas emanating from within this country.

23. Under a federal system, there would probably be a need to bring about an end to the House of Lords in its current form. The second chamber could be reconfigured to provide territorial representation for the different ‘states’ making up the federal UK. Members might be directly elected, or it might compose the governments of the states of the UK. Numerous efforts to achieve a full overhaul of the composition of the House of Lords in more than a century since the Parliament Act 1911 have proved unsuccessful (though numerous changes in its composition have taken place). For those who deem fuller reform of the House of Lords desirable, a more effective approach to attaining it might be to treat Lords reform as part of a wider process of constructing a federal constitution, giving it a clearer purpose and perhaps greater momentum.
24. As is plain, a federal UK would amount to a significant change in our system of government. It would need to overturn powerful constitutional preconceptions and institutions. Yet it would nonetheless channel important pre-existing tendencies, including the multinational character of the UK, and the patterns already detectable in UK constitutional development in the era of devolution. Furthermore, some of the challenges that the UK system currently faces, especially the possibility of Scottish exit from the union, may create a powerful imperative to bring about a federal system, regardless of the challenges that this effort of constitution-building might entail. We recommend that the Committee give serious consideration to this potential future for the Union.

28 September 2015
Federal Trust for Education and Research—Oral evidence (QQ 68-82)

Evidence Session No. 4  Heard in Public  Questions 68 - 82

WEDNESDAY 4 NOVEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Cullen of Whitekirk
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Brendan Donnelly, Director of the Federal Trust for Education and Research, and Alexandra Runswick, Director of Unlock Democracy

Q68 The Chairman: I do not know how much our second guests heard of the earlier exchanges, but I am very glad that you were sitting there, because you can either say, “Yes, I agree”, or, “No, I disagree”, and give us concise answers on some of the points that they have covered. But we are very glad to welcome Alexandra Runswick, director of Unlock Democracy, and Mr Brendan Donnelly, director of the Federal Trust for Education and Research. We thank you, also, for the information that we already have from you and about you. I will start the questioning straightaway, by reference to the pamphlet Devolution in England that came from the Federal Trust, and ask whether you believe some form of legislative devolution to or within England is needed for a stable constitutional settlement.

Alexandra Runswick: Yes, it is. There is a real problem within England in terms of the devolution settlement, in that people particularly in areas outside London, like Yorkshire, Cumbria, Merseyside and Manchester, feel that being governed by London is far too remote and that they do not have enough say in the decisions that are taken about their communities, or indeed in how those communities are defined. When you are trying to maintain a union and you have part of that union that dominates to the extent that England does within the United Kingdom, you need to look very seriously at decentralising that main unit.

The Chairman: Do you agree, Mr Donnelly?

Brendan Donnelly: Yes, I would, and what Mr Osborne is doing is an attempt to respond to his sense of that desire, which has been accelerated and reinforced by devolution to Scotland, Wales and Northern Ireland. One other element is that within Scotland—and here I speak with some hesitation, given the distinguished Scottish Peers sitting around the table—it does seem to me, to
judge from the rhetoric of the SNP, that they at least believe that in Scotland there is a sense of the United Kingdom being excessively centralised or an English superstate, something that is very much focused in an unhealthy way on Westminster, Whitehall and London. Devolution and the willingness to look in a fairly radical way at the internal governance of our United Kingdom might be a way of reassuring Scotland that indeed we are willing to live in a United Kingdom where there are four related demoi, all of them striving to make it as easy as possible for the other demoi to live in harmony with them. I would add that point, if I may.

The Chairman: What is interesting about Scotland, however, is that devolution to Scotland has taken place, but devolution within Scotland is not happening. Indeed, centralisation is taking place. I will not pursue the question further, because we will come on to other aspects of it in future questions, so I will move straight on.

Q69 Lord Norton of Louth: Coming on to the proposal for—or the implementation of—English votes for English laws, how significant do you see this in relation to the union? Is it a means of stability? Will it address concerns about the West Lothian question?

Brendan Donnelly: I will answer that, if I may. Particularly in the short term, it will make very little difference. There is a symbolically negative aspect to it that underlies this not so much at the political level but often when it is raised in popular discourse, if you like, in England—there is a sense that devolution has been unfairly or unreasonably generous to Scotland and this is a balance that needs to be redressed. That is an unhelpful attitude of “us and them”, which is not a very good background against which to look at the questions we are considering today, which I reformulated using your phrase as, “How do the nations live more easily together?” More political capital has been invested in it than was justified by the objective circumstances.

Alexandra Runswick: There is a risk that English votes for English laws could make the situation worse, in the sense that there is going to be a process by which Bills are going to have to be determined and certified as to whether or not they are England-only or not. That could become a very political and politicised process. For people who feel strongly about their English identity, and who feel they are not able to express their English identity and that there is this unfairness, it will become very contentious. You will have enormous arguments about whether or not a particular clause is or is not England-only. Rather than giving people a sense that they have more control over what is being done, it could just make the whole situation worse.

Lord Norton of Louth: Will the dispute about the provisions be very much within this place, to some extent? Robert Hazell made the point that he did not think people outside were really going to be that knowledgeable about which Bills are, say, certified as English-only law provisions and that—this was Mr Donnelly’s opening point—this is not so much to do with the detail but the broader perception that there is a problem. If people felt, “Yes, there are English votes for English laws”, that would create some degree of stability or, if not, at least stop the concerns that people south of the border have been having.

Alexandra Runswick: Members of the public are not going to be scrutinising each and every certification decision, but there are going to be some Bills that are politically contentious. There will inevitably be some Bills people instinctively feel should be England-only but are deemed not to be—probably for very good reasons, but for reasons they may not necessarily understand. It is not clear to what extent there will be reasons given; at the moment, it looks like reasons will not be given for why a Bill is certified in a particular way. Equally, you could have MPs in particular areas campaigning on a particular issue. It could very quickly become a highly politicised issue as to whether or not something is or is not England-only. Nothing about the English votes for English laws
process is simple—ie how you determine it and make it work in practice. The idea is quite simple and quite appealing, but nothing about how it works is. It will not address people’s sense that their English identity is not being reflected enough or their sense that they do not have enough control over the decisions that are being taken.

**Lord Cullen of Whitekirk**: Is it possible it might even have an effect on the drafting of legislation in order to try to circumvent the problem before it is reached?

**Alexandra Runswick**: Yes, it will.

**Brendan Donnelly**: That would be an ironic outcome in some ways—but a highly predictable one.

**Lord Cullen of Whitekirk**: It is a little like our natural situation.

**Q70 Lord Morgan**: I recall that Metternich famously described Italy as a “geographical expression”. The problem here is how to define or create England as something rather more than a geographical expression, which is very difficult. Would regional devolution be a realistic possibility? I live in West Oxfordshire. I ask neighbours what they think about regional devolution. The answer is either “Oxfordshire” or, “I do not understand your question”. It is a widespread problem. What do you feel about regional devolution, given the famous rejection of it in the north-east? Is it even worth thinking about?

**Brendan Donnelly**: If I may, because I think that was more directed to me, it is certainly worth thinking about. The fact that some of your neighbours say they do not know what you are talking about goes back to point that was made earlier—that public discourse can alter attitudes. I would not look back at the events of the north-east referendum as being necessarily decisive for possibilities now. The Scottish situation has moved on very radically since then. The north-east referendum was something on which the Government of the day were clearly divided and they become less enthusiastic as the campaign went on. It was not something that was part of a general scheme. It was not something that was preceded by a proper public debate on the subject.

I would be the last to deny that there are difficulties about regional identities and regional boundaries associated with regionalism in the United Kingdom. However, if you take the view, as I do, that a more federal structure for the United Kingdom would make it easier for the nations to live together and if you take the view, as I do, that England as a unity would—perhaps we can come back to refinements on this—almost certainly be a destabilising element because of its size in a federalising system, you are thrown back on the question of regional arrangements. It will be a question of whether there is a political will to think about that seriously. If there is a political will for it, I am far from convinced the administrative or objective difficulties are insurmountable.

**Q71 Lord Lester of Herne Hill**: Yesterday, the Minister, Baroness Chisholm of Owlpen, said something that could be the motto for the work of this Committee at the moment. She said that the Government’s immediate focus “must be on implementing a fair and balanced constitutional settlement that works for all the people of the United Kingdom”. That, apparently, is the Government’s objective. Let us assume we all share that objective. Could we learn from Spain, for example, in answering that question, using a rolling system of opting in, in which you could carve up England into units much as the Allies carved up Germany after the Second World War into Länder? You could then have a process of opting in or opting out in order to try to help produce a “fair and balanced constitutional settlement that works for all the people of the United Kingdom”.

**Alexandra Runswick**: That is certainly one model. To step back a little, if you want a fair and balanced settlement for the people of the United Kingdom, you do have to involve the people of
the United Kingdom. One of the big problems we have had with the referendum that has already been mentioned or the current proposals going through Parliament is that approaches to decentralisation and devolution within England have been top down. It has been a Government deciding (a) what the regional unit is and (b) what powers that regional unit then gets. That has been one of the fundamental problems, particularly with devolution within England. As we have already explored in the earlier session and a little today, the idea of Englishness is quite a contested identity. The idea of what a region is is quite contested. We need to have the public discourse—the space in which to explore some of that.

I have been working on issues around democracy and constitutional reform for over 10 years. Whenever I speak at a public meeting around these kinds of issues, someone inevitably gets up and starts talking about the reorganisation of local government in the 1970s. They talk about how they used to have a community and they knew what it was and they knew what their identity was, but that they have not had it since then. I am not trying to make a comment specifically about those structures, but we are talking about people’s sense of place and their identity as well as powers for government units. You need to make sure that is incorporated and addressed in any proposals we bring forward. Broadly, however, the model you discussed—we published a paper jointly with the Federal Trust around an English devolution enabling Act, where people could pull down from a menu of powers at different rates—is one viable way forward, yes.

Brendan Donnelly: In the case of Germany, it was not opting in; it was an imposed system—and rightly so, in my view. An interesting parallel with Germany is that by no means were all the Länder historic regional entities. There were enough of them in Bavaria, Hamburg, Berlin and Bremen to be able to say these were building blocks. The rest of them were, as it were, filled in. Something similar might be conceivable in this country, in the sense that we do have some building blocks, it seems to me: London, the south-east, Yorkshire, Wales, Scotland and possibly the south-west. As to the question of a programme of rolling acceptance of a menu, yes, that could indeed work. I have two points, however: it would have to be up to the regions themselves. It would not be decided centrally whether they were able to do it. The tendency of Spain has been towards more and more drawing down of this option. It would probably be a phased move towards a federal system, not something that was likely to be arrested halfway, as a halfway house.

Q72 The Chairman: Do you agree that devolution to Scotland was essentially demand-led and, thereby, it enhanced the asymmetry that already existed in the United Kingdom through geography, demography, economics, culture, history and so on, and did not take account of whether or not it was beneficial to the union itself to approach it in this way? If you agree with that, do you not see the dangers of the approach you are outlining within England?

Brendan Donnelly: It was demand-led. However, it was not inevitable that those who were involved in this process should have ignored the implications for the rest of the United Kingdom. They did, to some extent, but one of my general thoughts would be that the United Kingdom, particularly the central Government of the United Kingdom, has rather tended to think of Scotland, Wales and Northern Ireland as being English problems. The thought is, “We will solve this problem as an English problem. There is unhappiness in Scotland. We will give Scotland what we think Scotland wants and then the problem will be solved”. In fact, the interactions within the union are more complex than that, it seems to me. I see the danger you are referring to, but the dangers of not looking again in quite a radical way at how our United Kingdom is constituted are even greater—and may well be the occasion of putting Scotland over the edge of going for independence.
The Chairman: Yes, I was not making that broader point. I was making the point about England becoming an extraordinary mixture of diverging and differing local authorities, local organisations and so on. Where would it stop? How would it relate to the rest of England, England as a whole and the United Kingdom?

Brendan Donnelly: I made the point in replying to Lord Lester that the Spanish model suggests that regions converge towards similarity—ie that there would be symmetry within England. If you think a transitional period was a necessary price to pay for that, it would be entirely sustainable.

Alexandra Runswick: If you want to look at it from a union point of view, you need to look at what people identify with. The union is a very abstract concept. We need to look at what you are asking people to support and identify with. In the earlier session, John Curtice mentioned that you could have a whole series of history programmes to get people feeling engaged with the union. That is one approach that could be taken. You could also look at the reasons why people feel alienated and disaffected with the British state more generally. A lot of people feel that the way they vote does not match the way seats are allocated in Parliament. There are lots of different reasons why people might feel they do not have a close relationship with the British state in the way that they have a local identity and a local affiliation. They are issues that need to be addressed together, but you cannot simply say, “Until we resolve how people feel about Britishness, we cannot let people have more say over their affairs locally”.

Q73 Baroness Taylor of Bolton: This is interesting. As someone who lives in Yorkshire, there is certainly a feeling of a Yorkshire identity. That does not take us very far in terms of what kind of devolution or decentralisation there should be there. There is certainly a lot of interest in northern cities about the current Government’s proposals for a northern powerhouse, city devolution and things of that kind in the current legislation. I am wondering what you think of that. How does this fit into your English devolution enabling Act that you touched on earlier, which you said would be demand-led? We have talked about having a “fair and balanced” constitution. One of the concerns is that there is no end point—there is nothing that looks as though it will bring that stability. Without that stability, it is difficult to reinforce the meaning of “the union” or the country as a whole. Do you see an ongoing process of demand-led leapfrogging: “They have this; we want that”? I do not see the end product yet in terms of stability from what you are suggesting with an enabling Bill.

Alexandra Runswick: My first point would be the point that Brendan made about the model of Spain: although there were differences initially, you can get to the point where there is more convergence. England historically has always had different units of government and different powers. It has never been an equal system of local government. I fully accept that this is a messy model, but that is not necessarily different either from where we have been or a deal-breaking problem. We have to accept that, if there is to be a United Kingdom, England is going to be a bigger part of that union than the other parts of it—and you have to find ways of decentralising power within that. What works for one community is not going to work for another.

Obviously, you have talked about the debates going on in Yorkshire at the moment. There are enormous numbers of different ideas around different models for Yorkshire at the moment. However, the debates going on in Yorkshire are completely different from the debates going on in Sussex, Cornwall or other parts of the country. Yes, it is messy. Yes, it is a journey. Partly, however, for me this is about having the public discourse. Particularly within England, there has not been the same kind of public discourse around how we are governed that there has been with Scotland and the independence referendum and even also within Wales and Northern Ireland. They have had
devolution settlements. There has been a process; there has been something for people to talk about and issues to explore, which we have not had in England. There has been some discussion around English votes for English laws, but there has been much less around what kinds of models of devolution people want. There is not one simple answer that will take us to a neat system. We probably have to accept that we are going to have a messy constitution and we are going to have to live with that. However, it is how we involve the public and how we communicate it that is essential to making that stability.

Brendan Donnelly: It seems to me that within the English discussion of constitutional issues there is always a tension between two things, one of which is wanting an end point and the other the horror of systematic thinking, because that is felt to be inadequate for the complications of life and reality and our chequered history. The model I was putting forward, which is a more overtly federal one, is perhaps a little less open to that criticism, but it is open to the opposite criticism, which is that it is trying to shoehorn people into boxes, whereas our constitutional experience and perhaps preference has been of a more evolutionary nature.

Baroness Taylor of Bolton: Can I follow up on that? How do you envisage getting that connection and the public involvement you were talking about as being absent?

Alexandra Runswick: There are lots of different ways you can do it. You need to use deliberative democracy. You can do that through a constitutional convention. You can do that through smaller events locally. There are already lots of citizen-led projects going on. You have already seen the creation of the Northern Citizens Convention. There are lots of different campaigns in different parts of the country for specific models. There are pilots being run at the moment in Sheffield and Southampton, I think.

Baroness Taylor of Bolton: It is on the south coast somewhere, yes.

Alexandra Runswick: Those pilots are around using a more deliberative citizens’ assembly model. Fundamentally, you need a deliberative model that allows people to hear different points of view and explore ideas. The experience of the Scottish referendum was touched on in the earlier session. That was a two-year period where a lot of that work was done, not necessarily by the referendum campaigns but by lots of organisations in Scotland that were facilitating conversations around how they thought they should be governed and the kind of Scotland people wanted to see. It is perfectly possible to do. People in England are having those conversations, but not with the language that is necessarily used in this building around devolution and decentralisation—but certainly about the powers they want and the say they want in their community. Those conversations are already going on. There needs to be more of a public discourse with politicians taking the lead, articulating views and allowing people to explore those identities, rather than being quite politically scared of Englishness as an identity, as they have been historically.

Q74 Lord Lester of Herne Hill: I love the danger of systematic thinking. Mr Donnelly, you are from the Federal Trust. The Federal Trust suggests that the idea of a federal UK has substantial attractions. Is one of the problems that the f-word—ie “federal”—is completely misunderstood by most people, quite apart from the prejudice against systematic thinking? Most people seem to think that “federal” means a concentration of power at the centre, for example, or centrifugal forces that break up the country. What can you do to educate the British people in systematic thinking about what federalism means and does not mean?

Brendan Donnelly: Obviously, the Federal Trust does its best. I looked up “federalism” in a Longman dictionary recently. Meaning one was “a centralising political philosophy” and meaning two was “a decentralising political philosophy”. Of course, both of them are wrong. The point is
that it is a philosophy of allocation. Some things are centralised; some things are decentralised. It is the agreement and recognition of where the boundaries are that is quite central.

For what it is worth, the word “federal” has suffered from another problem, which is its use in the European context. Most people who want a federal Europe, as I do, want a more integrated Europe—and that is a controversial issue in this country. People assume that the term “federal” specifically applies to the European context, where it may well be, at some level, a centralising and integrative phenomenon. It is more complicated than that, but I can understand why people come to that conclusion. I have been rather heartened by the way in which, it seems to me, in UK discourse the term “federal” is becoming halfway respectable, in that the most unlikely people talk about a “federal Britain”. The Society of Conservative Lawyers recently produced something called *Our Quasi-Federal Kingdom*. I have my doubts about whether you can have a quasi-federal system, because it seems to me that you either have a federal system or a non-federal system, but that is another issue. It was very interesting, however, that they seemed to think that it was something that rational men and women could talk about. The Federal Trust would certainly be an enthusiastic advocate of talking about federalism. One of the things we are debating is whether you can have a federal United Kingdom with England as a single unit. There will be people within the Federal Trust who have different views on that. We are looking to contribute to the debate and refine the debate rather than be a campaigning organisation.

**Lord Lester of Herne Hill**: You mentioned Europe. Yesterday, in a debate, Lord Hannay pointed to the dangers that the European referendum will present in relation to devolution. He said in the debate yesterday evening, “The consequences ... could be dramatic, and ... irreversible”. He tried to explain how going one way would lead, almost inevitably, to Scottish independence and would also lead to very serious problems in north and south Ireland as well as Wales. Is that something that is within your concern?

**Brendan Donnelly**: Both personally and with the Federal Trust, yes—although I must stress that the Federal Trust is not a campaigning organisation. We had an interesting meeting with Irish colleagues in June. In many ways, they were very disturbed about the prospect of England leaving the European Union in a way that goes beyond the question of economic relations. They think it would be profoundly destabilising for the island of Ireland.

**Q75 The Chairman**: I am glad you mentioned England, because that has always been the objection of people who think that it is a non-starter in the United Kingdom. England, being 85% of the United Kingdom’s population, would be too dominant. As one of our witnesses pointed out to us, the Prime Minister of England in a federal United Kingdom would be more powerful than the Prime Minister of the UK and would have a larger budget. How is this achievable? In what way would you break down England to achieve it? Would that not run counter to the demand-led approach that was talked about for England?

**Brendan Donnelly**: England would dominate a UK federation if it were a single unit. We have been talking about the possibilities of regional units along the lines of the German Länder—that being the model I would personally prefer. There are difficulties about that, but I have suggested that, if the conclusion was that the United Kingdom would be more easily held together in a federal system and it was probably impossible to have a federal system with England as a single unit, you are forced back on to question of regionalisation. If you do not accept this last link in the argument—believing that regionalisation is impossible—you would then look at safeguards and vetoes within the federal system for the other components apart from England. These would have to be fairly explicit. If there were decisions taken at the federal level about which the four federal Parliaments...
were consulted—assuming England had a Parliament—you would have to have disproportionate rights for the smaller partners. Whether that is something that would be acceptable to English opinion is also a good question.

**The Chairman**: You are treading into the territory where the word “quasi” attached to “federal” becomes more relevant. I will not ask you to answer that, though.

**Q76 Lord Morgan**: I would like to ask a slightly different question. If you look at many of the federations in the world, and particularly that of the US, what makes them buoyant and stable is the role of the Supreme Court and the courts in general. In a way, this is true of France, in view of the recent constitutional changes they have had. Would one important aspect of having a federal Britain be making our Supreme Court something that people like Lord Neuberger and others have resisted hitherto: a constitutional court able to adjudicate on boundaries and balance, or what the French call *a cour de cassation*?

**Brendan Donnelly**: I used the phrase slightly flippantly, but I honestly meant no disrespect in talking about the horror of systematic thinking. It is certainly true that federal systems are more codified than our British constitutional system is. That has advantages and disadvantages. If you are looking at that from the perspective of our existing system, somebody who occupies a prominent role within the existing system is more likely to be aware of the problems of a radically different system than someone who is not playing a leading role in the present system. I do not baulk at the idea that judges and Supreme Courts can play a more significant role in our political culture under a more federal system. That does not seem to be an objection—and it might, perhaps, be an advantage.

**Q77 Baroness Taylor of Bolton**: I wanted to go back to what you were saying about regionalism in a federal situation. When you were talking about it, we were talking about Scotland, Wales and Northern Ireland. I wonder whether you think we would have to have some regionalism within Scotland or within Wales, because there are very significant differences within those countries as well.

**Brendan Donnelly**: It would be impertinent of me to give too definite an answer to this with Lord Morgan here, but I would not have thought that there would be a case for division in Wales. There might be in Scotland, but that would be something where—I come back to Alexandra’s point—the demand led within Scotland would be able to articulate itself without too much difficulty if there were a serious discussion at the political and civil society level about radical constitutional change.

**Q78 Lord Brennan**: Would a federal system in the United Kingdom, if it came about at present, depend upon the agreement of each of the devolved Governments? That is question one. Question two is this. Surely, such a system would require a written constitution. Who is going to produce it?

**Brendan Donnelly**: I would be surprised if there were any problem about getting the agreement for a federalised England from any of the devolved Administrations. I cannot see what problems it would create for them and it might even be beneficial for them.

On the question of a written constitution, in the submission we linked this to a written constitution. That is, as it were, orthodox thinking among people who regard themselves as federalists. I am, however, thinking about it, struck by the Scottish experience, whereby Scotland now has a Parliament, which is very unlikely to disappear in any foreseeable future. It has become, in the jargon of the British constitution, almost a constitutional convention that there should be a Scottish
Parliament. Perhaps it might be possible, particularly if you were thinking about a transitional arrangement of a menu of options, to have a federalising system—more than quasi, perhaps three-quarters federal—brought into being by a simple Act. In the long term, entrenchment is one of the advantages of federalism, and a written constitution is a way to bring that about. For other reasons, I personally favour a written constitution. I am wondering, as I think about it, whether it is absolutely essential, particularly at the beginning of this federalising process, to have a written constitution, with all of the other sets of problems that provokes, in addition to the problems of regional boundaries.

**Lord Maclennan of Rogart**: Arising from that, it seems that Scotland is being over-centralised. To give an example, we now have one police force. Policing in my former constituency and in the central parts of Glasgow on a Saturday night are very different. I would have thought that we should have decentralisation within devolution. I would be interested to hear your views about that.

**Alexandra Runswick**: There certainly is a case for looking at devolution in Scotland beyond the Scottish Parliament. Obviously, there is a discussion around the powers the Parliament should have, but I know many campaigners within Scotland are looking not just at the powers of the Parliament but of councils and bodies beyond that. It is about making sure that devolution does not stop with the Scottish Parliament. I am afraid I cannot comment on the issue of policing.

**Brendan Donnelly**: In general, I am in favour of decentralisation. The question in Scotland as to whether the devolved assembly has used its powers in too centralising a way is not, it seems to me, a question that goes to the heart of the stability of the union of the United Kingdom. It is a pity and it is a legitimate subject of controversy, but I do not think there are many people who say this problem undermines the contribution of devolution to stabilising the union.

**Q79 Lord Maclennan of Rogart**: The Bingham Centre made a proposal to us that we should have a charter of the union, which seems attractive, setting out the principles and maybe the structure of the union. How could we get the public involved in such a discussion? If the charter is to be something that binds the union together, it needs to be supported and understood by the general public. Perhaps a convention would be a way of doing that, but, if so, what structure would that have to have?

**Alexandra Runswick**: First, you want to make sure the public have the chance to influence whatever this charter is going to be, whether that is helping to draft it initially or not. One of the speakers in the morning session was talking about public involvement and the importance of what the motivating factor is for the public. That is really key. If you want the public to be engaged with these kinds of issues, there has to be a sense that their involvement means something and that there is going to be an outcome from what they do. Obviously, we cannot have each individual member of the country drafting their own charter, as we would have many millions of charters of the union and that obviously would not work. However, there are processes by which we can bring people together to have those discussions. It has to be clear from the outset how and where the public can have a say on the charter, rather than it simply being something that might be drafted by parliamentarians or lawyers and then potentially put to a referendum. There needs to be some sense the public can have a say.

I would recommend, as I said earlier, doing that through deliberative mechanisms. Whether you call that a constitutional convention or a citizens’ assembly or whether you have smaller focus groups, there are lots of lessons we can learn from the way more participatory democracy has been used in other countries in order to have those conversations. It is perfectly possible to do. It is not
something that has been done particularly in the United Kingdom yet. It was with the Northern Ireland Bill of Rights process, but otherwise it has not been used at a governmental level very much.

People say that the big thing with the independence referendum in Scotland was not just that they had the two-year campaign with people doing that deliberative work on the ground but that people also knew that how they voted mattered—that it was going to have an impact. Far too often with government processes, the public view is, “The Government have already decided that x or y will happen, so it does not matter if I get involved”. If what we want is meaningful public engagement in constitutional processes, we have to think about those motivating factors and how it is that we are allowing the public to have their say.

Brendan Donnelly: The role of politicians in generating public interest was rightly stressed in the previous session. It is very crucial on constitutional issues. There is an interaction, it seems, with the things Alexandra was talking about, which I am all in favour of. However, they cannot replace or proceed without clear political leadership, which can then be rejected or endorsed or modified, but there has to be a dialogue.

Lord Cullen of Whitekirk: You have taken the words out of my mouth, because I was going to say, complementing what you have said about the public, that there is surely a need for Ministers to act. We have been informed by various witnesses that United Kingdom Ministers should act as if they believed in the union. Is that not important?

Alexandra Runswick: Yes, absolutely. In the recent past, one of the problems has been that the expression of English identity has been felt to be politically difficult. Lots of people, particularly in southern England, felt very strongly that they were English and British but that, although it was okay to be Scottish and British or Welsh and British, being English was somehow problematic and there were not the same level of expressions of Englishness, politically, as with the other identities. I completely agree that there needs to be political leadership as well as meaningful engagement with the public.

Q80 Lord Lester of Herne Hill: Yesterday, the Minister was pressed by Lord Foulkes of Cumnock to be in favour of a constitutional convention. Her reply was, “My Lords, there is nothing to suggest that the public want to be involved in a constitutional convention. The Government were elected on a mandate to deliver their commitment to further devolution, and that is what we are doing”. What are your comments on that apparent lead by the Government?

Alexandra Runswick: That is not true at all. The fact that there are pilots being run in Sheffield and Southampton, where people are willing to give up their time to take part in a deliberative process that is exploring these issues, very much shows that people are willing to make the effort and take part, where they can see it makes a difference. Internationally, we have seen that deliberative processes can have a very positive effect. Look, for example, at the assembly in British Columbia and the effects that had and the participation it had. If you ask people at eight o’clock in the morning, “What is your priority for today? Is it taking part in a constitutional convention?” the answer is obviously, “No, it is not”. People are worried about their day-to-day lives. Where they are given a chance to have a meaningful say about the powers their community have over how they are governed, there are more than enough people who are willing to take part in those processes.

Q81 Lord Morgan: On engaging the public, harking back to Lord Brennan’s question, would one very important way of doing this in the longer term be to have a written constitution, as in the
United States? It is a badge of citizenship; it is a way of getting fundamental changes to society, like implementing the civil rights process. How do you feel about that?

**Alexandra Runswick:** Unlock Democracy—and Charter 88, its predecessor organisation—campaigns for a written constitution. I would absolutely agree with you: part of the problem with attitudes to governance in the United Kingdom is that it is very confusing for people as to where power does lie. There is no clear sense of what the Government can and cannot do in our names. How we are governed is not clear. The fact that central government can, at a whim, restructure local government leaves people very confused. From my point of view, having a written constitution that set that out would be a very positive step.

**Brendan Donnelly:** Even if it were true that there is no public desire for a constitutional convention, that would not necessarily be an overwhelming argument against having one. It might well be that the ideas that would be generated by such a constitutional convention would help the proposals of politicians and might help generate interest in a way I personally would think very desirable.

**Q82 Lord Norton of Louth:** Most of the discussion has necessarily been about constitutional change, because that is what has taken place and there are proposals for more. That has really been dominant. However, is there anything we could do beyond constitutional change that would help to maintain the stability of the union?

**The Chairman:** We kept the easy one for last.

**Brendan Donnelly:** The balance in our political culture between continuity and innovation is one that tends a little too much towards continuity. While operating in a continuing historical environment, if politicians nevertheless had a more self-critical attitude towards the institutions in which they operate, that would be something that would make the United Kingdom, in an intangible way, a more attractive place to live in, particularly for people who do not come from London and south-east England. If I may take up a remark about devolution and its effect on Scotland, one phenomenon I notice in Scottish friends and commentators is that they have been exposed to an interesting political culture in Scotland that is much nearer to home and something they can identify with much more—and it was not the Westminster model. I suspect that is one of the reasons why there are people in Scotland who doubt the Westminster model. They say, “We thought the only political show in town was what happened in Westminster—but, no, something rather interesting and engaging happens on our own doorstep”. I suppose it comes back to the parliamentary sovereignty idea, which is an incubus on British political culture. To think more creatively and flexibly about it is something that would make the United Kingdom a more attractive place to live in, politically.

**Alexandra Runswick:** If I could add to that, a lot of the reforms I would want to see that would help people identify more would be constitutional change. Things like electoral reform and people feeling more represented in our politics would be helpful. To go back to the points that were made earlier, if you want people to identify with the union, you have to make a case for the union; you have to make a case for what the union is and why it matters. Obviously, I am not Scottish; I was not there for the referendum. However, as an interested observer I saw a campaign that was called Better Together but never seemed to make a case for what was better about being together—or at least I did not see that case being made. If there is to be a campaign for the union, there has to be a clear set of reasons as to why a union is better.

**Lord Norton of Louth:** That is very similar to Professor Gallagher saying last week that within government there needs to be a fairly high level union—or at least Ministers with political authority who were sent there to make the case for the union.
**Brendan Donnelly:** It is quite significant, as Professor Curtice said, that the case for the union was made quite successfully—or it improved its standing—in England but not in Scotland. That might suggest that making the case for the union is good for one audience but not for another. You mentioned the need for Ministers to sound as if they believed in the union. Alexandra is right: what kind of union is that? Some people want, particularly in Scotland, a rather different kind of union from the one that commends itself to people in England.

**Lord Norton of Louth:** It might have to be tailored, but none the less the point was one needed to be at least proactive, rather than simply reacting to what is happening. We therefore might be encouraging fragmentation without standing back and thinking about it.

**Brendan Donnelly:** I prefer to say that, rather than tailored, it should be comprehensive.

**The Chairman:** Thank you very much indeed. It has been an extremely informative, articulate and thoughtful session. You have given us some very interesting thoughts, which we will carry forward and take into consideration as we move towards reaching some sort of outcome for this rather difficult study we are engaged in. We are most grateful to you, Mr Donnelly and Ms Runswick. Thank you very much.
Evidence Session No. 16  Heard in Public  Questions 219 - 225

WEDNESDAY 13 JANUARY 2016

Members present

Lord Cullen of Whitekirk (Chairman)
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Professor Matthew Flinders, Sheffield University, and Katie Ghose, Chief Executive, Electoral Reform Society

Q219 The Chairman: Can I welcome Professor Matthew Flinders and Katie Ghose, Chief Executive of the Electoral Reform Society? I know that each of you has been taking a leading role in setting up the pilots for citizens’ assemblies. What do you see as the product of these pilots? What do they demonstrate or what do they show can be done?

Professor Flinders: For me, what is probably the best or the suggested main output of the assemblies relates to the fact that we live in a time dominated by a lot of cynicism about politics and about the public’s interest in politics. As a political scientist, for me what has been most amazing about these pilot assemblies—Assembly North in Sheffield and Assembly South in Southampton—is the huge public appetite to learn about what is going on and to get engaged and give up their time to learn, to deliberate and to come to a view on things in a way that really goes against a lot of the academic literature. However, the public want to have informed debate. They do not want to feel that they are involved in tokenistic window dressing. They want to feel that there is a link between what they are contributing to and the policy-making world. Give them that link and there is a desire for fresh ways of doing politics.

Katie Ghose: I will build on that a little. I would absolutely echo the real ability and willingness we saw among citizens, many of whom are not in the usual business of being engaged with formal political debate, to grapple with quite complex issues of governance. That was very encouraging. There was an incredibly high retention rate between the two weekends. The people who came along absolutely got hold of the issues and said things like, “This has really blown me away and I want more knowledge and learning”. The other important thing we did and I took away from it was the difference in doing a deliberative exercise, if you like, that is spread out into phases. There is a
learning phase, where people get up to speed on the status quo and how local or national government works, then there is a consultation phase where they can take on views of the wider public, and then there is a deliberation phase where they challenge each other’s views and so on. Those phases worked, and we were doing this in miniature, if you like, but the lesson I took away is a lot of what we did could be scaled up and done on a UK-wide basis in a constitutional convention.

The Chairman: I want to ask you about that, because obviously the pilots were of comparatively small groups and they were, perhaps, quite strongly stage-managed, handled and so on in order to get the best out of the members of the groups. You think this can be replicated over a larger scale.

Katie Ghose: Yes, very much so. A lot of the lessons we learned were about how to get a reasonably representative sample of the population, the importance of having quite a focused agenda and a topic that can be dealt with in the time available, but also having a little open space for people to discuss or deliberate other topics as well. There are definitely some lessons there that could be scaled up.

The Chairman: I notice that with the pilots, for example, the members of the groups were handpicked, if that is the right word, and a lot of care was taken to make sure that the personal experience was tailored to the occasion, as it were. They were not put under too much pressure and were given some time to think and so on. Is that possible? Can one do that on a larger scale?

Professor Flinders: The participants in the assemblies were not handpicked. We commissioned YouGov to approach and recruit members for the assemblies. We had a fairly good cross-representation of society. In fact, one of the interesting things about the pilots was that they uncovered areas such as, if you were to scale up, how you might have to have random sampling that you then came back to with more targeted recruitment to make up for specific areas of society that had not come through the random sampling. There was certainly no handpicking, and lots of people who were involved had not had any involvement with politics ever before.

The issue with stage management and support is absolutely key, and there is no doubt it would be possible to organise a citizens’ assembly and to the assembly schedule, the selection of invited speakers, the influence of the facilitators etc. in order to manipulate the process and increase the chances of obtaining a certain outcome or recommendation. We had an advisory board of directors of large national and regional citizens’ assemblies from all over the world who advised on how to avoid these risks. One of the things we spent a lot of time on was, at the beginning of the assembly, allowing the members to decide the principles and values, the rules of the game for their own assembly and what they wanted to look at. One of the challenges, as an investigator, was that we had to be responsive by the hour to what the assembly said they wanted us to deliver for them and change and be very flexible around them. It was a very interesting and positive experiment.

Q220 Baroness Taylor of Bolton: I would like to follow up in terms of the selection. You have mentioned that to a certain extent, but by definition people who come to an event like that have either a confidence or an ability or an interest, which you are reinforcing or tapping into. Could you remind us of the numbers and the timescale of what you were doing and how much involvement there was? Also, did you do anything to find out whether, having brought people into the citizens’ assembly, they then became interested in more mainstream politics or went as visitors to council meetings or got involved in any other way and sustained that interest?

Professor Flinders: That is a fantastic question. One of the challenges of the organisers was that the assemblies lasted over an eight-week process with two residential weekends within those eight weeks. The members of the assemblies tended to work together, as a community, online between
On the initial recruitment of members, we worked with YouGov. They had a large sample database in our two regions of the country of several thousand people. A random process was used to invite cross-sections to express an interest. You are absolutely right about the self-selection issue. These were people who had already, in effect, joined the YouGov panels, and that is a key issue. There is no hiding that at all, but then we went through and made sure that we spoke on the phone to all the people, from a range of different backgrounds, who had expressed an interest. We explained exactly what was needed. The support for members of the assemblies is absolutely critical, because we had lots of people turning up from all over South Yorkshire who knew nothing about politics, and they were really scared. They were very nervous about what they were doing, so we had more facilitators and staff than we did actual public members at each assembly in order to ensure a supportive environment, using brilliant volunteer students who had their own specialist training. That support for people to allow them to be confident and speak openly throughout the process was key—so a lot of personal care. Having a citizens’ assembly is a resource-intensive process, but not necessarily in terms of money. We have a specific short note from YouGov on some of the challenges of recruiting a large cross-section of society, which I am happy to send to the Committee after today’s meeting.

More broadly, in politics there is a rising level of democratic inequality, particularly among the economically disadvantaged and the young. What became clear—and this is the great reason for having a pilot—was that if you were to do an assembly on a national basis, you would have to be far more proactive than maybe the polling companies would be on their own, but that has happened in other countries. That is not a challenge that would undermine the whole system, but you would have to be far more proactive in making sure that the final number of 100 people or 150 people really was representative as a whole. Once you brought the people together, it was critical to make sure they had the support, in all sorts of different ways—even the tiny things—that allowed them to forget everything outside and just commit to the process. What was fantastic was our retention rate: 100% of the people who turned up for assembly 1 came back for assembly 2. At the end of assembly 2, we asked the members, “How many of you would be willing to stay involved with the process and appear in Parliament or appear at public events to talk about your experience?” It was 100%.

**Baroness Taylor of Bolton:** How many people did you have?

**Professor Flinders:** The initial plan was to have 45 members of the public on each of the assemblies, one in the south and one in the north. We ended up with around 35 people on each assembly, because we had no-shows from those who were not coming. The difference between the two assemblies was that the northern assembly was a pure assembly, just made up of members of the public; Assembly South was a hybrid assembly of two-thirds public, one-third politicians. One of the challenges there was that politicians are busy people. Getting politicians to attend and commit to two full weekends proved to be a big ask, but again that is part of the learning process.

**The Chairman:** The process of recruitment would, presumably, be intended to exclude people who had, let us say, extreme views, is that right?

**Katie Ghose:** No, not necessarily.

**The Chairman:** Well, an agenda.

**Katie Ghose:** One of the values of doing a deliberative exercise where you do a random representative sample, if you like, is that it challenges people to come along and have their views
challenged, and this was something that we saw in real time, if you like. Some people came along and they had a party affiliation but many people did not; some people were involved in politics but many people were not. Over the course of the two weekends, with the three weeks in between of the online deliberations, quite a lot of people did have their preconceptions or prior views challenged and they changed their minds over time. Therefore, what you are trying to do is get a reasonably representative sample of the population, and that must include people who have all kinds of views within it.

The Chairman: Let me put this to you: our attention was drawn to a blog by Dr Alan Renwick of his experience, in which he said, “The alternative of allowing anyone to participate who wants to inevitably attracts an unrepresentative proportion of political junkies, many of them with particular axes to grind”.

Katie Ghose: Yes, exactly. If you do not do it in a thoughtful way and it is up to the usual suspects to trot along to something, that is one way of doing it. We were designing it and doing it in a real attempt to reach out and get a reasonably representative sample of the population. The difference between that and the idea of a constitutional convention writ large, if you like, is that you really do your best. It is important to say it is not just about the formal assembly members who were there. A good design of a constitutional convention has lots of public meetings going along on the side, with lots of opportunities to feed in. The interest groups, if you like, and the politicians are vital, as are the technical experts to come along and give evidence to the assembly members. It is important to look at that broader picture of how to get as many views in as possible.

Professor Flinders: I did a piece for the Yorkshire Post about the assemblies a week or so before they were due to start and I made the mistake of putting my email on the end of the article. I was inundated with hundreds and hundreds of people who had very strong views and wanted to be on the assembly, asking how they could get on it. Of course, we did not want to fill the assembly just with those who were already politically active and interested. We wanted some of those, but we wanted a broader cross-section. What was fascinating, for me, when we started off the assembly was that it was clear there were some very extreme views and some strong characters. However, as the assembly process went on, a lot of those characters became far more quiet, calm and thoughtful, and lots of the people who had not had an interest in politics became more confident and started getting involved.

Q221 Lord MacGregor of Pulham Market: How could a constitutional convention best be used to address questions around devolution and the territorial constitution? Could a single convention deal with the issue or should the regions and nations of the UK each be asked to contribute?

Katie Ghose: The design should probably combine or be conceived of as a single project that stretches across the UK but that can have some conversations among citizens of each nation and then some opportunity for cross-border conversations as well.

Lord MacGregor of Pulham Market: What is the ultimate objective?

Katie Ghose: Of a constitutional convention?

Lord MacGregor of Pulham Market: Yes. I am trying to align this to the answers to the previous question about the citizens’ assemblies. What is the long-term objective?

Katie Ghose: We have some good learnings now from the assemblies. We were really careful to have a question that could feasibly be addressed in the time. The question for these local pilots was, essentially, “Where do you want power to lie in your local area?” For reasons of time and resource, that was quite a limited question, if you like. We did not particularly stray into the whole
Professor Matthew Flinders, Sheffield University—Oral evidence (QQ 219-225)

issue of where power should lie between and among the nations of the UK. That was sensible for the pilots. The design and the ambition or objective for a constitutional convention should very much look at the territorial issues and the power and the identity issues of how the nations of the UK are going to relate to each other as well as devolution within the nations. I am not an advocate of the kitchen sink, as it were, where you organise a convention and you throw in every single constitution and political reform issue. It should be the objective of that convention to really unearth the territorial and identity issues in a sensible fashion.

Professor Flinders: For me, the one thing to be clear on is that a constitutional convention is not going to be a panacea for the problems of the constitution that we face. There are complex challenges and there are no simple solutions. The great benefit of a constitutional convention in the current context is that there is a gap—and a very real gap—between formal politics and politicians and then the broader public and, particularly, sections of the public. Also, the model of English devolution that is currently being proposed is very different from the models of devolution that have come forward in Scotland and Wales. There is a need to avoid the view that this is just another top-down process. There is a need for fresh ways to re-engage with the public and give them an opportunity to feed in, in a meaningful way. In a sense, you might say that there is a symbolic as well as a practical, empirical reason for having this citizens’ assembly. That symbolic view that the political world is listening, that it can do things differently, is itself very important.

The $100 million question, though, to think about is the reconnection point or the nexus. You have a big constitutional convention, it is very successful, it gets a lot of public and media attention, it creates a groundswell of democratic energy, but then what? In some countries, politicians have been brave and have said, “Whatever the citizens’ assembly comes up with, its recommendations will be put directly to the public”. In other countries, the recommendations have been purely advisory and have been left on the shelf. There is a great danger around constitutional innovation in that there is nothing worse than raising the public’s expectations and then dashing them, because you make things seem worse than they were already. There is a real need to think about where, if there was a constitutional convention, the final report and recommendations would go in terms of feeding it back into the formal democratic process.

Lord MacGregor of Pulham Market: I am struggling still to work out exactly what this constitutional convention does. Who would be the people attending it, for example?

Katie Ghose: Building on the citizens’ assembly pilots, you would be getting a representative sample of the population in the different areas. There is quite a strong case—and this is what we tried to do with the pilots—for giving English citizens a say, given that Scottish citizens have had a lot of say over the future of their democracy. English citizens have not had that opportunity. If you were to do a series, for example, of regional conventions to get the constitutional conversation going, you would be drawing a reasonably representative random sample of citizens from among those regions. I would strongly advocate for it to be two-thirds citizens and one-third politicians. They could be a mixture of local and national elected politicians, because there is real value in people and politicians coming together to resolve some of these issues. That would be my direct answer to who the people would be. Other people it would be vital to involve would be experts and advocates, who would come along and have a role as evidence-givers and witnesses to the meetings.

Lord MacGregor of Pulham Market: I was a Member of Parliament for quite a long time and spent, as others here, a great deal of time not only in my own constituency and all the organisations you deal with having these sort of discussions but also more broadly and more widely. I am struggling to see how this approach and the people you are involving in very complex issues could contribute to
the general thinking once you get into issues of different levels of assemblies and so on and different regions, and the extremely difficult questions of finance and how you allocate and all that—all of those very complex questions that many of us struggle with for a very long time very intensively.

*Katie Ghose:* Even in this mini-pilot, where people had two intensive weekends and three weeks between, I think you would have been really struck, as Matthew and I were, by their sheer ability to grapple with those complexities. Once people are given that opportunity to have knowledge shared with them and to develop their own knowledge—and Alan Renwick and others have examined this when they looked at similar exercises in other countries—there is absolutely an ability to deal with complexity in the citizenry. It is a question of giving them the tools, resources and the time to do it.

**Q222 Baroness Taylor of Bolton:** I will be restrained. How does this fit in to the whole principle of representative democracy?

*Professor Flinders:* Good question. I think it fits in. I hate to say such a phrase among such esteemed company, but there is a massive debate about what has been termed ‘post-democracy’ and what is happening in most people’s lives and politics. The public are involved in politics; they might not admit it or understand it, but their everyday politics is a million miles away from the formal political processes or the institutions that we are in today. This is an adjunct. It is an evolution of democracy. It is a new way for responding to the public’s need to play a greater role in deciding how they live their lives and where power lies. That is the great challenge. In a way, with the rise of new parties you have bubbles of democratic energy and large sections of the community who are extremely critical. They are not anti-political, but they are pro a different form of politics. The big question for representative politics is whether it has the nimbleness and the agility to respond to broader social demands in a way that can tap into—it is almost like a pressure pot—and channel those democratic energies that are out there and exploding at the moment. A constitutional convention would provide one of a number of different ways that you could respond to some of that public angst and frustration that nobody listens to them and nobody is interested in them.

One of the issues around the current debate on devolution and decentralisation in England is that there seems to be view among sections of the public that this really is a very paternalistic, top-down view and that politicians and an elite at the local and central level know what is in the best interests of the public. The problem is that if the public were asked directly, they would probably reject what was on offer. That is the issue. It is about blending and evolving representative democracy with new opportunities for engagement.

*Katie Ghose:* A lot of MPs are already experimenting with different ways of doing politics.

**Baroness Taylor of Bolton:** As John was saying, we always did.

*Katie Ghose:* Yes, and they are bringing citizens in to the difficult trade-offs that elected representatives have to make. One of the values of this kind of process is that it forces citizens to confront directly the very difficult decisions and trade-offs that elected representatives are trying to make. In that sense, deliberative or participative means are a good complement and a possible strengthening of the representative democracy that we have.

**Lord Lester of Herne Hill:** I can understand the case. I even agree with the case for a constitutional convention when it is considering concrete, focused proposals—for example, with a Scottish convention before the Scotland Act, or the Northern Irish constitutional convention presided over by the then Lord Chief Justice. That I can understand, but it seems to me that you are in danger of
putting the cart before the horse if you have a constitutional convention without any clearly defined options and without some kind of body to help to steer the conversation. Otherwise you finish up with a kind of constitutional babel, it seems to me. I am sorry to mix my metaphors.

**Katie Ghose:** I agree with you, which is why one thing that we tested out in the assembly pilots was something very concrete in each area, which was a proposed devolution deal that had been set out in specific terms by local authorities in the area. Quite a lot of the discussion was saying to the citizens, “What is it that you think about this? Do you have other ideas about it?”, so I would absolutely endorse that approach. It has to be a mixture of getting some agenda-setting and a bit of freedom with a number of options that would be put before the body with good expertise, so I would probably agree with you on those important issues around design, agenda and focus.

**Q223 Lord Hunt of Wirral:** Were the assemblies run before or after the general election?

**Katie Ghose:** After.

**Lord Hunt of Wirral:** I see. What was wrong with the general election in producing a deliberative and participatory democracy?

**Katie Ghose:** The electoral system, I would argue, gave us an electoral map that did not fully reflect the views and votes that were expressed across the nations. When you look at Scotland, which is probably a very stark example, you have Labour, the Liberal Democrats and the Conservatives with barely 5% of the seats on nearly half of the votes, whereas you have the SNP with 56 seats out of the 59 on 50% of the votes. If you are looking at the future of the union and future relations between the nations of the UK, you have to have a look at how the electoral system is, in a multi-party era, no longer able to fully reflect the true diversity of views out there and gives you an electoral map that exaggerates political divides among the nations.

**Lord Hunt of Wirral:** I am asking also about this policy of decentralisation to cities and regions. We are told that it has been lacking in public engagement. Do you agree and, if so, what are the problems with this and how should it be rectified?

**Professor Flinders:** The current process with the devo deals and the metro mayors has been lacking in public engagement. That is not just a criticism that we would make; it has come out of a number of different committees and organisations. Looking forward, what was very interesting about the pilots was that both assemblies were generally in favour of the Government’s plans for devolution within England. However, they were not in favour of the specific model that was currently on offer and were in favour of a slightly different change. The value of the assemblies is related very much to the knowledge that local communities can bring to specific areas but, in the current plans, the demands on local authorities in the areas that have put in for devo deals are very weak in terms of the commitment for any form of public engagement. The risk is that we go forward to 2017, when we have the first elections of the mayors, and the democratic turnout is so low that it brings into question the authority of mayors. That is where, in a sense, the risk with the current model is: unless it is embedded and socially discussed and supported, it will just seem like another top-down initiative and the public will not understand why it matters to them in their lives.

**Q224 Lord Judge:** I am not and never was a politician. I have great confidence in the jury system and that is 12 citizens assembled together to make some very difficult decisions examining sometimes very complex evidence, so I am not surprised that a group of citizens sitting together, who have taken sufficient interest to come along to what you describe as a national assembly, were intelligent, thoughtful, committed and so on. There is nothing surprising about that. What I want to
know is, if you introduce such a system, (a) who is going to choose them, (b) to whom are they responsible and (c) are they not going to be yet another body telling all the other citizens what they should and should not be doing?

Katie Ghose: I am not advocating at the moment, although it is an exciting idea, a kind of standing system of constitutional conventions. I am advocating, for now, a one-off that could really grapple with the very pressing issues.

Lord Judge: The questions are still the same, though: who selects them and so on?

Katie Ghose: Absolutely. One of the issues is whether this is a government-instituted process, ideally with cross-party support, or whether it is not a government-instituted process. We were doing something that was off our own bat, if you like, with a broad network, and that was an important lesson, because although it was not a government project and we could not promise the citizens that note would be taken of it, none the less they came along and showed appetite and willingness to engage. That is one important point. In direct answer to your question about who chooses the citizens, it is going to depend on who the instigators of the project are. We would love to see a government-instituted constitutional convention. If that does not happen, there are some good lessons from other conventions that have happened in the past, and I have found it invaluable to be bringing together academics, campaigners and others so that you have a good group of people to come up with a sensible and neutral design.

Professor Flinders: I would imagine that whether it was a government-commissioned or parliamentary-commissioned inquiry, a chair would be selected of high public standing and then an initially random selection process would be used to recruit members (with the potential to ‘top up’ with individuals from under-represented groups once the initial recruitment phase has been completed). In a sense, many public citizens’ juries have been used extensively in recent years as part of the move towards deeper forms of democracy, particularly at the local level. You might have 100 or 150 members of the public, a cross-section drawn from different regions of the UK, with very specific criteria. I would imagine it is more than likely that their recommendations would be advisory. This would not mark a new start in terms of all issues going towards a constitutional convention, nor should it be a standing convention, but we are at a particular point in terms of the constitution. There are so many untidy ‘loose ends’—there is such a debate about the direction of travel and where we are going and why—that now is a good time to have a constitutional convention, which would be different from some of the more traditional ways that these issues might be looked at, in order to provide a fresh way of thinking about politics. Interestingly, it is often not only the people on the assembly who learn a lot but also the politicians who are engaging with the assembly too.

The Chairman: Can I just ask you about the lessons from the pilots, not in terms of the process but whether they yield any conclusions about what powers citizens want to see devolved or decentralised to their cities, regions or communities, or is it, at this stage, too early to say?

Professor Flinders: The detailed data analysis is going on, but the headline findings of the assemblies, particularly the assembly in the north, was that the public were in favour of regional devolution within England. They preferred an assembly model rather than a mayoral model, but they wanted the assembly itself to have more powers than had been previously offered in other similar cases, particularly Lord Prescott’s reforms a few years ago. It was pro-regional government, but a more powerful model, not a large city mayor model.

Q225 Lord Norton of Louth: On decentralisation that is taking place now within England, what is happening seems to align with much of our evidence that it is asymmetrical and there seems to be
support for that, so it is trying to meet local needs, moving as quickly as some areas can sustain change, and others cannot. What is your view on that? There is some conflicting evidence about whether that is sustainable or not, because the danger is that certain areas may be left behind. Is it sustainable and what do you see as the merits and demerits of what is happening should we maintain this asymmetrical decentralisation?

**Professor Flinders**: I do not think there is any problem with asymmetrical devolution in principle. The concern at the moment is around the speed of the process and the underpinning values and principles that are guiding that process. It is all very well to say, “Let a thousand flowers bloom”. However, there is an issue about the obvious fragmentation that is likely to occur if that goes forward too quickly. One of the issues around a constitutional convention is that it often allows for some space for thinking and talking and, in fact, for listening, which can be incredibly healthy.

I also think one of the issues at the moment with the asymmetry is not just about geography but the balance of the focus of the policy. The policy at the moment is about driving the economy and economic growth. That is important and incredibly valuable, but it has to be offset with a focus on the social aspects of people’s lives, and that is where there is a slight imbalance currently. I have absolutely no problem with asymmetrical devolution, but where is the blueprint? Where is the glue that holds the system together? That is the big question for me.

The great thing about a constitutional convention is that it can really help to allow and support the public to think through those issues. At the moment we have a whole range of centrifugal forces pulling the UK in different directions and, again, that is not itself a problem, but where is the glue that is holding us together as a union? Where are the pragmatic international best practices for stopping and letting us think about the nature of the democracy we want? That is what we do not have: the reflective space, as it were, at the moment.

**Katie Ghose**: I agree with what Professor Flinders has said. We have asymmetry of powers, which is not necessarily a problem, asymmetry of population, which is a fact to be grappled with, but the real problem with the local picture and the march of devolution at the moment is the asymmetry of public voice. It is completely arbitrary as to whether any local resident of any corner of the country is going to have any say over the flavour and settlement of devolution in their area. This is where we can relate the local to the national very clearly. If we do not start with the values and the principles and the criteria that should underpin the political structures, we are left flailing around. That is what we are seeing at the national and at the local level, and then you have real problems in terms of a lack of public support, legitimacy, sustainability and stability.

**Lord Norton of Louth**: Do you not have a problem that, even if you create the framework where there can be greater discourse and people can discuss, you might not still reach agreement and there is still a problem? You might find there is commonality of view in one area but next door there is a different view and, therefore, you might have to go your separate ways or not have any agreement at all about what should be decentralised, so you are then falling behind relative to those areas where you have reached agreement.

**Katie Ghose**: The problem at the moment is that there are multiple speeds and, as a consequence, in some areas people will not feel they have had a chance to think about where they want power to lie in their area.

**Professor Flinders**: There is a very strong “me too” dynamic going on: “If these councils are getting in on the action, we must do so really quickly too”. Whilst I can understand the logic and the real challenges that local authorities are facing, which are incredibly tough, it is very interesting. Michael Heseltine gave a speech in which he said that the English devolution deal should not be
spoken about in terms of devolution or decentralisation; it was the Westminster model. It was just a new partnership where the central state would tell local authorities what to do with even more direction, and the trade-off was slightly more flexibility in delivering those goals.

The big risk for local authorities is that they will become the public face of austerity, and local authorities are well aware of these challenges, but we have to retain a sense of optimism and positivity that, as a collection of people, a community nationally, locally and regionally, we can address these challenges. Maybe I should not have said it in front of the assembly, but I said that I had been a professor of politics for 20 years and I had learned more about politics by running the assemblies than I had from reading thousands of books about real politics and how it affects people’s lives. I just think that is an important reflection in terms of where we go from here, given the challenges that face us economically and democratically and this issue about ‘what binds us?’.

That really is the central issue. Where is the centripetal force that can allow for flexibility or difference? We have new academic centres for super-diversity. What still gives us a commonality and goals that allows us to live together? That is where a constitutional convention, properly resourced, over time, done transparently, will not deliver all the answers—not everybody will agree on all the recommendations—but will help to put down certain markers so that the politicians, who have, quite rightly, been elected to make decisions, will have a better basis on which to make those decisions.

The Chairman: We have come to the end of the allotted time. Thank you both very much indeed for the insights you have given us from your own experience and knowledge of the working of these assemblies. Thank you very much.
Professor Matthew Flinders, University of Sheffield—Supplementary written evidence (UDE0067)
Citizens Assembly Summary Report

YouGov were employed by the Citizens Assembly team in order to recruit panellists in the target areas (30 in Southampton and 45 in Sheffield) which broadly reflected the demographics of the population. Initially the aim had been to look at several demographics: age, gender, ethnicity, left and right political scale and education but given the time and feasibility restraints we focused on age and gender as a first priority.

Surveys

Approximately a fortnight before the first Assembly a survey was sent out to around 5000 YouGov panellists in South Yorkshire (defined as the four local authorities of Barnsley, Doncaster, Rotherham and Sheffield) and 5000 panellists in the Solent area (defined as Wiltshire, Portsmouth, Southampton and the Isle of Wight). The survey asked a series of political questions as well as asking initial interest in attending the weekends.

YouGov uses a process called active sampling, meaning restrictions are put in place to ensure that only the people contacted are allowed to participate.

This means that all the respondents who complete YouGov surveys will have been selected by YouGov, from our panel of registered users. The demographics we used to sample the respondents who were sent a survey were shown on the right.

The survey was followed up by further surveys and a telephone call from the team to confirm attendance.

Attendance

In both assemblies approximately 70% of confirmed respondents arrived on the day. In both cases we achieved a good gender balance although there was a noticeable drop off of younger respondents. Another problem was the lack of BAME participants, something that was also noticed by participants at both assemblies.

Future Projects

As part of our work on this project we have made a few recommendations for ways we feel the recruitment process could be improved for future assemblies:

1. **Providing a financial incentive.**

   This would increase the total number of people willing to take part making it easier to recruit participants. In other projects we have also found that harder to reach...
groups are more responsive to a financial incentive which could also help with representativeness.

2. **Require less commitment**

Most YouGov focus groups only require participants to attend for a couple of hours. This both reduces the length of participation and inconvenience for participants but also removes the need for an overnight stay which we believe would have had an impact on sign-ups especially for younger respondents.

3. **Oversampling**

For future projects we would recommend having more flexibility on those who can sign-up in anticipation that some may drop out. This should be possible in both the recruitment stages and in the confirmation stage.

Moreover, the varying drop off rates of different demographics means that, to gain representativeness, it is necessary to oversample certain groups (such as young people or BME groups) in anticipation of a higher dropout rate. If this can’t be achieved solely through online panels, other supplementary recruitment processes could be considered.

January 2016
Transcript to be found under Professor Charlie Jeffery, University of Edinburgh
Julian German, Campaign for a Cornish Assembly—Oral evidence (QQ 115-122)

Transcript to be found under Campaign for an English Parliament
Katie Ghose, Electoral Reform Society—Oral evidence (QQ 219-225)

Transcript to be found under Professor Matthew Flinders, Sheffield University
Baroness Goldie MSP, Conservatives—Oral evidence (QQ 134-140)

Transcript to be found under Claire Baker MSP, Labour
Daniel Greenberg, Constitution Reform Group—Oral evidence (QQ 202-210)

Transcript to be found under the Constitution Reform Group
Transcript to be found under the Constitution Reform Group
Summary

1.1 There has been a marked decline in British identity since the end of the Cold War. This has been driven by a combination of:

1.1.1 the departure of the Soviet Union as a constant, common international threat;
1.1.2 the decline in shared national experiences with the development of the internet and the multiplication of media (Chapter 2); and
1.1.3 the decline in the use of the phrases “Great Britain” and “Britain” by politicians and the media as a core part of the name and identity of the state in favour of “the Union”, “UK” and “United Kingdom”.

1.2 The reality that the flag (removing the blue bits) and name of the state (removing “Great Britain”) would have needed to be changed had Scotland voted Yes in the independence referendum was largely absent or ignored during the referendum campaign (chapter 3).

1.3 An analysis of general election manifestos by the major national parties since 1970 has shown that all significant constitutional changes were included in the respective manifestos (chapter 3). This includes joining Europe (Conservative manifesto 1970), the referendum for staying in Europe in 1975 (Labour October 1974), the devolution referenda of 1979 (Labour October 1974), reform of the House of Lords (Labour 1997), the Scotland Act 2012 (Conservative 2010) and, most fundamentally, the devolution referenda of 1998 (Labour 1997).

1.4 A referendum on Proportional Representation was held in 2011 and was defeated.

1.5 The political fabric of the nation has relied upon this unwritten principle of consent to constitutional change. Each government, whether Conservative, Labour or Coalition, could claim a mandate for these fundamental changes. Each voter had the opportunity to vote for an alternative party if they did not agree with the proposed change. This is a democratically unimpeachable process and fundamental to the rule of law and respect for the state (chapter 3).

1.6 Independence is a matter reserved for the UK Parliament.

1.7 The general election manifestos of 2010 were silent on Scottish independence, except for the SNP (chapter 3).

1.8 With the Scottish Parliament elections of 2011, the UK Parliament was presented with legislation by the UK Government to authorise an independence referendum for Scotland.

1.9 Only six MPs (SNP) could claim a mandate to legislate on this matter – perhaps the most profound question to be put before Parliament in three hundred years.

1.10 Whilst the vast majority of the UK electorate, myself included, would probably have agreed with Parliament’s decision, this was a departure from constitutional practice.

1.11 The implications are profound:

1.11.1 The UK Parliament has set a precedent to make constitutional changes without consent. This is harmful to our democracy.

1.11.2 Parliament had the power but not the right. Thus, whilst technically legal, the validity of the referendum was open to challenge (chapter 3).
1.11.3 Had there been a Yes vote, the UK Government would have been bound by the result; the UK electorate would not.

1.11.4 The process for a potential second referendum is unclear - the 2015 manifestos were again silent on independence. Consequently no MPs, even SNP, would have a mandate to legislate for a second referendum during the current Parliament. This is not widely understood and may lead to false expectations when Scottish voters go to the polls in 2016.

1.12 Restoration of the principle of consent for constitutional change is a fundamental step in restoring faith in the Union.

1.13 Faith in the Union has also been undermined by confusion over what Britain stands for in the world. Clear principles of foreign policy have become blurred. This has led to Britain intervening in Iraq when perhaps we shouldn’t and risking a repeat of Chamberlain’s mistakes over the crises in Crimea and Ukraine (chapter 4).

1.14 Redefining foreign policy to uphold the international rule of law would restore clarity and re-align us with the principles that required the ultimate sacrifice in two world wars – a source of intense pride underpinning faith in the Union.

1.15 The debate on British values would benefit from embracing notions of decency and sacrifice that formed powerful seams of belief until very recently (chapter 5).

1.16 The 2015 general election exposed fault lines in the First Past the Post electoral system that risk further undermining faith in the British political system.

1.17 The Every Vote Counts system would resolve this:

1.17.1 Different from PR and other well-known voting system, Every Vote Counts makes no change to how the voter casts their votes in the constituency.

1.17.2 First Past the Post still applies and returns a constituency MP.

1.17.3 However, the losing votes are collated across the constituencies in a county and recounted.

1.17.4 The party with the largest number of losing votes in a county returns a County MP.

1.17.5 Appropriate boundary changes would be required and constituencies enlarged to accommodate the County MPs without increasing the size of the House of Commons.

1.17.6 The changes in overall election results would be minor, thus strong government isn’t compromised. However with c70% of votes gaining some form of representation (the winning 40% for the constituency MP, the second placed party with c30% returning a County MP), faith in British politics would be transformed (chapter 5).

1.18 Faith in the Union requires an overt demonstration of trust and respect. It is time to consider devolving independence itself. Subject to winning a mandate at the next general election on this pledge, the UK government should devolve the right to hold an independence referendum to the Scottish Parliament (chapter 5).

October 2015
Transcript to be found under Professor Arthur Aughey, University of Ulster
Wednesday 14 October 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witness

Professor Robert Hazell, Professor of Government and the Constitution, School of Public Policy, University College London

Q10 The Chairman: Can I move on and welcome Professor Robert Hazell, a figure very well known in constitutional circles and a man who has had a very varied and rich career as a barrister, senior civil servant in the Home Office, director of the Nuffield Foundation and founder of the Constitution Unit, from which he has only recently stepped down? As you would have heard, Professor Hazell, we ran out of time with the previous two very informative witnesses, and that is because this is our first evidence-taking session and we are plunging into big, broad issues. We shall probably run out of time with you as well, but we are most grateful to you for coming.

I would like to ask the first question, which is of a rather broad nature: what do you see as the purpose of a union and does that purpose vary in the different parts of the United Kingdom?

Professor Hazell: Chairman, forgive me, I did not hear all of the previous session so, if I start to repeat things that your two very distinguished witnesses before me have said, please press the fast-forward button. The purpose of the union, classically, is divided into three categories. There is a political union, a social union and an economic union. The economic union provides the UK with a single market, with a single currency and a strong central fiscal regime. The social union provides the social solidarity that binds the union together, by redistributing revenue and pooling and sharing risk through welfare benefits and through the pension system. In the political union, every part of the UK is represented here in the Westminster Parliament, and the UK Parliament manages the economic and the social unions. As the sovereign parliament, it can itself reshape the political union, as it has done quite dramatically through the devolution settlements that we are discussing today.
The Chairman: Thank you. That is a brilliantly concise and extremely good analytical answer, if I may say. If I were to ask you to embellish it and say if there is not another layer, where the purpose of the union is to maintain a certain set of values that brings people together from the different components of the United Kingdom, would you feel able to define some of those? The monarchy and the BBC immediately spring to mind, and the Olympics every four years, but where does this begin, where does it end and how important is it?

Professor Hazell: To adopt another tripartite classification, the union is bound together through shared common values, but also through shared interests and through some common institutions, which give expression to those interests and those values. You just mentioned some very important institutions, bodies like the BBC. We could add the Armed Forces. The monarchy is very important, a common institution across the UK.

The interests that bind us together in part I mentioned in my first answer, but primarily they are interests of defence, of national security, but also the common interest that we all have as citizens of the same state in paying our taxes as a form of mutual insurance when any of us becomes old, sick or disabled, and needs to draw on the benefit system, which is the common insurance policy. Those are interests that bind us together.

The values are the hardest one, because those are not laid down formally anywhere. Different citizens might give you a different readout of the main values, and they are not uniquely British values. They are values of which any self-respecting democracy would say, “Those are our values too”. They are democratic values, values of fairness, of equality, of respect for humanity, fundamental human rights and all those things.

The Chairman: Thank you very much. Perhaps we should go on to the principles involved. Can I bring in Lord Hunt?

Q11 Lord Hunt of Wirral: What principles should underline the governance of the UK in future, as well as any further devolution or decentralisation of power?

Professor Hazell: Forgive me, these are all quite high-level principles. Staying with my three-part classification, talking first about the political union, the political union needs to observe principles of democracy and so of democratic accountability and of transparency, in terms of the division of powers between the UK and the devolved or lower levels of government, to observe the principle of subsidiarity and, in terms of dealings between governments at different levels, principles of mutual respect and comity.

For the economic union, there need to be principles of economic efficiency. There needs to be a level playing field, in terms of taxation regimes, and any fiscal framework needs to be sustainable, in the sense that, as we move to many more taxes being devolved, I hope we will move to a system that is regarded as durable.

Lastly in terms of the social union, there need to be principles of fairness and of equal rights between citizens, equal access to the benefit system, and therefore a system of fiscal redistribution in order to be able to ensure that equalisation.

Lord Lester of Herne Hill: I listened with admiration to what you said about British values, shared values and so on, and how you were explaining that what we call British values are in fact shared by any civilised society. If that is right, then presumably one of our so-called British values is tolerance of views that we hate, but which ought to be expressed as part of free speech.

Professor Hazell: Indeed.
Lord Lester of Herne Hill: I find that concept fundamental, but there are those in power who want to tackle that as being unacceptable extremism—the notion that there are certain kinds of views that are inimical to British values. Does that tension help to highlight the dilemma of those who would say that there are uniquely British values that need to be respected on that basis?

Professor Hazell: I hesitate to say very much, because you are a far, far greater expert on human rights and, in particular, freedom of expression than I am, but you will know, as a very distinguished human rights lawyer, that in any society there is a tension between the right to freedom of expression and national security. It is open to any Government to try to draw the line in a slightly different place, but its decisions, as you again will know very well, are subject to review by the courts.

Q12 Lord Morgan: Just one question, Robert, if I may: you have expressed broad principles that should entrench devolution settlements everywhere, and I would agree absolutely with everything, but they have been modulated by, as you so well know, an asymmetry in the way that devolution has been operated. I wonder if there is a problem here. It seems to me that, quite often, asymmetry has become inequality or unfairness. I am thinking specifically, as you might guess, of the standing of the Welsh Assembly, which has only just acquired reserve powers, for example, with the Scottish Parliament. Is asymmetry a problem in that sense?

Professor Hazell: Yes, asymmetry is a problem. It is a problem for two reasons. One is it is more difficult for citizens in different parts of the UK to understand their rights as citizens and their responsibilities if there is a different set of powers in different parts of the UK. Secondly, in an asymmetrical system, there is the risk of a game of leapfrog between the devolved countries, so that, if Scotland is offered something more, then Wales puts its hand up and says, “We want that too”, and Northern Ireland, and perhaps in time English cities or regions. Asymmetry possibly creates a dynamic that makes it harder to reach a stable and enduring settlement.

Coming to Wales, as you will all know, there is consensus across the parties to introduce a reserved powers model for Wales, and we have been told by the Government that they plan to publish a draft Wales Bill, possibly next week. I hope this Committee, if it has the time, alongside this very important inquiry, might possibly do a scrutiny hearing or hearings into the draft Wales Bill, because the schedule of reserved powers in that Bill will be a core part of the new devolution settlement in Wales. It would help reduce the asymmetry, if, as I expect, all three of the devolved nations in future have a reserved powers model, if they could have a core of reserve powers that are held in common. That is not moving all the way to a written constitution, which you began to discuss with your previous witnesses, but it would be moving towards greater harmonisation of the devolution settlements if, once they are all built on a reserved powers model, the schedule of reserved powers was harmonised across the three devolved countries.

Baroness Taylor of Bolton: I just wanted to follow up on part of that, because we have asymmetry, especially between Scotland and Wales, because devolution has been demand led. When we were talking to Professor Tomkins, he was very keen to make that clear as a driving force. If we move to more of what you are talking about, there is a danger that you get to an imposition from the centre of what devolution should be. I am thinking particularly in the context of England, city powers and so on. Do you think that devolution or decentralisation should be demand led?

Professor Hazell: Generally I do and my previous remarks were mainly directed towards devolution in Scotland, Wales and Northern Ireland. If the Committee wants to hear evidence about the extent of demand, you need to hear from experts on public opinion. There has been a huge amount
of academic research over decades on that, not from people like me but people like Professor Curtice and others connected to the Centre on Constitutional Change in Scotland.

Coming to England, I do not think that devolution should be imposed on parts of England that do not want it, but the risk of continuing with devolution on demand is that we may end up, in England, with a very fragmented and patchwork set of powers and responsibilities in different parts of England. I do not myself think that that, in the longer term, is sustainable.

Lord Lester of Herne Hill: In response to the question that Baroness Taylor asked you, is it not possible to establish a coherent framework for the UK as a whole, while at the same time having a demand-led opt-in within that framework, in the sense that different parts of the United Kingdom could opt in, rather like I believe happened in Spain, at a certain stage. When you have rolling devolution on that basis, you establish your framework. The framework is there to stay, hopefully, and within it the consensus would apply and you can have what you could call the demand principle or the consent principle.

Professor Hazell: That is certainly possible as an overall framework and it is how they started out in Spain, in the late 1970s. If you do have a comparative dimension to your inquiry and you have witnesses from Spain or experts about Spain, they would not necessarily tell you a very strong story about where they are now. In particular, there have been very big problems with the amount of fiscal devolution, and Spanish regions getting into serious deficits contributing to a banking crisis et cetera. We tend, in our British ignorance, to think that other countries must have done it better, but many of these devolved and federal countries are grappling with very similar sets of problems and finding some of them as difficult as we do.

Q13 Baroness Dean of Thornton-le-Fylde: Good morning. Your second point on the purpose of the union was social welfare, and you were in when I asked the earlier question, so I will not repeat that part of the question about proportions. Picking up on the point about asymmetry and the latter point you have just been making, in devolving areas of social welfare, and I use it in its widest context, is your view that what should be provided is perhaps a basic minimum beyond which no citizen can fall, going back to your point about equality? If in fact there was a top-up to that, would that have to be both agreed and funded within the devolved nations? That is one part of my question.

Perhaps I can ask a more political question: the SNP is talking about full fiscal powers of autonomy, which from my interpretation flies in the face of some of the unifying principles that we have. To have full fiscal devolution without defence and foreign policy, is that devolution or home rule, or is it in fact full independence?

Professor Hazell: To take the first part of your question—whether there should be a common floor in terms of access to universal benefits, but different parts of the UK, if they are willing to fund them, should be entitled to top up certain benefits—that in effect is the model being proposed in the Scotland Bill. From memory, as many as almost a dozen personalised benefits, in future, if the Scotland Bill is passed, would be devolved to Scotland, and it would be open in future to the Scottish Government, if they are willing to raise the necessary revenue—

Baroness Dean of Thornton-le-Fylde: Forgive me for interrupting, but that is about Scotland and the debate is really about the union. It is not about our other nations within the union. What we seem to be faced with is Scotland determining what is going to happen in the other nations too, without the other nations necessarily being centre of the debate, and I include in that England.
**Professor Hazell:** Just staying with the three devolved governments for the moment, I support strongly the principle for fiscal responsibility for all of them. I think the Government in Wales and the Government in Northern Ireland should also be responsible for raising a significant proportion of their own revenue. That leads me to the second part of your question, full fiscal autonomy, which the SNP says it aspires to. First, it is completely unrealistic, as Professor Tomkins said. There is no country in the world, no federal system, where one of the states or provinces has complete fiscal autonomy. Secondly, it is undesirable and impossible so long as we remain a union. Full fiscal autonomy is a complete opt-out from the social union, and the social union is a bargain about pooling and sharing risk. It is a bargain whereby the richer parts economically of the UK redistribute very significant resources to the poorer parts and, over time, we do not know in future which the richer parts or the poorer parts will be. It is in the nature of insurance and it would be completely wrong of Scotland to claim that they want to remain in the union but they want to opt out totally from the social union.

**Q14 Lord Maclennan of Rogart:** The Bingham Centre has proposed that we should have a charter for the union, setting out the principles and structure of the union. If that is to be other than a parliamentary exercise, and I think it would need to be in order to reflect the wishes of the country, how do you suggest we might invoke the public view? One of the possibilities might be through a convention on the future structure of the union, expressing principles that people would agree to. In the early post-war period, a million people signed up to the Covenant in Scotland, and somehow we need to get across the ideas that are worthwhile for securing the union to the public. Have you any thoughts about that?

**Professor Hazell:** Just briefly on the charter, I have said to the people involved in writing the Bingham Centre report—it is an excellent report, which, as you know, proposes the charter—that since they are primarily a team of lawyers, their next step should be to draft the charter, so that we know what it looks like. That would make this kind of discussion much easier, and it will be quite challenging to draft because, if it is at too high a level of generality, then it becomes rather meaningless but, if it is too detailed and specific, then it runs the risk of possibly being inflexible. Perhaps this Committee could add their invitation to the Bingham team to draft the charter that they advocate.

In terms of the idea of a constitutional convention, which was much mooted, in particular in the run-up to the election by several political parties, it sounds a good idea in principle. There are quite a lot of potential difficulties. One is that ideally the convention should be cross-party and, if one or more parties were to boycott it, would that reduce its credibility? You will remember that was an issue with the Scottish Constitutional Convention.

The second is that I think people overestimate the prospects of success. If the model of the convention is to be a citizens’ assembly of randomly selected citizens then, looking at international experience, it is not very encouraging. There have not been many of these citizens’ assemblies, but in British Columbia, Ontario, the Netherlands and Iceland they all ended in failure, in that the political project that the citizens’ assembly was asked to formulate was not subsequently adopted. Most recently, there has been an Irish constitutional convention with a slightly different model of two-thirds citizens and one-third politicians, and that does seem to offer slightly better prospects of success but, so far, I think it is right that, of its 38 proposals, the Irish Government have decided to adopt only four.

The other worry I have about people proposing a constitutional convention as some kind of panacea is the risk of the agenda being overloaded. There are a lot of constitutional reforms that a
convention could be asked to consider and many of them are interconnected, so there is a kind of logical case for asking them to think about reform of the second Chamber alongside devolution and our relationships with Europe, et cetera. My worry is that it would then collapse under the weight of much too wide an agenda.

Lord Maclennan of Rogart: How would you suggest we get the expression of views from the general public about what ought to be in the charter?

Professor Hazell: Watch this space, because there are next month starting to be two pilots with citizens’ assemblies, conducted by academic colleagues of mine, in particular Dr Alan Renwick from the Constitution Unit at UCL, working with Professor Matt Flinders in Sheffield and Professor Gerry Stoker in Southampton. The pilots are in Sheffield and in Southampton. They are testing two models—one an assembly that is 100% randomly selected citizens, and the second in Southampton will be two-thirds citizens and one-third politicians, from all levels of government, so following the Irish model. Forgive me, but I cannot remember precisely what task they have set for these pilots but, if the pilots are deemed successful, there will be a lot of academic interest in pursuing further citizens’ assemblies and giving them further tasks, and so this could certainly be something offered to them.

Q15 Lord Cullen of Whitekirk: You suggested that a charter, if it formed the basis of a statute, should be put to the parliaments of the other nations within the union. Do you see a prospect of that commanding support from the Scottish Parliament?

Professor Hazell: As currently composed, perhaps not.

Lord Cullen of Whitekirk: If that is so, might there be something to be said for taking a different approach, possibly appealing directly to electors, by way of some form of referendum or some kind of exposure of the charter to see what kind of support there was across the board?

Professor Hazell: What you said about seeking the consent of the devolved Parliament and assemblies reminds us that no change to any of the devolution settlements can be made without their giving legislative consent through the convention known as the Sewel Convention and, in effect, seeking their consent to the charter would be another version of that.

Lord Cullen of Whitekirk: Is that quite right, because what we are talking about is a charter that is meant to entrench what already exists or should exist, rather than change the status quo? The trouble is there are problems with the status quo, because it is being invaded by the effects of devolution.

Professor Hazell: Forgive me, but I do not think we need to venture very far down this road because, as I indicated earlier, first we need to have a charter—and I hope the Bingham Centre will draft a charter—and then we will have a better sense of what it is that we are talking about.

Q16 Lord Lester of Herne Hill: There are examples where constitutional conventions have worked quite well and surprisingly so. One was the Scottish convention that eventually led to the Scotland Act and indeed the judicial review as part of that. The other example is Northern Ireland where Lord Lowry presided over a deeply divided community, but the constitutional convention was able to achieve a remarkable degree of agreement across the two tribes in Northern Ireland. Are you saying that, if we had a draft charter and therefore a fairly focused discussion, it would make some sense to have a constitutional convention but no sense if the constitutional convention was simply a talking shop without a precise agenda to discuss?
Professor Robert Hazell, University College London—Oral evidence (QQ 10-17)

Professor Hazell: There is a lot of interest in the idea of a citizens’ assembly, especially in the academic community but also among the political parties, as a possible forum in moving some of these matters forward. As we said in our report about devolution and the future of the union, which we published in April of this year, it is by no means the only model, and you remind us that there are plenty of alternative models for considering proposals for constitutional reform, fleshing them out and testing them.

There can be expert commissions, like for example the Royal Commission chaired by Lord Wakeham on reforming the House of Lords, 15 years ago. There can be cross-party talks, and we have seen plenty of examples of those. Again staying with the issue of House of Lords reform, there were cross-party talks chaired by Jack Straw under the Brown Government, and then by Nick Clegg under the coalition Government. That is another possible forum in which to try to seek some kind of cross-party consensus. There are several different models for trying to progress and test support for specific constitutional reforms. The citizens’ assembly is in fashion, if I can put it that way, particularly among my academic colleagues, but it is not the only model, by any means.

The Chairman: We are running short of time, but I would very much like to bring in Lord MacGregor on the situation in England in any settlement, because we had to forgo it in the last session.

Q17 Lord MacGregor of Pulham Market: Coming on to England alone, is a settlement that does not include legislative devolution to and/or within England sustainable in the long term? If I can first of all take it at the parliamentary level, I know that you have had views about this in the past, but there is clearly going to be an increasing demand, also because of the prevalence of Scottish MPs since the election, for a solution to this problem. I wanted to ask you on that if a parliamentary mechanism, such as English votes for English laws, or an English grand committee solution, which are the two that have been suggested, answer the English Question? Secondly, within England, does decentralisation under the Cities and Local Government Devolution Bill and City Deals provide a long-term solution to the other issue?

Professor Hazell: Can I take your question in two parts, starting with English votes for English laws? On that, I have expressed great scepticism in the past, in particular in a book that we published now 10 years ago called The English Question. I have since modified my view, and I would like to see and hope to see, in this new Parliament, some experimentation with English votes for English laws, as the Government intend to do. I do not know and, in all honesty, nobody can say with confidence whether English votes for English laws can be made to work in terms of the technical procedures in the House of Commons, which as you will know are potentially quite complex on the Government’s proposals, but also, more importantly, in terms of their political impact. By political impact, I do not just mean in terms of Parliament and the vexed question of whether we then introduce two classes of MPs—those kinds of questions—but more fundamentally whether it works for the public.

Why has English votes for English laws been proposed? There is a sense amongst politicians that, with devolution to Scotland, Wales and Northern Ireland, England feels left out and the people of England need a louder political voice, and so Evel is being offered as giving English representatives that louder political voice. If, as I hope, we have experiments with English votes on English laws, one piece of research I am longing to do, or I hope that some of my colleagues who do polling will do, is to see what impact that has on the people of England. I personally would be quite surprised if the people of England notice that a particular Bill has been passed by Parliament under the new Evel process. Ordinary people know very little about the legislative process.

Lord MacGregor of Pulham Market: Is there not some evidence that English votes for English laws is now becoming a preferred solution, not just among parliamentarians and politicians, because
there has been much more written in the media around this? When one has a particular piece of legislation that looks as though it is English-only, and may not carry the House of Commons because of the presence of a lot of Scottish MPs, do you not think that is likely to create a lot of feeling among a lot of people that Evel is the answer for that particular type of legislation?

**Professor Hazell:** You are right that, in terms of the polling evidence, there has long been quite strong support for English votes for English laws, and it is right also to add that the Conservative Party has not just recently pulled this proposal out of the hat. It has been in every Conservative manifesto for the last four elections since 2001, and that is another reason why I would now like to see it tried. There is strong public support for the idea, so I hope there will be experiments, and let us see how it works. In terms of whether the public notice, critically it will depend on whether the media notice and choose to report it. Again, we know that the ordinary public do not read *Hansard* but, if it is widely reported in the press that this has been used, and possibly against Scottish opposition, that is the kind of thing that will come to public notice.

**Lord MacGregor of Pulham Market:** I agree with that and think the media is very likely to focus on it, in fact, because it is going to be quite a big issue. What about within England itself, the second part of the question—whether the Cities and Local Government Devolution Bill and City Deals will provide a solution?

**Professor Hazell:** As I said to Lady Dean, my worry there is that it risks being a very fragmented and patchwork solution. If it consists, as appears likely at the moment, simply to be a set of bilateral deals, in effect between the Chancellor of the Exchequer, who is driving this policy, and different cities or city regions in parts of England, that to me is not from the sound of it a very sustainable long-term framework. It may last only as long as this Chancellor. The part I am keenest to see further detail on is the financial side and, at the moment, the funding deals appear to depend upon a competitive bidding process. It was announced by the Government last month that there had been 38 bids for this next round and, connected with the Autumn Statement, I expect the Chancellor probably to announce further winners of these new deals under the umbrella heading of the northern powerhouse but, in the longer term, that does not seem to me a very sustainable basis.

**The Chairman:** I am afraid we must draw to a close at this stage. Professor Hazell, thank you very much indeed for giving us extremely helpful, concise and informative answers. I wish we could have gone on, but we have other business we have to deal with. May I say that we would very much appreciate it if you are willing to drop us a note about the answers to the last two questions, which I think you knew we were hoping to ask and did not get round to? One was concerning the possible territorial role of the House of Lords, and the other was to do whether there were any other non-constitutional solutions that would help establish a more stable settlement. We would very much appreciate some written work from you on that.

**Professor Hazell:** I will gladly do so.

**The Chairman:** In the meantime, thank you very much indeed for coming to us today. It has been extremely helpful.

**Professor Hazell:** Can I wish you good luck with your inquiry? I do think it is very important.

**The Chairman:** We need a lot of that. Thank you.
Introduction
My main submission to the Committee was a copy of the Constitution Unit’s report Devolution and the Future of the Union, published in April 2015 (see https://www.ucl.ac.uk/constitution-unit/publications/tabs/unit-publications/163.pdf/). It was produced by a team of ten people, seven of them former senior civil servants, who pooled their experience of working for Scotland, Wales, Northern Ireland and the UK government. My oral evidence on 14 October drew heavily on that report, as does this further written evidence. I was asked to submit further evidence on the possible territorial role of the House of Lords, and on other non-constitutional solutions that would help establish a more stable settlement.

Remodelling the House of Lords as a second chamber of the nations and regions
There have been calls recently for the House of Lords to be remodelled as a second chamber to represent the nations and regions of the UK. The underlying assumption is that a reformed second chamber could bind together the nations and regions at the UK level by representing them directly in the Westminster parliament. That is the theory; but experience elsewhere suggests it may be more difficult to realise in practice. Federal second chambers rarely operate to bind a federation together, because they rarely contain representatives of state governments or parliaments. Second chambers in federal systems can be directly elected, indirectly elected or appointed. Examples of all three types can be found in the larger countries of the Commonwealth; but whatever the method of selection they tend to be party chambers first, and federal institutions second. The Australian Senate is a powerful second chamber, a strong check and balance, but it does nothing for the federation. Its directly elected members represent the people of the states, not the states themselves, and they vote on strict party lines. The Canadian Senate is all appointed and relatively weak, but its members also vote on party lines, not as representatives of the provinces. Similarly with the US Senate, which is directly elected: Senators vote primarily as Republicans or Democrats, not as representatives of their individual states. How the Senate behaves depends on which party holds the balance of power. Directly elected second chambers tend to be dominated by national political parties, and do nothing to represent state governments or state legislatures at the federal government level.

Indirect election appears to be a more promising model for a federal second chamber. But should it be elected by the state parliaments (as in India) or local government (as in France or Ireland); or contain representatives of the state governments, as in the German Bundesrat? Only the German model offers functional representation of the states at the federal level: in the other models members of the second chamber are party politicians first, and representing their states or localities comes a long way second. Even in Germany the party balance in the Bundesrat is crucial. But the German model is not directly transferable to the UK, because the Bundesrat gives representation to the state governments, with floating membership depending on the topic being discussed, as in the EU Council of Ministers.

The difficulty in replicating the Bundesrat lies in finding equivalents to the governments of the Länder. Scotland, Wales and Northern Ireland could be represented by their governments; what are the corresponding regional governments in England? The difficulty arises to a lesser extent
even with proposals for a directly elected federal chamber: Scotland, Wales and Northern Ireland could be represented as nations – what are the corresponding units in England? Most proposals for a directly elected second chamber have relied on the same regional constituencies as are used in elections for the European Parliament, using a regional list system. This would result in a party dominated chamber, with very weak local ties: with list systems, party loyalty predominates.

In terms of institutional design to bind a federation together, the machinery of intergovernmental relations is generally far more important than the design of the second chamber. The German Bundesrat is the only second chamber which enables the state governments to negotiate with each other and the federal government over federal policy. In other federations that is achieved through the machinery of intergovernmental relations: in Australia COAG, the Council of Australian Governments; in Canada through the Minister for Federal-Provincial Relations. But the machinery only works if there is political will from the Prime Minister to make it work; in Australia and in Canada that fluctuates, depending on the interest of the current Prime Minister.

**Stronger territorial role of the House of Lords as presently constituted**

But the House of Lords could play a stronger territorial role without further reform, and a stronger contribution is badly needed. The Lords particularly needs to do so because the committee structure in the House of Commons is so fragmented, reflecting the fragmentation in Whitehall. Whitehall has six centres for devolution policy (Scotland Office, Wales Office and Northern Ireland Office; Cabinet Office, DCLG and Treasury). In the Commons responsibility for devolution is similarly divided between the six Select Committees which scrutinise the work of these departments.

Only the Lords can bring a more coherent and rounded view. That could be provided by the Constitution Committee, and is exemplified by the Committee’s current inquiry. If the Committee does not have the capacity to maintain a sustained focus on devolution and the future of the Union, because of the importance of its other work, then it might wish to establish a Devolution sub-committee. Or if that is deemed impractical, it might wish to ask the House authorities to consider establishing a new Select Committee dedicated to this task.

**Non-constitutional solutions to establish a more stable settlement**

There are no easy answers to this question; and a limit to what governments alone can do. In the concluding chapter of *Constitutional Futures* in 1999 I said “Constitutions alone cannot bind nations together: but constitutions embody values, and to work they need politicians who accept those values and can give force and expression to them”. So politicians, through their speeches and media interviews, can set out to create a constructive framework for intergovernmental relations based upon mutual respect and effective co-operation. Or sometimes they can do the reverse. The latter was exemplified in David Cameron’s comments about English votes for English laws in the aftermath of the Scottish independence referendum. That set up two opposing nationalisms, when a statesmanlike approach would have been to reach out to the people of Scotland and be generous in victory. Getting the tone right matters.

**Devolution on demand**

I should like to finish with two parting comments on other issues raised at the evidence session on 14 October. One is the unquestioned assumption that devolution should only be granted in England upon demand. If devolution unfolds in a haphazard way, through a continuation of the City Deals bidding process, there may come a point in future when the patchwork is considered too fragmented. A future government which wishes to introduce greater coherence and consistency
between the different powers and financing arrangements of different cities and regions may need to legislate to impose greater uniformity, if some areas resist levelling up or levelling down. That would breach the principle of devolution on demand. But other countries have not been so precious in observing the principle. Take just two examples from Europe. When Germany became a federation in the post war German constitution, several of the Länder were new creations which initially were very unpopular. And when Italy introduced direct election for its regional Presidents in the reforms of 1999 and 2001, it was a centrally imposed reform, not something demanded by all the regions (the equivalent for the UK would be the imposition of directly elected Mayors).

Interpreting and altering the division of powers between the UK and devolved governments

Lord Lester asked (Q 8 on 14 October) about the relative roles of the courts and Parliament in interpreting the division of powers. One advantage of the devolution settlements, denied to countries with federal constitutions, is their built in flexibility. The devolution statutes all contain provisions which enable the UK government to amend the division of powers by Order. To take one example, the Scotland Act 1998 includes provision in s 30(2) to amend Schedule 5 (the list of powers reserved) by Order in Council. This adjustment provision has been used quite frequently to make minor adjustments to the settlement. Powers have been moved both ways: more power has been given to Scotland, and further functions have been reserved to Westminster. This power to rewrite the settlement is subject to the important safeguard of requiring an affirmative resolution of each house at Westminster and of the Scottish parliament.

23 October 2015
Professor Ailsa Henderson, University of Edinburgh — Oral evidence (QQ 83-92)

Evidence Session No. 5
Heard in Public
Questions 83 - 92

WEDNESDAY 11 NOVEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Maclean of Rogart
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Professor Ailsa Henderson, University of Edinburgh, and Professor Nicola McEwen, University of Edinburgh

Q83 The Chairman: I welcome our two distinguished guests, both from the University of Edinburgh. Unfortunately, Professor Charles Lees of the University of Bath has had to call off but is sending us some written evidence. We are grateful to you for coming. You both have distinguished backgrounds with all kinds of exposure to constitutional matters. We very much look forward to hearing what you have to say.

I will start the questioning with the first point that we wanted to raise: are there any common principles underlying the distribution and exercise of power in other countries with multilevel government systems—either in other countries or in the UK, if you think that is appropriate?

Professor Nicola McEwen: Only in a very general sense in that all federal or multilevel systems tend to be based on the principle of wanting simultaneously to recognise diversity and to maintain unity. That idea of balancing unity and diversity is the underlying principle for all of them. Of course, how you do that and how you give institutional expression to that principle will vary from case to case, but all systems have a balance between self-rule—recognising autonomy and self-government—and shared rule, facilitating a process for the constituent units to participate in decision-making at the central, state level on matters that concern their competences.

In the UK, at least with respect to Scotland, Wales and Northern Ireland, we have tended to focus rather more on the self-government aspects and have really neglected the shared rule dimension. There is probably rather a lot that we can learn from looking at other systems about how to begin to address that.
Professor Ailsa Henderson: I agree. In terms of common principles, one thing that is clear from the literature is that there is not one way to do things, so often the literature focuses on the variation rather than on what is shared. If we are looking at constitutions or documents proposing change, obviously diversity is something that crops up frequently. Sometimes that is recognition of diversity in terms of the existence of constituent units or recognition of diversity in terms of constituent communities—linguistic or ethnic communities. That crops up frequently, and sometimes there is an overlap between those constituent units and those communities. Then there is the notion of unity and social solidarity. Often we find in constitutions, particularly of federal states, that there is an attempt to link those; for example, the notion of diversity in unity that is referred to in the Swiss constitution.

Another thing that crops up often is the notion of equality. Equality is sometimes referred to in a formal legal sense—everyone is equal before the law—but particularly in a multilevel context it also refers to equal opportunity or equal access to programmes, and it surfaces often in the notion of mobility rights; that is, if you move from one part of the country to another, you will have equal access to different programmes and services; and particularly when there is linguistic diversity within a state - that a particular region is not seen as a ghetto for individuals and they should be able to move outside their region - in which there is linguistic difference, and still be able to access services and programmes throughout the state.

The Chairman: Do you think there is a danger that we can focus too much on principle-driven approaches to relationships between devolved parliaments and nation states and that we would do better to focus on the political reality—the horse-trading, the pressure groups, the demand-led devolution and all the problems that arise—as perhaps being a more practical approach?

Professor Ailsa Henderson: If anything, I think the reverse is possibly true. If you do not spend enough time thinking about the principles, the practice will not ever really work. You need to know what you are doing. You need to have a discussion—what are the first principles of this political, social or economic union? What kind of union is it? What are the fundamental values that are animating it?

Professor Nicola McEwen: I probably have a different view. The problem with that, particularly in a clearly multi-national state such as the UK, which in many ways is a series of unions rather than one union, is that if you try to define and lay down those first principles, you will inevitably please some and alienate others. What the union means will vary in different parts of the country and will be mediated through other territorial identities and perspectives. I do not necessarily think it is an either/or. If you are going to go down a principles route, I would keep it at the very abstract level. Nor do I necessarily think that you should be led by short-term political behaviour and pressures, but I would think more in terms of the institutions that would express your principles and the practices and procedures that might express those principles in terms of a practical way forward.

Q84 Lord Lester of Herne Hill: I suspect that we are still dealing with the causes and effects of the French Revolution and the reactions to it. Taking the hint from the Lord Chairman about principles, the very idea of principles seems alien to our system in some ways. Take comity as an example. Obviously that is cultural, but can you give us some practical examples of where it has made any difference because somebody in some country has complained of a lack of comity, as a result of which a court has said, “Yes, there is a lack of comity here”? Can you think of any examples of that kind where it has made a positive difference rather than being what some would regard as simply rhetorical?
Professor Nicola McEwen: I think it depends on how it would be expressed in practice or institutionally. You asked whether a principle of comity might be enforced in some way. To me enforcement seems almost at odds with the principle: if you have comity, it has to evolve; it has to be the practice rather than something that you can enforce. In any set of relationships that kind of mutual trust has to be earned, learned and acquired through experience rather than something that can be a top-down measure. Some of the examples that Ailsa gave—things such as the equality of rights and supporting mobility throughout a state—might build into that. But even where you have those sorts of provisions, it does not necessarily follow through into practice. I was struck when I was in Canada in the summer that some of the criticisms of the then Government were that they had lots of things at the centre—they have Ministries of Intergovernmental Affairs in the constituent units and the federal level—but nobody at the federal level was working at it. They were not working at making the federation a success. That was seen then as a problem and it may be different under the new Government.

Professor Ailsa Henderson: Fundamentally, you are looking for a harm principle—you can have difference but you will not do undue harm to either another constituent unit or residents in those units. There is a distinction between perceived unfair treatment for jurisdictions and perceived unfair treatment for individuals. The reference to non-detriment in the Smith commission report is an attempt to get at that. Another example would be that when the Canadian Government finally recognised the existence of Quebec as a nation, they tried to do it in such a way that enforced the unity of Canada, with Quebec as a nation within a united whole, a united Canada. In constitutions you often find this statement about unity and common purpose. The Swiss constitution refers to a common purpose. So there are attempts to state that it exists, but I think Nicola is absolutely right: how do you enforce trust? How do you enforce social solidarity? There is also a distinction between different treatment and unfair treatment. Jurisdictions could reasonably claim, “We are being treated unfairly if we do not have a seat at the table”, but in terms of individuals, it is a difficult judgment call about whether being treated differently is evidence of unfairness. That is the problem that you are trying to resolve.

Lord Lester of Herne Hill: I am very interested in what you are both saying. Of course in the House of Lords, we have various statements to guide us, like that there should be no asperity of language—I have heard that enforced on one occasion—or that we act on our honour. That is certainly something that has had to be enforced in our 17th-century procedures. So I understand the cultural advantages of certain kinds of statement. Are you saying that we are not in an area of law where judges will come in and rebuke for lack of comity, we are dealing with political and cultural matters that need to be reinforced and it is a good idea to write that down in some document? Am I getting it roughly right?

Professor Ailsa Henderson: Roughly, yes. There is a spectrum. On the one hand you have to identify that it is useful if we all trust each other and work on a common purpose. But to then act on that, if you perceived that someone was acting contrary to that, you would need some kind of definable wrong that had occurred that you would be punishing. You would need something concrete that you were finding to be wrong, rather than that they were failing to exercise trust.

Professor Nicola McEwen: There is a difference between a citizen perspective on this, where you can have specific rights, if you like, or duties on citizens wherever in a multilevel state they reside. That can be enforced. If you are talking about the relationships between Governments, it is useful to have a set of principles to guide and perhaps steer behaviour, but the principles in and of themselves will not be sufficient. We have had principles in the UK, and we had that in the Memorandum of Understanding, but it does not necessarily follow through into behaviour.
Lord MacGregor of Pulham Market: Professor McEwen, you said that you were struck in Canada this summer by the lack of an institutional structure that tackles the federal situations and establishes some of these things. Is that a weakness? How would you put it right?

Professor Nicola McEwen: It is not so much that there is a lack of a structure but a lack of the use of that structure. In the Canadian context, there are a multitude of forums for intergovernmental affairs but they are not statutorily based and they can be rather ad hoc. Sometimes the federal and provincial relationships and intergovernmental committees will be initiated when the federal government of the day wants them to be. The previous Government took a rather distant approach to working at the federation through those multilateral intergovernmental forums. Certainly, from the perspective of some of the provinces, that was seen as a problem. Do I think you need an infrastructure? Yes I do, but how you establish it and how routine and institutionalised it is expected to be will shape how it is used as well. It has to be there not just for the sake of it; it has to matter if the Government at different levels will engage meaningfully with it. You also see that in relationships between nation states. I did some work looking at the Nordic countries’ relationships with each other, and bodies like the Nordic Council of Ministers are not terribly important because they do not do very much. There is not much at stake on its agenda for senior Ministers to engage in. It has to be meaty enough to bring them to the table and to make it matter.

Q85 Lord Hunt of Wirral: In exploring the symmetry, we have to deal with the predominance of England, both demographically and economically, so we are almost looking at parallels. My question to both of you is: do any other devolved federal states have significant sub-state regions or nations without devolved powers? Can administrative devolution to regions substitute effectively for legislative devolution? Are there comparable examples to England?

Professor Ailsa Henderson: No, is the short answer. Asymmetry is not uncommon at all in federal or multilevel states, but the norm is where the majority of the constituent units have a base level of power and then others, for whatever reason, have slightly more than that. We sometimes find that within other regions of federal or territorialised states, such as the special regions in Italy and particular autonomous communities in Spain. You also find it sometimes when there are overseas territories or protectorates, so Greenland and Denmark, an otherwise unitary state, or the Åland Islands. More rare to find is where you have regions with a base level of autonomy and then regions with significantly less autonomy than that. So, with Spain’s autonomous cities that are not territorially contiguous with Spain, they have significantly less autonomy. But nothing compares to England, in terms of the scale of difference and level of self-rule available, but also the asymmetrical demographic size of the units. It is usually a very small unit that has significantly less power. A useful example is Canada and Australia, where they have provinces and states, and then they have territories. The territories have smaller populations and less self-rule and shared rule than the provinces and states. There has never been much call for the territories to become provinces or states, so they are on a completely separate trajectory.

Professor Nicola McEwen: It is probably helpful to think of the UK as a unitary state with three special-status regions. That sort of structure is not uncommon; there are a lot of examples in the world today and historically where you have special-status regions, usually on the periphery of a country. Most of those are small, often remote, sometimes island nations or territories, if you like, so Åland in relation to Finland or the Azores in relation to Portugal are examples of that. In Europe, probably the closest parallel to the UK would be Italy for much of the post-war period until the most recent reforms, where you had five special-status regions within Italy, again on the periphery. The constitution in the post-war period recognised regional units in the rest of Italy but it never did so in a meaningful way. It never followed through until relatively recently. That is probably the
closest parallel, but I agree with Ailsa that there is nothing quite like the structure that we have here.

Q86 Lord Norton of Louth: Following on from that point, we are exceptional in the extent of the asymmetry but you stressed that asymmetry is not unusual elsewhere. My question is really to explore the consequences in the context of the UK, if we look at it from the point of view of political stability. We have received somewhat conflicting evidence. Professor Tomkins suggested that asymmetry should be seen as a virtue. Other witnesses such as the PSA and Rob Hazell, among others, suggested it can underpin instability. What is your view about what we could learn from elsewhere in how we assess asymmetry?

Professor Nicola McEwen: There are asymmetries in every system. Even those that are constitutionally symmetrical will have asymmetries in other respects—cultural, linguistic, economic or political—and those have to be balanced. The size issue is often talked about in relation to England, that you could not have an English Parliament because it is so huge compared to the other devolved nations. Hugeness in and of itself is not necessarily unusual. For example, in Germany, Bremen comprises about 4% of the population of North Rhine-Westphalia; Prince Edward Island is even smaller vis-à-vis the size of Ontario. The issue is not just that England is so much bigger than the others but that it has the overwhelming proportion of the population. If you were to try to think of a federal structure for the UK, the experience globally—we do not have many experiences in our comparator countries, I guess—is that one would think of that as a potential source of instability. On the other hand, you can find examples both of asymmetry potentially creating instabilities and of a failure to accommodate asymmetry as potentially creating instabilities as well. If you have cases where there are grievances or territorial distinctiveness and you do not recognise those, either symbolically in terms of the recognition of national status or constitutionally and institutionally in terms of the powers that are afforded to those nations, that also becomes a source of instability. There is no right answer to your question, I am afraid. You can find examples of both.

Professor Ailsa Henderson: Obviously there is a distinction between de facto and de jure asymmetry. One useful example is the existence of provincial opt-outs in Canada. When the Canadian Government have shared-cost programmes and they legislate in an area of provincial jurisdiction, provinces can choose to withdraw from the shared-cost programme. Until the 1960s if you chose to do that you just bore all the costs of creating your own programme by yourself. There is now a system whereby you can be compensated for that financially by the federal Government. That offer is made to all provinces but typically only Quebec takes it up. This is seen as generally less problematic than what the NDP proposed in the last federal election, and what happens with immigration, which is that Quebec is given the right to exercise judgment on immigration and run its own programmes but that right was not offered to other provinces, including Ontario, which takes the bulk of immigrants. The existence of that and the NDP proposal that if Quebec did not want to be part of any programmes at all, not just shared-cost programmes, it would be able to do so and would receive full financial compensation for that, was seen as deeply problematic. Offering all provinces the right to opt out and letting different ones choose is seen as less problematic. That said, even that situation has its critics, because it creates instability for the federal Government. They are never really sure who is in and who is out. It raises risks in terms of economies of scale—what if the larger ones all opt out and you are left running a programme just for the smaller provinces? It is agreed on a rolling set of five-year agreements and nothing is ever set in stone. For the provinces, it also creates vulnerabilities because the federal Government can stop running programmes. There are lessons to learn, not necessarily how not to do things but maybe how to
tweak things. There is obviously a distinction between opting out in the Canadian example and opting in in the Spanish example.

**Baroness Taylor of Bolton:** Could we have an example of the kinds of programmes you are talking about?

**Professor Ailsa Henderson:** Yes, the kinds of things that they opt out of have included, over time, funding for highways; funding for universities, hospital insurance, —

**Professor Nicola McEwen:** Childcare as well.

**Professor Ailsa Henderson:** The 1982 constitution included an amendment which said that you would be compensated financially if it was in the area of education and culture. So most of the opt-outs are within that realm, but not exclusively.

**Professor Nicola McEwen:** Often they are in areas that are within provincial jurisdiction but in which the federal Government can intervene and develop shared-cost programmes. If you are Quebec, you may already have a programme in that area or you want to keep those institutional identities to yourself and meet what are perceived to be distinctive needs. The tendency of whoever is in government would be to opt out and do it separately.

**Professor Ailsa Henderson:** The main criticism of those is that even if you opt out, you still have to follow the general principles set by the federal Government. So you have the autonomy to spend your own money and implement the programme yourself but you do not have the autonomy to make significant changes to the basic principles, which are set by the federal Government. So it is a funny kind of autonomy. It is the autonomy to spend your own money, in a way.

**Lord Lester of Herne Hill:** Do we not have examples from our own history of the disadvantages of asymmetry, such as the history of the founding of the Irish Republic or what happened under Stormont in Northern Ireland for 50 years? Do those examples indicate that the old system did not function very well and we allowed asymmetry and it had rather severe consequences north and south of the border—or is that a bad example?

**Professor Nicola McEwen:** I think it is a difficult example, because many of the problems that emerged in Northern Ireland were not caused by asymmetry in and of itself. It might have been a contributing factor alongside many others. Going back to the discussion about principles, one of the lessons from Northern Ireland is: do not devolve power and then just ignore it. You have to work at it. The experience of devolution in Northern Ireland over much of the 20th century was that there was an element of neglect and reluctance to intervene until intervention became absolutely necessary. Northern Ireland and Ireland in general are always going to be a difficult example, given the sectarian nature of the issues that have emerged there.

I will give one other example, which I am thinking of as something that could potentially be followed in England. In Spain, with the transition to democracy and regionalisation, there was a general constitutional framework but the autonomous communities negotiated their arrangements bilaterally with the state within that general framework. That has tended to lead to a mainly symmetrical system, apart from a few exceptions, but it gave them the space to come to arrangements and to do that at the pace which was suitable for each of the regions. Potentially that could be applicable within England in any future regionalisation.

**Q87 Lord Norton of Louth:** This question moves from the merits to the practical aspects. If one is going to further develop devolution or even a federal system, it is about how we get from here to there. What are the lessons we may learn from practice elsewhere? Sometimes there is a problem
that there may be a lack of regional identity or you may be creating artificial constructs in some parts of a nation. Are there any lessons we can learn so that we do not reinvent the wheel should we want to move further in that direction?

Professor Ailsa Henderson: Obviously, I know the Canadian example best. In 1867, just four units were part of the federation; a fifth existed but did not join. But in the late 19th and early 20th centuries a series of provinces and territories were created. It is worth distinguishing between why one might become a province and why one might become a territory. Fundamentally it had to do with population—the population of the settlers rather than of First Nations or aboriginal peoples. It was the size of the population. It was the concentration of the population. It was also whether there were pre-existing institutions of government. If you had a large enough population, it was relatively concentrated and you had pre-existing institutions such as a legislative council, you were likely to become a province. If you had a smaller population and the fundamental issue was about identifying a piece of land that was not too large to govern, you were a territory. The territories and provinces were slowly carved out of the Northwest Territories. The overriding concern with the territories was size—what is manageable? How big is too big? “Let’s carve out little bits at a time because the rest is too big”. You can see these two different logics running alongside discussions about what you do with England. If the issue is self-government for England as England, that leads you towards the provincial model. If the issue is that England is too large to govern as England—

The Chairman: We will pause there.

The Committee paused for two minutes’ silence.

The Chairman: Professor Henderson, you were in mid-flow. Would you like to continue?

Professor Ailsa Henderson: There are two different logics in the different visions of what you might do. One prioritises self-government and the other is focused on territorial scale.

Professor Nicola McEwen: Again, thinking of the Spanish example, one pattern that has been evident there, and that you might see in some other cases, is the catch-up dynamic. In Spain they call it café para todos. When you have regional government in one place, it might act as a demonstration for others. You can do that by design—by setting up a framework to facilitate that sort of process—or it may happen as a result of the political pressures that that generates; a demand for regional government in other places if they see that they are missing out on something. That may well happen in the English case. It is not inevitable that it will, but it may well do. I do not know if that answers your question.

Lord Norton of Louth: Whether or not one has a formal imposition of an overarching structure, you are implying that it is about having a degree of flexibility and adaptability in the light of experience in responding to demands.

Professor Nicola McEwen: Yes, that is absolutely the case. Sometimes, regional government happens from central direction, for functional reasons, efficiency of government or whatever. But a lot of the time, it happens because of the pressures that are generated, often through party competition. The classic example there is Belgium, which became a federal system over the course of my lifetime—from 1970 until the 1990s. That happened after the parties regionalised, so, in a sense, the parties drove that process. The parties drove the process in Italy also. Party competition can be a big driver of these things.

Lord Lester of Herne Hill: Just to get my mind around this, are you saying that these parallels, in Spain and elsewhere, indicate that you could have a charter, constitutional document or framework document of some kind and then a kind of opt-in position? That way, you do not coerce, as we did
with the allies in occupied Germany after the war, and simply say that we are going to impose a framework upon those who do not want it; that way, we would be saying that we are going to do it differently, as an opt-in. If that is what you are saying, I would be jolly interested to know how it works in Spain. Did it in fact work well in Spain? As I understand it, it is exactly the kind of thing that their system has.

Professor Nicola McEwen: That is what I am saying. Echoing Lord Norton, flexibility is the key, as well as a degree of pragmatism. Spain is a very different context. It was a transition to democracy and there was a constitution that aspired to develop a regional structure throughout the country. But it did so at a different pace in different parts of the country. The historic nations were fast-tracked to regional autonomy; the others moved more gradually. It did so on a bilateral process. That bilateral nature continues now, so you have revisions to statutes of autonomy that involve both the national Parliament and government and the autonomous community as well. They are negotiating a settlement for each of the autonomous communities but within a national framework. So, yes, that is, in a sense, what I am suggesting as one possible route.

Professor Ailsa Henderson: I would urge some caution, though, in the sense that it depends how fluid you want the situation to be. You could find yourself in a situation where regions opt out to things when they do not like, say, the Government of the day, because they believe that they are going to make certain kinds of changes to social policy. So, for the duration of that Government, they will opt out of things. Then, when the Government changes and they like things, they will opt in. That is something that you might think of as an advantage of the system. But it does carry risks that would need to be examined, partly because of the cost of starting up and closing down programmes and shifting jurisdiction back and forth. You might like to look at term limits of five or 10 years; that would not be unreasonable to my mind.

Lord Norton of Louth: Just a quick question as a follow-up to that. Are there any examples of that excessive flexibility that you have just identified as a potential problem? Has it been realised anywhere in practice?

Professor Ailsa Henderson: The Canadian example provides the structure for that. We found in Canada that, because they are shared-cost programmes, it is often not the province changing its mind but the federal government. Because they are legislating in an area of provincial jurisdiction, they can, at times, decide that they are going to cancel a programme. So provinces that are in shared-cost programmes find themselves suddenly in a situation where, if they want to continue the programme, they all of a sudden have to adopt the full cost. The risk has been surfacing in the other way, but it illustrates how it might work in a different direction. There are five-year arrangements in terms of investigating those. But the federal government can, with no notice, cancel a programme. That does have costs.

Lord Lester of Herne Hill: Are there risks of not doing things as well as doing things? We talk about the risks of an opt-in programme, and I understand that, but what about the risk if we simply go on as we are now, doing nothing?

Professor Ailsa Henderson: I would not urge doing nothing.
Professor Ailsa Henderson, University of Edinburgh—Oral evidence (QQ 83-92)

in the sense that the settlement provided that the health service would be run in Scotland by the Scottish Parliament but on a budget that is voted on in London. Scotland does have provision to raise taxes to support shared costs if it wishes to, although that has never happened. At what point do we really start to question the national integrity of the state on devolving social and welfare benefits? In a small nation, if you opt out of a provision where you can do different things in different regions—although we are currently looking just at independence and separation—at what point do you say, “That won’t work”? We are geographically a small nation. If you have different regions, someone living in Yorkshire or Lancashire might live in one place and work in the other. They would potentially have very different social and welfare structures. Is there any evidence where that has happened and created problems?

Professor Nicola McEwen: First of all, I would say that there has always been a degree of variation within the welfare state, long before devolution. It was never as homogenous as we sometimes might think given the current nature of the debate. In some countries, one way to try to address that is to have framework legislation at the national level, so that the national Parliament sets guiding principles, or the framework within which regional governments and parliaments can then develop their own distinctive policies and programmes while agreeing to a minimum set of national criteria. However, that is incredibly controversial when it is applied and creates resentment. Again, I go back to the Spanish example, as Spain operates a system of framework legislation for things like health and education. That creates resentment in Catalonia and other historic nations where they want the autonomy to do things differently. I would not recommend that sort of system for the UK. There are other ways. In a way, this goes back to our first principle of unity and diversity: if you have a multilevel system, you have to accept that it will create differences in different parts of the country, and the system will have to be able to cope with, accommodate and respect those. In a democratic system that is often a matter of political choices. So I would be very cautious about trying to override that in ways that seek uniformity in some respects. You can have a minimum standard, in a way, or a system which enables different parts of the country to reach a certain standard. Often, federal countries will have equalisation systems or something equivalent to that, so that a poorer region has the ability to deliver a set of services to its citizens that are at least comparable to those in a wealthier region in another part of the country. But there will still be variations, which will be a matter of political choice. I think that is okay. It is one of the things that we have to live with in the context of multilevel government.

The Chairman: Before bringing in Professor Henderson, I am slightly worried that the clock is against us and we have a lot of other things we want to ask you about. Perhaps everybody could bear that in mind

Professor Ailsa Henderson: I was going to say something fundamentally similar to Nicola, so I am perfectly happy to move on to the next question, if that would work—I could not agree more.

The Chairman: I hate to inhibit contributions. Are you sure?

Professor Ailsa Henderson: We have lots of data on this. People have a strong sense of regional identity, and a strong sense of regional solidarity follows that, but that does not always come at the expense of state solidarity. Sometimes it does, but it is not a zero-sum game. Our argument suggests that you can have a strong sense of both regional and state solidarity. There are softening measures, which Nicola pointed to. I am happy to move on.

Q89 Lord MacGregor of Pulham Market: I am interested in which powers you think need to be reserved to maintain an effective state or union. Some are fairly obvious—defence, security, macroeconomic policy and so on—but we have had differing evidence from elsewhere. Scotland in
Union has given quite a long list of things which it thinks need to be reserved at the national level. What is on your list?

**Professor Nicola McEwen:** If you are thinking specifically about social solidarity, in a lot of countries you find that the national level is keen to hold on to social security, although Canada is an exception here in that it is mainly a provincial responsibility. It is also commonplace in other countries that there is a distinction between social security, which is more narrowly defined than we have it, and social assistance, for which the responsibility is often at the regional scale. That might be things like family allowances, child benefit and some benefits for the elderly, which come under the area of social assistance and are commonly handled at the regional scale. But you might want to have some means of enabling central government to exercise the power to redistribute across a country at a territorial scale, for example some mechanism to distribute resources from the wealthier to the poorer regions. I cannot think of another example—perhaps you can, Ailsa—where there is no income tax at the federal level.

That is where we are heading in Scotland with the Scotland Bill in 2015, where all income tax, leaving aside the savings element, will be devolved to the Scottish Parliament. I cannot think of another example of that. I think that is risky. It is risky from a Scottish perspective, because of the inflexibilities that surround it, and it is risky from a union perspective because of the symbolic significance that income tax has as the contribution to the social contract between the citizen and the state—the exchange of rights and obligations. Of course, other taxes are collected centrally, and national insurance may fill that void a little bit, but from a citizen’s perspective, income tax has that symbolic significance, and that is about to be lost at the central level. I do not think I would have gone there.

**Lord MacGregor of Pulham Market:** To look at it another way, let us say powers are devolved for tuition fees, social care and so on—or whatever it might be—to Scotland. Does it not follow to a certain extent—possibly quite a large extent—that tax-raising powers have to be devolved at the same time, otherwise there is a real tension between the two?

**Professor Nicola McEwen:** Absolutely. There is a very strong case for having revenue-raising capacity at the regional scale, and there are many examples of ways you can do that. My point is that having a heavy reliance on income tax as part of that carries risks both for the Scottish Government, in terms of the responsibility that that brings to them, and correspondingly from the union perspective. It is very common to have regional income taxes and federal income taxes, and to have a share of different taxes such as sales taxes. We cannot do the latter in the EU, but it is those sorts of things. It is commonplace to have that, and sometimes there is an agreement to work together and effectively make it a national system. With Canada and the other provinces, except Quebec, for example, you have tax harmonisation. So yes, I take your point, but there are other ways that that could have been done.

**Professor Ailsa Henderson:** I would just ask in whose eyes it is effective: from the perspective of the voters—we know what voters want to be devolved and what they want to remain with the UK—or effective for the functioning of the state? To answer that second question, there needs to be a debate about what the state is for, what we are trying to do and who we are. We cannot make a list of things we want until we know what we are for and what we are doing. I would not so much answer your question as rephrase it for later witnesses.

**The Chairman:** I think the witnesses have answered your question already, Lord Lester, about regions applying?
Q90 Lord Lester of Herne Hill: You have answered the question about possible models for opting in but I was struck by Professor Henderson referring earlier to a principle of equality and how that could be invoked. When we are considering all this difficult stuff about devolution and federalism, we do not have any federal rights or federal constitutional principles, do we? What we have is EU law, a European Convention on Human Rights and a Human Rights Act, but we do not have anything in the way of federal rights and principles. Take the case of defamation, which I keep on citing—if Northern Ireland does not want our defamation law, it does not have to have it. Take abortion—if we decide that women should have the right to safe abortion, but Northern Ireland does not want it, so be it. We do not have any trumping federal principles other than what we find in the Convention on Human Rights or EU law, do we?

Professor Ailsa Henderson: There are two ways to answer that. First, do we have anything written down in one place which tells us the operating principles of our law? Not really, but that does not mean that there are not guidelines that help us to navigate our way through things. We have already mentioned the memorandums of understanding. In those we can see fundamental principles of what is best practice in terms of how we are moving forward. If you are asking me if it would be easier if it was written down in one place, I would say yes, but I do not think that needs to be in a constitution. It could be in a piece of legislation or a framework agreement. That is often where the principles come from. If we look around the world at where we find the principles, they are sometimes not in the constitutions. They are often in the documents arguing for change, so they are in Calman, the Silk commission and the Social Union Framework Agreement in Canada.

Lord Lester of Herne Hill: I have given you two examples where it is not working. Whatever the memorandum of understanding or guidance, it is not working. I am inviting you therefore to say something about that because it seems to me that, looking at practical things, it is not working.

Q91 Lord Cullen of Whitekirk: In its previous reports on intergovernmental relations, this committee has criticised the lack of adaptation in Westminster and Whitehall to the existence of devolution, and in the course of this inquiry we have heard of undue focus on Westminster and Whitehall, allied with the feeling that Ministers need to behave as if they believed in the union. So my question is, how do the institutions of the central state accommodate the sharing of powers between the state and substate nations or regions?

Professor Ailsa Henderson: I have a short answer. There is a distinction between interstate and intrastate federalism, and you need both. Intrastate is where you have representation from the regions within the central machinery of the state, so often the organising principle becomes the regions. It is done informally through ministerial posts and in Cabinet or formally in representation in an Upper House. So that is one mechanism by which the constituent parts of the union can have a say in the centre. The other obvious one is interstate federalism, where the Prime Minister and the premiers or the heads of all the constituent units and the Governments that they represent come together—the Ministers come together or the heads of government come together and they discuss issues of the day. From the comparative literature, the warnings are that you need both, not one.

Professor Nicola McEwen: One of the things to bear in mind about the UK is that it is not just multilevel but multinational. For that reason, if we were to ever follow through on some of the suggestions that are periodically aired about a territorial second chamber, that in and of itself would not resolve some of those problems. It would have to be done through the intergovernmental arena, perhaps alongside some other mechanisms, but I think that needs some attention. To go back to the point I made at the very beginning, we have neglected the shared-rule
element of multilevel government in the UK. This Parliament has not coped very well with the fragmentation of politics that we have seen in this country. From the outside looking in, it must look very odd to have this Secretary of State for Scotland and this shadow Secretary of State for Scotland, given the political make-up and representation that the general election produced. The government/opposition dynamic that emerged with the two-party system is quite a unitary idea and vision of the UK. The UK does not look like that anymore, and I do not think it will look like that anytime soon. So even if political representation changes in different elections, and that is inevitable, the underpinning fragmentation that is there is unlikely to disappear anytime soon. So there needs to be within this Parliament ways to accommodate that institutionally as well as using the intergovernmental arena to have meaningful shared-rule mechanisms.

Lord Cullen of Whitekirk: Does that suggest again the idea of Ministers responsible specifically for intergovernmental relationships across the border?

Professor Nicola McEwen: Possibly. That is certainly one option, but it is also about thinking about what intergovernmental relations are for. One example, I suggest, is the issue of constitutional reform. So in the cases of Spain and Italy, when the statute of autonomy or the competences of the regional level are under review or revision, that is a bilateral process. Here, it is not. There are features of discussion and consultation, and of course we had the Smith commission, which was a very peculiar example in the Scottish case. In a sense that was a “Made in Scotland” party-brokering deal, which was then developed into legislation by one level of government. However, if there was a more bilateral, co-operative process at the outset, then it would be more likely to secure legitimacy. You would not have the situation that we had in Wales the other week, where you have a Wales Bill that the First Minister sees as outrageous. If you have the co-operation built into the process, you are more likely to secure the legitimacy. The constitution is just one example of that but there might be other areas, too, where reserved matters clearly impinge on and shape devolved competence. Those jagged edges between what is reserved and what is devolved need somehow to be managed and mediated through the intergovernmental framework in a way that does not necessarily happen just now.

The Chairman: We are running short of time and are not going to be able to cover the remaining three questions. So I am going to ask if you would be kind enough to send us written answers to two of them. The clerk will confirm to you which they are—they are numbered 10 and 11 on our list—but that gives us a chance briefly to ask question 12.

Q92 Lord Brennan: Last year we debated independence for Scotland. In Spain at the moment, the constitutional court is likely to be asked to declare the Catalan vote of this week to be an unconstitutional attempt at secession. Canada has had a rocky road. We are asked to give views on this. Using Canada in particular, what are the dos and the don’ts that we should bear in mind?

Professor Ailsa Henderson: I suppose that the dos and don’ts depend on what you want. Different sides of the argument would see strengths and weaknesses, or successes and failures, in different things. The Canadian example in Québec is interesting, because there were completely different trajectories with the two referendums. After 1980, the promise in the campaign by Prime Minister Trudeau was that he would interpret a No vote as a desire for change, and promised change led to expectations about change. The change was never defined; it came in the form of constitutional patriation. People in Québec were not satisfied, so as a result there were constitutional negotiations at Meech and Charlottetown. Frustration about a reaction to the referendum in its immediate aftermath is what eventually led to the second referendum. If you look at the Scottish
example right now, the election of 2015 looks an awful lot like the 1993 election in Canada, so Scotland and the UK are almost moving at an accelerated pace through that first trajectory.

The trajectory after 1995 is completely different. After the loss the sovereignists said “Look, we’re not going to put you through this unless we have winning conditions: a clear lead in the polls, favourable economic conditions and a popular leader. Then, and only then, will we ask the question again”. The federal Government’s Clarity Act set out rules for how you could conduct a referendum and while it made clear the steps you could take to secede from Canada, which was remarkable, it sets the bar rather high. It makes it rather difficult for Governments to run another sovereignty referendum.

The Québec response has been to take advantage of the autonomy that they have access to and govern as if they were sovereign. They were calling it sovereignist governance, and essentially saying, “Let’s just do as much as we can with the autonomy we have and take advantage of all those opt-outs. Let’s move forward. If we want to raise taxes, let’s raise taxes. If we want to have a different Québec model of welfare, let’s do it”. That is part of what has led to support for independence declining. However, we have also seen a rise in anti-immigrant sentiment from certain sections of society, and that alignment with the nationalist cause is also making independence less popular. People are very devoted to a civic, inclusive message of nationalism and when it seems to be ethnic and exclusive, it is less popular. The general trend since 1995 has been for decreasing support for independence. The one exception to that was when the scandal about using federal money to promote Canada inside Québec broke, and then support for independence rose for a little while. It then fell again. Professor Nicola McEwen: The way that you phrased this in the questions as we were sent them was, “How did Canada get past the period of constitutional crisis and referendums?”. Yes, it has passed a crisis but the underlying issues were not really resolved. I absolutely agree with everything that Ailsa has said, but I do not think that the decline in support for sovereignty is as a result of anything that the federal Government did. It is more about internal explanations. I think the UK did reasonably well in the procedural aspects in the run-up to the referendum, so I would not necessarily suggest trying to do anything over and above that which would deliberately set a high bar. The Clarity Act was extremely controversial in Québec and, if anything, it probably had the opposite effect—

Professor Ailsa Henderson: On sentiment.

Professor Nicola McEwen: Yes, on sentiment at the time. For the UK, and thinking specifically in relation to Scotland here because Wales is rather different, there are two possible paths. One is towards a looser arrangement, almost on the model of associated states or a federacy—something that was a UK model and that suited our purposes, so a looser union as regards Scotland. The other is a more interdependent union. If you go down that road you need to then find the mechanisms to make it real, and they are not there at the moment. The Scotland Bill 2015 is a mishmash of those things. I have spoken to this committee before about my thoughts on the Bill but there are elements in it that I think will have repercussions further down the line—but we have a minute left, so let’s not get into EVEL.

The Chairman: I will bring in Lady Taylor, if she wants to come in. No? Anybody else?

I apologise for squeezing out two questions and for asking for written homework from our witnesses. The issues are on fostering a sense of national identity and informing people what the structure is of their forms of government, but we will send you more literature on that.

I thank you very much indeed. It has been extremely useful and very interesting. You have been very helpful and we are most grateful.
Principles

1. Are there common principles underlying the distribution and exercise of power in countries with multi-level governance systems?

Much of the literature on multi-level governance focuses on the variations rather than the similarities. We can distinguish between formal rules and de facto arrangements, between formal federations and regionalised unitary states. Typically, though, they have in common arrangements about self rule, in which constituent units have authority to government exclusively or in a shared capacity in different sections – such as education, health or transport – and shared rule, in which the different parts of the whole have a say in the running of things in the centre. When we measure the extent to which a system is multi-level or not we are typically measuring the extent of self and shared rule.

With respect to principles they typically surface in two types of documents, either in constitutions or in the documents proposing reforms (eg Consultative Steering Group, Silk report and, in Canada, the Meech Lake Accord or Charlottetown Accord). Occasionally such principles appear in legislation, such as the Social Union Framework in Canada (1999).

They include

a) recognition of diversity, existence of constituent communities – whether these are the units of the federation (as in German or Swiss constitutions) or linguistic or ethnic communities (as in the Belgian constitution). This often refers to a recognition of distinctiveness but also the equality of different groups. Self-government for constituent units, communities or Aboriginal peoples surfaces as well

b) unity and social solidarity – this could either refer to one nation or one people forming the demos or the common purpose of all within the state (eg Italy united by labour, US one nation united under God)

c) equality – this is often just included as equality before law but also includes equal opportunity and is therefore tied to mobility rights. Citizens should have equal access to services wherever they live. This takes on particular significance when there are recognised linguistic communities so that one constituent unit is not perceived to be a ghetto from which state citizens cannot move.

2. Is the principle of ‘comity’ and mutual trust useful in federal or other multi-level constitutions? How is it enforced?

- Do you have any views how a principle of comity might be enforced in dealings between governments in the UK?

The notion of a federal harm principle is appealing, and presumably this was behind the non detriment clause in Smith but it seems difficult to enforce. Evidence that it is difficult to enforce is seen in the race to the bottom over welfare provision in the United States. States cannot enforce a sense of trust or solidarity. Related issues concern perceived unfair treatment of jurisdictions or constituent units and perceived unfair treatment of citizens. Federalism implies different decisions will be reached in different jurisdictions and those different decisions might well just be diverse forms of implementation but they might also lead to higher and lower levels of service. If you provide a unit with authority to create tax bands and levels then individuals will inevitably be
treated differently. There is an important distinction, however, between different treatment and unfair treatment. Requiring someone to have a regionally provided health card to receive service and not treating someone without one, or not treating someone who has moved recently from one constituent unit to another, could be perceived to be unfair treatment. It is impossible to enforce sentiments such as trust, but you can develop a system of adjudication to resolve disputes between constituent units or between units and the centre and can underline the importance of a common goal. Much of this works on the basis of common will to be together.

Asymmetry and England

3. Do any other devolved/federal states have significant sub-state regions or nations without devolved powers? Are there any comparable examples to England?

Where asymmetry exists, the norm is for a majority of regions to have a base level of autonomy, with a smaller number to have enhanced self or shared rule (usually self rule). Sometimes these are particular regions within the territory of the state (eg Spain, Italy) or sometimes they are overseas territories, or protectorates as is the case with Greenland, or the Aland Islands. Only in a handful of cases is there a majority of regions with a base level of autonomy with a smaller number enjoying lower levels of self or shared rule (eg city regions Ceuta and Melilla in Spain). For our purposes the closest corollary would be the Canadian and Australian territories whose constitutional status is different from Canadian provinces or Australian states. Canadian territories in some sense are provinces writ small (with smaller populations and restricted legislative competence) but there are three further differences:

- Sovereignty of provinces derives from the Constitution Act but territories are created by federal statute and cannot amend their constituting documents. They could, in theory, be disbanded or have boundaries altered by federal acts.
- Formal sovereignty extends to all territorial legislation, so any piece of legislation could also be overruled by the federal government.
- Territories have lower levels of fiscal autonomy. They do not have control over management of Crown lands. They can collect income tax but the diseconomies of scale ensure that the bulk of their funding comes from block grants.

- Can administrative devolution to regions or nations substitute effectively for legislative devolution?

There is a distinction between whether it can work in principle and whether it would be helpful in the UK. In a UK context I would have thought that administrative devolution would be perceived to provide insufficient democratic expression to the will of a particular people. The campaign for devolution in 1997 (indeed from 1979 to 1997) hinged on the inadequacy of administrative devolution as a mechanism for reflecting the democratic will of a people. The introduction of significant administrative devolution to England would likely be interpreted as an interim step towards democratic devolution since this is how it has worked elsewhere in the UK.

4. Are there other countries which have a significant asymmetry of powers between regions? Does this cause problems in other countries?

Yes, there are variations in powers, although the extent to which they are significant is debatable. The asymmetries are often for exceptions but they are often in the direction of having more autonomy than is ‘normal’ within a state (eg Greeland within an otherwise unitary Denmark). With respect to problems, it is worth asking problems for whom? Problems for governments – in that...
Professor Ailsa Henderson, University of Edinburgh—Supplementary written evidence (UDE0065)

they don’t have an equal say in the affairs of the state – or problems for individuals, who are treated differently because they live in a jurisdiction with more or fewer powers? Furthermore, if there are problems one would need to determine whether it is the institutional asymmetry itself or the underlying diversity that made asymmetry appealing that is causing problems. If the Canadian federation is perceived to be dysfunctional is it because of the asymmetry afforded to Quebec or the pre-existing cultural and linguistic variation within the state that is causing difficulties?

It is also useful to distinguish between different forms of asymmetry to determine why problems arise. De jure asymmetry establishes different legislative authority formally (e.g., in constitutions) while de facto asymmetry occurs when only certain regions avail themselves of possible powers. One example of de facto asymmetry is the existence of provincial opt outs from federal programmes in Canada. The federal government legislates at times in areas of exclusive provincial jurisdiction. Until 1949, any province opting out of a federal programme in a provincial area of jurisdiction would have paid for it through taxes but surrendered any benefits from it and, if they erected an equivalent programme, would have borne the full costs of creating their own programme. At this time Quebec did not accept federal funding for highways, universities, hospital insurance, or language training for immigrants. One estimate is that the province was giving up roughly twice as much as it was accepting (82 to 46 mill) in federal spending. In the early 1960s, amid expectations that the federal government would compensate provinces who opted out, Quebec then joined a series of jointly funded programmes. In 1964 the federal government created an opt out formula, with financial compensation for opting out of standing shared cost programmes (including pensions, disability and welfare payments) and so Quebec withdrew from 30 programmes. Critically, each province was offered this right, but typically only Quebec exercised it. There are criticisms from both sides:

- that if the federal government cannot count on economies of scale then it becomes more expensive to administer programme to remaining provinces,
- that there are thresholds of participation for programmes to continue,
- that arrangements are approved on a series of rolling agreements every 5 years which introduces the prospect of instability,
- that provinces operating their own programmes need to offer similar provision to that offered by the Canadian government (which effectively means provinces retain the autonomy through administration rather than by establishing the guiding principles of such programmes)
- that the federal government can cancel joint programmes without notice and if provinces wish to continue they must bear the full costs of doing so

The 1982 Constitution Act allows provinces to opt out of constitutional amendments transferring powers from provinces to the federal government. Provinces would receive financial compensation only if it relates to education or culture. If it relates to anything else then provinces bear the costs if they wish to implement a similar programme. Up to 3 provinces can opt out so long as they have less than 50% of the Canadian population. Both the Meech Lake and Charlottetown Accords sought to extend financial compensation and preserve provincial autonomy with no financial detriment. The other form of asymmetry in a policy area relates to immigration, where provincial control was offered to Quebec but not to any other province. This has prompted calls from Ontario – which receives a large proportion of Canadian immigrants – to exercise similar control. The New Democratic Party (NDP) in the recent federal election campaign offered to Quebec a right to opt out of any policy and to receive compensation for it, with no conditions. Such an opportunity was
not offered to any other province. Of the two forms, this form of asymmetry is perceived by other provinces to be far more problematic (although preferred in Quebec).

There are other forms of asymmetry that reflect diversity. Official bilingualism and bijuridicism are two examples but they also feed other asymmetries, most notably in the proportion of Canadian Supreme Court Justices from Quebec (3/9).

Last, asymmetry does tend to lead to catch up federalism, so it is perceived to be a less stable and enduring settlement.

5. What do overseas examples tell us about how new sub-state regions for devolution or federalism are created? What lessons might the UK learn?

With respect to new sub-state regions, the Canadian example is useful because it has asymmetry at its heart. Only four provinces entered confederation in 1867. All had previously enjoyed some form of self-government. The rump was referred to as the Northwest Territories and it was from this mass that subsequent jurisdictions were created (Manitoba in 1870, the short-lived Keewatin territory in 1867, the Yukon Territory in 1898, and the provinces of Alberta and Saskatchewan in 1905). The original boundaries of provinces altered: in the case of Quebec they were extended in 1905 and again in 1912. At the time the distinction between whether something was a territory or a province was a function of population size and concentration, the balance of settler population to indigenous peoples and whether any legislative council had been in operation. Territories had fewer people and, critically, fewer settlers, and no previous institutions of self-government. The two forms set jurisdictions on different trajectories and there is no history of territories becoming provinces (although parts of territories have been integrated into provinces). The primary purpose of creating territories was to identify sections that were manageable to govern (nothing too big) while the primary purpose of creating provinces was to provide effective self-government for the settler population.

These are two different paths and one needs to determine which is primarily animating a desire to resolve the governance of England. If it is self-government, then an England wide solution is best. If it is to create territories of a manageable size, then regional solutions within England would be appropriate. Four rounds of the Future of England Survey and various other studies have shown consistently that England-wide solutions are preferred, particularly among those who are the most disenchanted with current arrangements.

With respect to federalism, we have obviously three situations: states that are federal from the moment of their inception, states that have witnessed transitions to federalism and states with levels of regionalism that are perceived to be quasi federal by some but not others. This last proves rather tricky as it leaves room for different interpretations by residents in different parts of the state. In all three forms of federal states do we find constituent units with historic boundaries as well as constituent units that are more administrative creations (eg Catalonia, Bavaria, Bretagne vs some of the more recent NUTS regions).

Reservation and devolution of power

6. How is the idea of ‘social union’ reflected in the distribution of powers and resources in other countries?

- How far can welfare/social provision vary between sub-state regions and nations without undermining social solidarity or the overall integrity of a state?

There are different forms of unions, including social, economic (trade, and currency), political and legal. In terms of variation and solidarity, two things worth noting:

First, feeling a greater sense of regional identity is related to a greater sense of regional solidarity but that is not universally related to lowers levels of state-wide solidarity (See Henderson, Jeffery and Wincott, Eds, Citizenship After the Nation State). True, it often works that way in historic
nations such as Scotland, Catalonia, Wales, and Quebec, but even in those states where it occurs in some regions it doesn’t necessarily work that way in others: for every Quebec or Catalonia there is an Ontario or a Madrid.

Second, federalism and various forms of multi-level governance have at their heart the right of regions or constituent units to make their own decisions about certain areas of jurisdiction. It necessarily follows that some of those decisions will be different. The possibility of variation is an inherent and fundamental part of autonomy. But there are three caveats to this:

a) In a UK context we know that people want regional governments to decide things and have policy control but there is an overwhelming preference for policy uniformity (and for those who want variation they want higher benefits and lower taxes)

b) There are ways of softening this, with central governments setting minimum standards or general principles, with constituent units left to deal with the details. This minimizes variation but it also infringes on the legislative competence of constituent units

c) We tend not to find wild variations in policy provision. Fundamentally units are working in the same economic climate. This is not to say there are not exceptions to this. We can find examples of large deviations in income tax and rates of sales tax, as well as access to state-subsidized childcare but comparative studies of policy provision in Canada often find less variation than we might expect

7. Which powers need to be reserved to maintain an effective state/union?
   • Do these go beyond defence, security and macro-economic policy, to include welfare or taxation?

Effective in whose eyes? Effective for voters not to wish to dissolve the union? Identifying policy areas must follow rather than precede a discussion of what makes an effective state and, specifically, what makes an effective British state. Much of the literature refers to social solidarity as a glue that binds citizens together. As a result, any proactive effort to stem centripetal forces would need to identify whether reserved legislative competence extends to those policy areas likely to foster and reflect social solidarity.

8. Is there a successful precedent for setting out powers that may be devolved and allowing sub-state nations or regions to apply for those powers when they are wanted?

Spain offers an example of this. The Canadian example offers the reverse, a range of federal programs from which provinces can opt out. Whether they are perceived to be successful precedents is largely a matter of interpretation (as response to question 4 suggests)

Accommodating devolution at the centre
9. How do the institutions of the central state accommodate the sharing of powers between the state and sub-state nations or regions?
   • Do central governments have senior ministers responsible for the maintenance of the relations between sub-state governments, and the wider health of the union?

This addresses shared rule rather than shared jurisdiction as such. There are both informal and formal mechanisms of shared rule and we can also distinguish between intragovernmental and intergovernmental relations. With intragovernmental relations, constituent parts of the state participate in central decision making through their representation in central institutions of decision
making. This can occur through informal quotas for cabinet positions for different regions, or in the formal distribution of seats in an upper house to the constituent units of the state. Intergovernmental relations occurs when the central government and the governments of the constituent units meet to discuss shared goals. This could include the heads of government (Prime Ministers and Premiers in the Canadian context) or specific ministerial portfolios. Both, rather than one or the other, are typically employed.

10. How important is it for states to foster a sense of national, rather than regional, identity? Which other countries offer successful and unsuccessful examples of this?

Very important, for without it the state will fail but it need not be zero sum. The issue in Quebec is not that voters have considerably higher levels of national attachment to Quebec but that their attachment to Canada is so much lower than in other provinces. It is this lack of attachment to the state – and to other Canadians – that relates to support for independence and such attachment is a difficult thing to reverse engineer. There are two obvious examples of attempts to foster it.

First, we can see efforts to bind citizens together through the use of symbols. Symbols include flags and buildings but also, arguably, constitutions. Following the 1995 Quebec referendum the Canadian government struggled with this. It pursued three initiatives with varying degrees of success:

- **Flags.** This included a commitment to distribute one million flags to ordinary Canadians and was motivated by a sense that the appearance of ordinary Canadians expressing pride in their country would make Quebeckers think twice about leaving. The programme was expensive, was seen by citizens as a waste of public money and had no discernible effect on attachment to Canada within Quebec (nor on already high levels of attachment to Canada outside Quebec).

- **Canada Information Offices.** These offices were akin to those established abroad to teach resident in other states about Canada as a site of migration or investment. Following the referendum CIOs also opened in Ottawa with the primary purpose of educating Canadians about Canada. This is the same vein as various activities of the Canadian Heritage ministry, including televised “heritage minutes” covering events in Canadian history designed to emphasise a shared past and common values.

- **Federal branding.** The sponsorship programme was designed to brand federal infrastructure spending projects, particularly in Quebec. The programme was criticised by those who felt that using public funds to advertise the Canadian government to Quebeckers was akin to campaigning in a referendum that had not been called, and was an unfair use of federal government spending power. Worse was that the programme was plagued by financial irregularities. When we look at patterns of support for independence in Quebec it is generally a story of long decline since 1995. The exception is the period when the sponsorship scandal broke and it is widely seen as one of the contributing factors to the defeat of the federal Liberal government in 2006.

Second, we can compare this to federal government efforts to emphasise shared values. We see this periodically, most often when values are perceived to be under threat. We see values emphasised formally in two ways: in constitutions and in citizenship tests for new immigrants. It is worth distinguishing between values of substance and values of process. We all believe x (eg we all believe in God, we are all Lutherans) appears frequently in constitutions and in citizenship tests (we believe in gender equality, in same sex marriage, in the legalisation of marijuana). These efforts to instil shared values are arguably less successful for they suggest there is only one way to be a citizen
or a member of the demos. It is partly this effort to emphasize shared values that is behind claims that Scots are meritocratic, left of centre, social democrats. Such claims risk alienating those who fail to share such values (and this ignores for the moment that the myth of marked differences in values across the UK isn’t actually true). We can juxtapose this with efforts to emphasize what we might refer to as values of process, which provide a sense of the functioning of the state and the interaction of people. Multiculturalism, or the vision of the state as a melting pot, are process values for they provide a sense of how citizens navigate their role as citizens, including how to interact with fellow citizens and the state. Without question UK citizens share substantive values, in the sense that we can discern clear majority preferences, but it is not always clear what specifically ‘British’ values (rather than Western European or northern European or liberal values) would be. One of the most obvious examples of a process value would be a British sense of fair play but it would be difficult to discern how this has been applied to the constitution or to argue that this is the motivating value behind constitutional reform. Arguably this is what the UK lacks, not a creation myth but a value driven exposition of how we’re all supposed to work together and what kind of (political) society we aim to be.

11. Do citizens of other states understand their constitutional structures and the sharing of powers among different state institutions?

- To what extent do you believe it is useful for states to have a documents clearly setting out their constitutional structures?

In general, no. Much of the evidence from the voting literature is that individuals can’t correctly attribute jurisdictional authority which means they can’t punish or reward the correct governments for their respective successes or failures. There are three caveats to this.

First, there are exceptions, where people generate split level citizenship, with different levels of trust and efficacy for different levels of government based on knowledge of different areas of jurisdiction, and different assessments of performance. For the most part this occurs in historic nations or locations where regions have a particular salience as political communities (eg they possess their own language, own political parties, enjoy high levels of institutional completeness, and control of agents of socialisation) but even then levels of knowledge are not high.

Second, there is a spectrum of preferences for jurisdictional control ranging from defence, which almost everyone thinks should be the responsibility of the state, to education, which almost everyone believes should be the responsibility of the region. I say this on the basis of a large European survey we conducted across 14 regions in 5 states but this is reinforced in various other single state surveys. Knowledge, typically, matches preferences: it is better at the poles but hazier on policy areas where preferences over legislative competence are more mixed. In Scotland, we also know that voters are generally better at identifying reserved areas than they are at correctly identifying devolved areas of jurisdiction.

Third, we saw evidence of policy learning and improved knowledge over the course of independence referendum campaign. This as a direct result of long campaign. The speed of proposed changes post-referendum means that knowledge of proposed changes is low, and that attitudes are often contradictory and malleable.

12. How did Canada get past the period of constitutional crisis and referendums on Quebec’s secession?

There are two different trajectories here, one after the 1980 referendum and a rather different one after the 1995 referendum. During the 1980 referendum campaign Prime Minister Pierre Trudeau indicated that he understood that a No vote was a vote for some form of change and
accommodation of Quebec. The specifics were not made clear and as a result voters would have had different expectations of what form that institutional change might take. The result was the patriation of the Constitution and a Charter of Rights and Freedoms both the process of which and the substance of which were perceived to be troubling to politicians in Quebec. On substance, the Charter of Rights was perceived to be more individualistic than the Quebec Bill of Rights and the proposed amending formula denied Quebec a veto. On process, the changes were made without the unanimous consent of the provinces. The constitutional debates of the 1980s and 1990s were an effort to correct what was perceived by the Canadian government to have been a missed opportunity.

The Meech Lake Accord was an elite negotiated deal that had to be approved by premiers and failed. The Charlottetown Accord was an elite negotiated deal that was then put to the electorate in two referendums held simultaneously (one organised by the DGE in Quebec and another organised by Elections Canada in the rest of Canada). The failure of the Meech Lake and Charlottetown Accords therefore did not address Quebec concerns about the process and substance of patriation nor did they address the long standing wish for formal recognition of Quebec as a nation/distinct society and the result was a call for a referendum on sovereignty partnership in 1995.

There are obvious parallels between the Scottish referendum and the 1980 referendum. Indeed the reaction to the 2014 Scottish referendum appears as an accelerated example of 1980, with quick offers of constitutional reform and suggested proposals make clear to voters less than six months after the referendum (compared to two years later in the case of Quebec).

What is actually being offered in Scotland and recent proposals for English Votes for English Laws is more similar to the Charlottetown Accord as it invokes not just bilateral reform but multilateral reform of the UK. The mass arrival of BQ MPs in Ottawa occurred during the 1993 election, 13 years after the 1980 referendum but in the UK the marked increase in support for the SNP occurred in May 2015, only nine months after the referendum.

The most obvious distinction is that the constitutional debates in the 1980s and 1990s in Canada offered a state-wide examination of the structures and operating principles of the entire state, whereas in the UK it appears to be pursuing an issue-by-issue bilateral approach, with seemingly disconnected discussions occurring in Edinburgh and Cardiff about the future of the devolution settlement.

For those opposed to independence, the trajectory after 1980 - which inevitably led to the 1993 referendum - is perhaps one to avoid. For those who support independence, the trajectory after 1995 is perhaps one to avoid.

Figure 1: Support for Independence, annually since 1989
After the 1995 referendum sovereigntist politicians said they would not press for a third referendum without three winning conditions. These included a popular and credible leader, favourable economic conditions and a clear lead in the polls. With the brief exception of 2002-2004, that lead in the polls never materialised. The declining support for independence can be attributed to international and Canadian factors as well as to internal Quebec dynamics and forces. Within Quebec, partisan debate moved to the right. Party competition is structured by two axes, one left-right, one on constitutional matters. The Parti Québécois (PQ), which previously had been the only sovereignist party, was joined in the early 1990s by the ADQ and later (in 2012) the Coalition Avenir Québec (CAQ). There were now more voices expressing a desire for sovereignty but from different economic perspectives and this sparked divisions within the PQ, particularly on economic policy. In addition, the PQ, whose leader typically served as the de facto head of the sovereignist movement, failed to elect leaders whose popularity and economic credibility matched that of former leaders Jacques Parizeau and Lucien Bouchard.

In addition, both PQ and Liberal governments in Quebec continued to take advantage of the autonomy available to them, including federal opt outs. Under PQ Premier Pauline Marois the PQ government referred to this as sovereignist governance and pursued higher taxes and debt reduction, as well as development of natural resources in the provincial north. The PQ government sought to maximize the use of powers available to it, and indeed operated as if it had the powers to pursue its own policy agendas in an independent state. For a while the party proposed holding sectoral referendums as a way to get around federal legislation governing sovereignty referendums. This reflected a desire to make the most of existing autonomy.

Last, this coincided with an increased salience of anti-immigration sentiment and criticism of interculturalism in Quebec. As a result Quebec nationalism has appeared less social democratic and less civic in its ideals that was the case before 1990.

The federal government reaction to the referendum was the Clarity Act, which affirms the right of provinces to hold referendums on any topic of their choosing but sets clear guidelines on the use of sovereignty referendums. The Act requires a clear question referring to separation without reference to other forms of sovereignty, insists on (but does not define) the need for a clear majority and suggests that a clear majority agreeing to a clear question would invoke the constitutional amending formula, which would then involve all provinces. While this establishes clear steps by which a province can secede – which in itself is unusual – the bar to provincial
secession appears high. This, the economic crisis and continued continental integration have dampened support for sovereignty, particularly among younger voters.

**Figure 2: Support for Independence and Parti Québécois**

While there are general trends in support we can see peaks and troughs and a growing divergence between support for Quebec sovereignty – which remains around 33% – and support for sovereignist parties. If we look at trends in support for Yes and support for the PQ, they are diverging from May 2000 and while they track similar routes PQ support lags Yes support, and lags it by a considerable margin. Obviously independence is a binary option, whereas PQ support is in a multi-party environment (ADQ and then CAQ as of 2012, QS).

What explains the various peaks and troughs in support? The behaviour of the different levels of government clearly matter. The federal sponsorship scandal is associated with an increase in support for sovereignty and so too is the presence of a Liberal government in Quebec. Support decreases when a popular PQ leader resigns (Bouchard, Landry) and rises with a less popular leader (Boisclair) resigns. This reinforces the importance of leadership to the sovereignty movement.

December 2015
Transcript to be found under the Institute of Directors
Mr Ruairi Hipkin—Written evidence (UDE0002)

Introduction

1. This written evidence will touch on certain aspects of the Select Committee on the Constitution’s current inquiry into “The Union and Devolution”. This evidence will not deal with all questions posed in the original call for evidence. Instead, it will deal primarily with the current devolution settlement (questions 1-4) and what changes there could be thereto (questions 8 and 9). There are also four appendices. The first three reproduce examples of devolution in Canada and Australia, whilst the fourth appendix contains a broad outline of a single “Devolution Act” (see question 9).

2. It is appropriate to say some words about question 5. In my respectful submission, question 5 is nearly unanswerable because there is very little way of entrenching a provision in statute. This was so held in Thoburn v Sunderland City Council35, where Laws LJ made the point that Parliament cannot bind its successors36.

3. Devolution is not a new phenomenon in the modern world – indeed; the United Kingdom was one of the last countries to adopt it, having bestowed it upon its former territories of Australia and Canada. Indeed, as I will show in this evidence, having taught much to the Australians and the Canadians about how to establish a union with devolution settlements, it may be worthwhile the United Kingdom learning from those two countries how devolution has evolved and refined itself.

4. This Written Evidence will traverse much and varied ground – indeed, in the first question, we are required to traverse a complicated area of international law – the definition of the “nation state”.

Part I – The Union

Question 1 – What is a nation state?

5. Cicero defined a state as “a body political, or a society […], united together for the purpose of promoting their mutual safety or advantage by their combined strength”. Unfortunately, this definition no longer applies in its purest form, but segments of it can still apply. For example, that a state is a “society, united together”. The United Kingdom is a society, united together by the fact that we all reside in the landmass that is “Britain”.

6. However, legal thought has evolved since then, and Craven tells us that the main definition of a “state” comes from the Montevideo Convention on the Rights and Duties of States 193337. That convention restated a pre-existing customary definition of statehood, known as the Declarative theory of statehood38. The Convention itself has also assumed a customary status, given that the Badinter Arbitration Committee, in its ruling as to the status of Croatia, Macedonia, and Slovenia after their secession from the Socialist Federal Republic of Yugoslavia, relied on the Montevideo definition. As the Badinter Commission was an organ of the EU, this must surely mean that any opinion on statehood as expressed by the Commission becomes official EU policy on statehood.

35 [2003] Q.B. 151
36 See paragraph 51 of Thoburn
37 M Craven, Statehood, Self-Determination, and Recognition in M Evans (ed), International Law (Oxford University Press 2014) 217
38 H Lauterpacht, Recognition in International Law, (Cambridge University Press 2012) 419
7. The definition set out in Montevideo, and now encased in customary international law, is as follows:
   - A permanent population
   - A defined territory
   - Government
   - Capacity to enter into relations with other states

8. It is quite clear that the United Kingdom constitutes a “state” in international law. The
United Kingdom has a population. It is quite clear that the “permanent population”
requirement does not require that the population be static. If that were the case, then
migration in all its forms would lead to ordinary migration rendering a state non-existent.
This, for obvious reasons, cannot be, otherwise this country would never have attained
statehood.

9. The United Kingdom has defined territory. Leaving aside the dispute over the Falklands with
Argentina, the United Kingdom has a defined territory in the British Isles.

10. The United Kingdom has a Government. We have regular elections, which, because of the
Fixed Term Parliaments Act 2011, occur every five years, and our government exists through
the Constitutional norm of the Queen-in-Parliament.

11. Finally, the United Kingdom clearly has the power to enter into relationships with other
states. This is mostly to do with the power of signing treaties. This is evident because we
have Treaties with other countries (whereby we exchange ambassadors), and we are
members of several international organisations. We have acceded to those organisations by
signing treaties.

Question 2 – What are the key principles underlying the Union? Are there principles that are unique
to the UK’s Union?

12. The key principles of the Union are:
   - Union under a central government
   - Union under the Crown
   - The ability for recognised regional majorities (that is, Scots in Scotland, or the Welsh in
     Wales) to decide on matters that would affect them exclusively
   - With overall supervision for the devolution, and powers and interests common to all
     constituent nations in the United Kingdom, remaining in Westminster

13. This is not unique to the United Kingdom. Indeed, in the Preamble to the Constitution Act 1867
(previously known as the British North America Act), it is expressly noted that “Dominion of
Canada [would have a] Constitution similar in principle to that of the United Kingdom”. This
must mean that the notion of union under the Crown, with powers delegated to regions or
other constituent elements, was a “principle of the United Kingdom’s constitution”, and is a key
principle underlying the Union today.

Question 3 – On what principles are the UK’s devolution settlements based, or on what principles
should they be based? Have principles emerged through the process of devolving power, or as
power has been exercised by the devolved nations and regions?

14. The UK’s devolution settlements are based on the division of powers between Westminster and
the various devolved administrations. It is also quite reasonable to believe that devolution
occurs to allow those who are “in situ” to govern the affairs of their area of the United
Kingdom. That is, as the Northern Irish are more aware of their societal, cultural and historical
background than Westminster would be, it is sensible to devolve powers relating to – for
example – abortion – to the Northern Irish administration. Abortion is a good example of this,
as Northern Ireland is still deeply divided, in some social aspects, on religious grounds. Another example is the devolution of justice matters to Scotland. Scots law has evolved differently to that of the remainder of the United Kingdom, and Scots judges and lawyers are better versed in their own legal system, and its proper administration, than the Westminster government. The general point, in these two examples, appears to be that Westminster devolves powers to the devolved administrations where they are better placed to deal with the specific issues raised by those powers.

Question 4 – Are there any applicable examples from other states with multilevel governance?

15. As I noted in the introduction, the United Kingdom is one of the latter comers to devolution. It is useful to look at the constitutional arrangements in Canada and Australia. Whilst it is true that the United States is a country with much devolution, its constitution is designed differently.

16. Canada’s constitution explicitly sets out what the Federal Government may do\(^ {39}\), and what is devolved to the Provinces and territories\(^ {40}\). These two separate lists are very strict in determining what each constituent part of the Federation can do.

17. With the exception of subsections 26-29 (dealing with marriage and divorce\(^ {41}\), the criminal law\(^ {42}\), and the management of prisons\(^ {43}\)), it appears that Section 91 provides a very easy comparison with the current devolution settlement. This is because much of the matters listed in section 91 are also reserved matters in the United Kingdom. Exceptions are drawn in respect of criminal law, marriage, and divorce and prison management, because in this country, the reverse has occurred, in that the main aspects of responsibility for those areas has been devolved in some way (the specific arrangements vary between the devolved administrations). Section 91 is set out in Appendix 1.

18. Section 92 of the Canadian Constitution Act, however, differs from the devolution settlement in the United Kingdom, because there are fewer powers devolved to the Canadian Provinces and Territories, than there are devolved to the various administrations in the United Kingdom. Section 92 finds comparison in Schedule 7, paragraphs 1-20 of the Government of Wales Act 2006, which specially sets out what the Welsh administration can do, just like Section 92 of the Canadian Act. However, there are fewer powers devolved to the Welsh administration than there are to the Canadian provinces. Section 92 is set out at appendix 2.

19. Section 51 of the Australian Constitution, conversely, is similar to the arrangements in Scotland. Section 51 lists powers that are reserved to the Federal Parliament in Canberra. The similarity arises because Schedule 5 of the Scotland Act 1998 lists powers that are reserved to the Westminster Parliament. Indeed, Schedule 5 of the Act nearly mirrors the provisions of Section 51 of the Constitution. For example, Schedule 5 of the Act provides that the powers relating to “international relations, including relations with territories outside the United Kingdom” are reserved to Westminster\(^ {44}\). Likewise, the Australian Constitution expressly reserves the “external affairs power” to the Federal Parliament\(^ {45}\), and Australian jurisprudence has interpreted this power to refer to relations with “countries outside Australia [and] other

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\(^ {39}\) Section 91 Constitution Act 1867
\(^ {40}\) Section 92 Constitution Act 1867
\(^ {41}\) Section 91(26)
\(^ {42}\) Section 91(27)
\(^ {43}\) Section 91(28)
\(^ {44}\) Scotland Act 1998, Schedule 5, section 7(1)
\(^ {45}\) Section 51(xxix) Constitution of Australia
international persons”, or where Australia has signed international treaties that require implementation in Australian domestic law. Section 51 is set out in Appendix 3

Part II – How could the Devolution settlement be improved?

Question 8 – What other practical steps could be taken to stabilise or reinforce the Union?

20. Throughout this written submission, I have cited various parts of the Australian and Canadian Constitutions that expressly list the powers reserved to the Federal Government, and (in the case of Canada) the powers devolved to the Provincial and Territorial legislatures. The fact that all the powers are set out in one central document is instructive. This is because in all circumstances, the devolved powers are set out in one “central” document. This would be an improvement in the setup in the United Kingdom, where all the various devolution settlements are different in nature, and spread across many Acts of Parliament. Such a proposed Statute is contained at Appendix 4. It does not violate the Thoburn principles set out in the introduction, because it is not entrenched and can be amended.

Question 9 – Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

21. After the comprehensive settlements established in the various Act devolving powers, there are still disputes over what the powers actually are. For example, in AXA General Insurance Company v HM Advocate, the appellant insurance company challenged an Act of the Scottish Parliament that would have imposed liability on insurers for pleural plaques. The Supreme Court was required to review, in some detail, the powers of the Scottish Parliament, considering the reserved powers set out in Schedule 5 of the Scotland Act.

22. This means that there should be reform as to how one determines what powers are devolved or reserved. An outline for the proposed single “Devolution Act” in appendix 4 can relieve part of this.

23. Another potential reform is the following. There is a pre-existing power under the Government of Wales Act 2006, the Scotland Act 1998, and the Northern Ireland Act 1998 to refer questions relating to the validity of legislation the Supreme Court. However, Devolved legislation can also be challenged in the ordinary courts, which leads to uncertainty in the validity of legislation as the related challenge works its way through the judicial system, and even then, the Supreme Court is not required to grant leave to take the resultant appeal. Indeed, there are more challenges in ordinary litigation than there are in reference questions under the various Acts. In order to avoid any such uncertainty, it may be worthwhile vesting the Supreme Court with original exclusive jurisdiction in matters relating to devolution. This would lead to a final determination, quite early in the life of the devolved legislation that is susceptible to challenge, as to its validity.

24. More generally, in respect of the actions of the Devolved administrations, it may be worthwhile enlarging the Supreme Court’s reference jurisdiction to take any reference question as to the compatibility of actions of the devolved administrations with obligations set out in national or international law. For example, during the Scottish independence referendum, there were many questions relating to the role of the Monarchy, the currency, and membership of the European Union.

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46 Koowarta v Bjelke-Petersen (1982) 153 CLR 168
47 New South Wales v Commonwealth (1975) 135 CLR 337 (“The Sea and Submerged Lands Case”)
48 [2012] 1 AC 868
Union after independence. If the Supreme Court had a general reference jurisdiction in relation to devolution, either the Central government at Westminster, or the devolved government in Scotland, could have put the following reference questions to the Supreme Court:

a) Could Scotland retain the monarchy after independence? If not, what, if any, legal requirements must be fulfilled for Scotland to be a monarchy?

b) Could Scotland retain the Pound Sterling after independence? If not, what are the legal requirements for this to be possible?

c) What would an independent Scotland’s status be in international law? Would it be able to become a member of the European Union or any other international organisation?

25. The reference jurisdiction envisaged above is not new. The Supreme Court of Canada, pursuant to Section 53 of the Supreme Court Act, already has a wide jurisdiction to consider any matter relating to the interpretation of the constitution, or the validity of federal or provincial legislation.

26. In conclusion, if the options and proposals for reform set out above are adopted, then there are two ways of resolving disputes relating to devolution. First, anyone who wishes to challenge the validity of legislation enacted by the devolved legislatures must sue in the Supreme Court, thereby reducing the ability for doubt and uncertainty whilst the challenge works its way through the intermediate court system. Secondly, the Government will have a wider and broader power to refer questions relating to devolution, or actions of the devolved governments, to the Supreme Court. In both cases, the Supreme Court, as arbiter of legal questions that affect the entirety of the UK, can deal quickly and efficiently with such pressing issues.

8 September 2015
Appendix 1 – Section 91 of the Constitution Act 1867 (Canada)

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say:

[...]

(1A) The Public Debt and Property;

(2) The Regulation of Trade and Commerce;
(2A) Unemployment insurance;

(3) The raising of Money by any Mode or System of Taxation;

(4) The borrowing of Money on the Public Credit;
(5) Postal Service;
(6) The Census and Statistics;
(7) Militia, Military and Naval Service, and Defence;
(8) The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada;
(9) Beacons, Buoyes, Lighthouses, and Sable Island;
(10) Navigation and Shipping;
(11). Quarantine and the Establishment and Maintenance of Marine Hospitals;
(12). Sea Coast and Inland Fisheries;
(13). Ferries between a Province and any British or Foreign Country or between Two Provinces;
(14). Currency and Coinage;
(15). Banking, Incorporation of Banks, and the Issue of Paper Money;
(16). Savings Banks;
(17). Weights and Measures;
(18). Bills of Exchange and Promissory Notes;
(19). Interest;
(20). Legal Tender;
(21). Bankruptcy and Insolvency;
(22). Patents of Invention and Discovery;
(23). Copyrights;
(24). Indians, and Lands reserved for the Indians;
(25). Naturalization and Aliens;
(26). Marriage and Divorce;
(27). The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters;
(28). The Establishment, Maintenance, and Management of Penitentiaries;
(29) Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces;
And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Appendix 2 – Section 92 of the Constitution Act (1867)

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

(1) Repealed;
(2) Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes;
(3) The borrowing of Money on the sole Credit of the Province;
(4) The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers;
(5) The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon;
(6) The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province;
(7) The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals;
(8) Municipal Institutions in the Province;
(9) Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes;
(10) Local Works and Undertakings other than such as are of the following Classes:
   - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
   - (b) Lines of Steam Ships between the Province and any British or Foreign Country:
   - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
(11) The Incorporation of Companies with Provincial Objects;
(12) The Solemnization of Marriage in the Province;
(13) Property and Civil Rights in the Province;
(14) The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts;
(15) The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section;
(16) Generally all Matters of a merely local or private Nature in the Province;

Appendix 3 – Section 51 of the Constitution of Australia

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:
(i) Trade and commerce with other countries, and among the States
(ii) Taxation; but so as not to discriminate between States or parts of States;
(iii) Bounties on the production or export of goods, but so that such bounties
shall be uniform throughout the Commonwealth;
(iv) Borrowing money on the public credit of the Commonwealth;
(v) Postal, telegraphic, telephonic, and other like services;
(vi) The naval and military defence of the Commonwealth and of the several States, and the control
of the forces to execute and maintain the laws of the Commonwealth;
(vii) Lighthouses, lightships, beacons and buoys;
(viii) Astronomical and meteorological observations;
(ix) Quarantine;
(x) Fisheries in Australian waters beyond territorial limits;
(xi) Census and statistics;
(xii) Currency, coinage, and legal tender;
(xiii) banking, other than State banking; also State banking extending beyond the limits of the
State concerned, the incorporation of banks, and the issue of paper money;
(xiv) Insurance, other than State insurance; also State insurance extending beyond the limits of
the State concerned;
(xv) Weights and measures;
(xvi) Bills of exchange and promissory notes;
(xvii) Bankruptcy and insolvency;
(xviii) Copyrights, patents of inventions and designs, and trademarks;
(xix) Naturalization and aliens;
(xx) Foreign corporations and trading or financial corporations formed within the limits of the
Commonwealth;
(xxi) Marriage;
(xxii) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody
and guardianship of infants;
(xxiii) Invalid and old-age pensions;
(xxiiiA) The provision of maternity allowances, widows' pensions, child endowment,
unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but
not so as to authorize any form of civil conscription), benefits to students and family allowances;
(xxiv) The service and execution throughout the Commonwealth of the civil and criminal process
and the judgments of the courts of the States;
(xxv) The recognition throughout the Commonwealth of the laws, the public Acts and records, and
the judicial proceedings of the States;
(xxvi) The people of any race for whom it is deemed necessary to make special laws;
(xxvii) Immigration and emigration;
(xxviii) The influx of criminals;
(xxix) External affairs;
(xxx) The relations of the Commonwealth with the islands of the Pacific;
(xxxi) The acquisition of property on just terms from any State or person for any purpose in
respect of which the Parliament has power to make laws;
(xxxii) The control of railways with respect to transport for the naval and military purposes of the
Commonwealth;
(xxxiii) The acquisition, with the consent of a State, of any railways of the State on terms arranged
between the Commonwealth and the State;
(xxxiv) Railway construction and extension in any State with the consent of that State;
Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;

Matters in respect of which this Constitution makes provision until the Parliament otherwise provides;

Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;

The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;

Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in any department or officer of the Commonwealth.

Appendix 4 – Outline for a proposed Devolution Act

Devolution Act 2015

Part I – Devolution and powers of the devolved legislatures

Chapter I Devolution
1. There shall be a Scottish Parliament, a Welsh Assembly, and a Northern Ireland Assembly, hereafter referred to as “The devolved legislatures”. The details of the devolved legislatures and the resultant devolved administrations shall be as provided in the Scotland Act 1998 (as amended), the Government of Wales Act 1998 (as amended) and the Northern Ireland Act (as amended)
2. Each devolved legislature shall only exercise the powers that have been expressly devolved to it by this Act, or that have not been expressly reserved or excepted by this Act. Those powers shall be listed in sections 3, 4 and 5.

Chapter II - Powers of the devolved legislatures
3. In respect of the Scottish Parliament, the Scottish Parliament shall have power to legislate on all matters that are not listed as “generally reserved” matters or “specifically reserved” matters, as listed in Schedule 1.
4. In respect of the Welsh Assembly, the Welsh Assembly shall have power to legislate on all matters that are specifically devolved thereto, as listed in subsections (1) to (20) below. Matters not listed below shall be considered reserved or excepted to the United Kingdom Parliament, and may only be devolved to the Welsh Assembly by specific enactment of the United Kingdom Parliament.
5. In respect of the Northern Ireland Assembly, the Northern Ireland Assembly shall have power to legislate on all matters that are not reserved or excepted, such reserved or excepted matters being detailed in subsections (1) to (64) below. Such excepted or reserved matters may only be devolved by specific enactment of the United Kingdom Parliament.

Part II – Disputes relating to powers of devolved legislatures

Chapter I – Jurisdiction of the Supreme Court
6. The Supreme Court shall have jurisdiction as set out in subsections 1 and 2, namely:
   (1) To consider and hear any Reference Questions, submitted by the Devolved administrations’ law officers (defined as the Counsel General for Wales, the Attorney-
General for Northern Ireland, or the Lord Advocate), or the Attorney-General for England and Wales as to the powers and actions of the devolved legislatures or administrations. The Supreme Court shall also have jurisdiction in respect of any other question that, in the opinion of the referrer, touches on the devolved legislature or administration. The Supreme Court shall have original compulsory jurisdiction in such cases. “Compulsory” jurisdiction shall mean that the Court is required to take such cases as envisaged in this subsection.

(2) Any suit bought as a judicial review, seeking to challenge any act of the Devolved legislatures for want of compatibility or competence in terms of sections 3-5 above. In such suits, the Supreme Court shall have original exclusive jurisdiction to consider and hear such suits. Notwithstanding the preceding, the provisions of Section 40(6) (the requirements for leave), and any rules made thereunder, shall apply to such suits.

7. The President of the Supreme Court may make such rules as he or she thinks fit in respect of proceedings envisaged under subsections (1) and (2) above


8. Schedule 5 of the Scotland Act 1998 is repealed in its entirety

9. Schedule 7 of the Government of Wales Act 2006 is repealed in its entirety

10. Schedules 2 and 3 of the Northern Ireland Act 1998 are repealed in their entirety

11. The provisions of Part II shall not have any effect on any proceedings instituted before the commencement of this Act.

N.B This proposal is not meant to be a word-for-word representation of any “Devolution Act”, but is meant to provide a guideline as to what potential legislation could look like.

August 2015
Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party—Oral evidence (QQ 123-133)

Evidence Session No. 8    Heard in Public    Questions 123 - 133

FRIDAY 11 DECEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan

Examination of Witnesses

Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party, and Ken Thomson, Director-General Strategy and External Affairs, Scottish Government

Q123 The Chairman: Minister, good morning. Thank you very much. It is very good of you and Ken Thomson to come today. I have already explained to my colleagues that he used to be my secretary in the Scottish Office many years ago. He has gone on to great things, and is still doing great things, whereas I am beyond all that now, on the reverse side of the slope, so to speak. We are extremely grateful to you for coming to meet us today. I have already apologised to you for the disastrous electronic connections that ruined our last interview, and we much appreciate that you are forgiving us and coming again.

Before we go into the questioning, I should say that the Committee understands and recognises that you are a Minister in a Government whose main objective is independence, and most of our colleagues, although we are a non-partisan Committee, would tend to prefer maintaining the union. If we can put that aside and try to find common ground between us on the issues on which we want to ask questions, I hope that we will get some interesting answers because, with the developments that have gone on and with the present Scotland Bill, there are a growing number of issues where collaboration is going to be increasingly important, where responsibility for certain activities is going to be shared, and so on. I am sure that you are as keen as we are to ensure that the relationship in the union between the United Kingdom Government and the devolved Governments is not only maintained but developed in a positive way that is beneficial to both. That is the sort of objective that we are seeking. Can I ask you the first question? How do you think that the UK Parliament has adapted to the large number of SNP Members and how do you think the SNP Members have adapted to the UK Parliament? Have there been benefits for both from the encounters?

Fiona Hyslop MSP: I cannot speak on behalf of the SNP Members, so I suggest that is a question you could most usefully ask of them in London when you are in London. I am here, obviously, as a government Minister, and I am a member of the SNP—it is an SNP Government—but that is a
strange premise to start our discussion, reflecting your opening remarks about the objectivity of your approach.

_The Chairman:_ Perhaps the unasked aspect of the question is: to what extent do they communicate with the SNP MSPs here? Is there an interflow of information that is useful to both of you?

_Fiona Hyslop MSP:_ That is a private party matter.

_The Chairman:_ All right, so you have nothing to say about that at all.

_Fiona Hyslop MSP:_ If you are asking about how, as an outside observer, I see the operation of the Westminster Parliament, it is interesting in a number of ways. If you are looking at the status of the union, how it functions just now, and the nature that it can and should have in a constructive way, you would expect that every Member of the Commons, particularly, would be treated equally regarding how they are respected in terms of the political arrangements that exist and have existed for some time. There is something about reflecting on whether there has been equity in the operation of the Westminster Parliament since the SNP MPs arrived.

There are no more or no less Members of the Parliament from Scotland than before. It is quite interesting that a lot of people are suddenly making comments like, “There seem to be more Scottish MPs than there were before”. No, there are not. There is exactly the same number. They might attend more, they might speak more, and there is a good example of a young woman from Lanarkshire who spoke more in the House of Commons in five weeks than her predecessor had in five years. The visibility is there. Nothing has changed. The numbers have not changed. The political arrangements have not changed. The political dimension might have, but that is not a constitutional issue. That is a political view and expression democratically by the people of Scotland.

In terms of practicalities, I will give you two examples. It is for you to judge whether there has been equity of treatment and cementing of the union in terms of these Members representing different political parties but the same constituencies. Their constituents have not changed. They are still the same people. If you take the example of the human rights group that has been set up, my understanding is that the membership of that includes a number of Peers. It has Labour members, Conservative members and, indeed, Liberal Democrat members, but in that review there is no member from the SNP. If you look at the constitution of the House of Commons—some of you may have been Members previously—the SNP group is the third largest party, so you would have thought that we would have had some representation on that.

Take the debate on Syria—a very important debate. Clearly, the Conservative Party had a whipped position. The SNP had a whipped position. Others may not have, and obviously Labour had a different position, but for the third biggest party to have only three speakers in six hours 49 minutes perhaps would not be what you would have expected previously.

I am a government Minister. I co-operate with the Government in Westminster and have done for seven years as a Minister. I happy to share with you how that works, as I think I did in my last evidence session. If you are asking me to look at how Westminster is treating the SNP group, it has to treat them as full equitable Members and, if it does not, if it treats them as other or different, it is choosing to say that Scotland is somehow “not of us”: that Scotland and the representatives democratically sent by the people of Scotland are somehow not to be treated as the same or with equity. I have given you two examples: the human rights working group and the Syria debate. Perhaps you might want to draw your own conclusions from that.
Q124 **The Chairman:** That is extremely interesting. The House of Lords operates independently from the House of Commons on these matters. We are without direct influence, but we have noted what you have said on that. Thank you very much.

Can I move on to a more specific point, which is quite topical at the moment, namely the Sewel convention and the Scotland Bill going through the House of Lords at the present time? Do you think that the convention should be judiciable and actionable in the courts or not?

**Fiona Hyslop MSP:** The important thing is that the Sewel convention has operated since 1999. That is 17 years. It has operated, and there has been no question of any court action or any question about it. My concern about what is on the table just now in relation to the Scotland Bill is that it may weaken what has been the operation of the Sewel convention and, indeed, the legislative consent Motion to date. Legislative consent Motion activity has a mechanism by which the UK and the Scottish Governments, and indeed the Parliament, can co-operate in terms of those areas of difference, but there are concerns that the weakness of the Scotland Bill may undermine what has been a co-operative system. I would like to ask Ken to come in, because he is probably closer to this.

**Ken Thomson:** This is something on which our Ministers have set out their position fairly clearly over the last few years, especially in June in response to an interim report by the Devolution (Further Powers) Committee in the Scottish Parliament. To put it briefly, I think our Ministers’ concern is that the Smith Commission recommendation that the Sewel convention should be put on a statutory footing means more than enacting a quotation from Lord Sewel. You need to enact the convention rather than the quotation. The specific concerns are that the scope of the proposal in the Scotland Bill currently extends to only one of the three legs of circumstance in which the Sewel convention currently applies and has applied since 1999. The second concern is on process, and that, if you simply put the words that Lord Sewel used on to the statute book, you do not enact or put on a statutory footing the process of consultation and consent that currently operates and has since 1999. The third concern, which I know has been shared by some in the House of Lords, and indeed in this Committee, is to do with the clarity of the language. If you take the word “normally” and put it on a statutory footing, what does it mean? Our Ministers expressed those concerns when the Scotland Bill was first being discussed and set out an alternative approach, which would put the three legs on to the statute book and would also provide for a process of consultation, bringing on to a statutory footing the process that has, as the Cabinet Secretary said, worked pretty well since 1999.

**Lord Cullen of Whitekirk:** Can I take up that point? I take entirely what you said about the word “normally”, but if you put the Sewel convention into statute, there is always a risk that the matter may get before a court on some ground or other. It has been suggested that it might be useful to add to the Scotland Bill a clause saying that the occasions for the use of the Sewel convention should be entirely a matter for Parliament—in other words, to oust the court from being drawn into some dispute about whether the clause applies or not. Does either of you have any view about that?

**Ken Thomson:** Perhaps I could come at your point from a different starting point. As a civil servant, I would always want to find a way for Ministers to either reach agreement or agree to disagree as a matter of government, rather than going to the courts. I hope you will forgive me for saying that going to the courts tends to take longer and cost you more. My approach in advising Ministers on this would always be to say that we need a process that will work to allow Governments to come to agreements, as they generally have done over issues to do with the Sewel convention. To come back to the starting point of your point to me, clarity of language is important in relations between...
Governments, just as it is important in the courts. My problem with “normally” is less whether or not it is justiciable but more whether, in the context of intergovernmental relations, we can find ways of making it work.

Lord Cullen of Whitekirk: Of course, there might be a problem even if the word “normally” is taken out. There still may be a dispute, so, for that purpose, it may be of some use to have a declaration that the occasions should be a matter for Parliament and not for the court.

Ken Thomson: We currently have, of course, a dispute resolution procedure within the memorandum of understanding.

Fiona Hyslop MSP: It is interesting that there is a dispute mechanism in the memorandum of understanding, but it is very rarely used. Perhaps we can follow up and provide you with examples of where it has happened—consequentials or funding for Olympic Games, perhaps, and one or two with Northern Ireland—but dispute mechanisms are very rare indeed. That comes back to the point about how you behave, as opposed to the rules of the game in which you are set up, whether it is legislative, et cetera. The behaviour of people, the culture and the respect for how Governments work together are far more important. Yes, you need the parameters, and we have those parameters, but in relation to the Sewel convention, as with other mechanisms of dispute, the resolution has happened because of the will of Ministers to understand that we do not want to end up either in the Privy Council or elsewhere, or in this instance in the court, to resolve it.

Lord Morgan: I just have one question. Do you have any alternative form of language or construction of this particular phrase or sentence that you think would embody the appropriate views of the Scottish Government?

Ken Thomson: Yes, we do. We published that on 8 June this year, and it is in the form of a draft clause that would, first of all, bring into the statute book the three circumstances in which the Sewel convention currently applies and, secondly, on this point, would provide a requirement on the UK Government to consult with the Scottish Government in relation to legislation of this sort unless there were exceptional circumstances or Scottish Ministers agreed that consultation was not required in the timescale set out. We can certainly provide you with that. That is the process our Ministers have set out.

Lord Morgan: That is very clear. Thank you.

Lord Judge: You spoke about cost and delay, but subsequent answers by the Minister rather suggested something else. Is it wise for the judges to get involved in a dispute between Governments? Speaking for myself, I cannot see it. What is your view?

Fiona Hyslop MSP: I know a number of you have experience in the legal profession, and I think anything that avoids courts in legislation is a good thing. However, there are times when you need to have a backstop of where things might have to go, but that is also a disincentive, dare I say it, to get there in the first place. I know in my operation, and I am sure, Lord Lang, this is your experience as well, there are many instances as a Minister where you have to avoid situations of going to court, because that is an incentive not to go to the final degree. You should resolve things before that. That is in every operation of government life, not necessarily just this one. In the context Ken set out, having the provisions that we have set forward we think is the most workable solution that seeks to resolve what people want to see as a firmer status for the Sewel convention.

The Chairman: As you know, this is unfinished business in Parliament, and we have had extensive debate already in the House of Lords. We are at Committee stage, and I have no doubt it will be returned to at Report stage.
Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party—Oral evidence (QQ 123-133)

Ken Thomson: I have a very brief point, to amplify what the Cabinet Secretary said. The protocol in the memorandum of understanding is called the “dispute avoidance and resolution procedure”, so it is exactly about the point that you both referred to.

The Chairman: We also have an intergovernmental relations report, to which you contributed, Minister, which was published some time ago but has not yet been replied to by the Government, because ongoing work is taking place in relation to the memorandum of understanding. We hope that it will be published soon and that it will reply to the report we published. We should be able to debate that further. We should perhaps move on to other issues, though.

Q125 Lord Hunt of Wirral: Minister, we received evidence advocating a new charter or statute of the union that would set out the principles underlying the union and devolution, asserting the voluntary nature of the union and setting out principles for the relations between the Governments of the nations of the UK. Is that something the Scottish Government would support?

Fiona Hyslop MSP: I do not think it is necessary. We set out our views prior to the Smith Commission in this document More Powers for the Scottish Parliament. Clearly, in terms of the principles and practice that the Scottish people already adhere to, we have to think about the exercise of power, behaviour and practice as opposed to words of principle. If I refer you to the Claim of Right of 1989, we are very supportive of that sentiment as a Government: “We, gathered as the Scottish Constitutional Convention, do hereby acknowledge the sovereign right of the Scottish people to determine the form of government best suited to their needs, and do hereby declare and pledge that in all our actions and deliberations their interests shall be paramount”. That was supported by the declaration of the pro-United Kingdom parties during the referendum last year, and their collective phrase was: “Power lies with the Scottish people and we believe it is for the Scottish people to decide how Scotland is governed”. Therefore, a centrally imposed statute or form of words that is presented to the people without their agreement may itself cause more dissonance than is needed.

A change of behaviour and practice is needed, as opposed to a form of words. Indeed, if you want to have a demonstration of the will of the Scottish people, while I would have liked a different result in the independence referendum, the people expressed their view in that referendum. That in itself is a statement of the views at that point in time. You should not try to get the lowest common denominator of a common statement when, if you look at the Administrations in Wales, Northern Ireland and Scotland, we are evolving differently. It is not the same. It does not need to be at the same pace, because it reflects the interest and needs of the different jurisdictions and Administrations and the different political focus and emphasis. Sometimes this is looked at from the other end of the telescope: there is more need to resolve what form of administration and form of government the English people want. There may be a statement from that, because they do not have that. We have that with the Scotland Act. Certainly, Wales has it as well, in relation to the form of powers it has and the ongoing discussion it has. We have that as an ongoing discussion in Scotland, and indeed, in Northern Ireland, you have ongoing discussions even as we speak in relation to their fresh powers and the fresh start they have had in recent weeks.

It is trying to make a statement of principles, but for what purpose? The purpose is more important than the words. We can have the best words in the world, but if people either in Whitehall as officials or as government Ministers do not adhere to that and behave differently, the words might be more counterproductive. If you look at the position here, all parties in Scotland in recent years have reflected that it is what the people of Scotland express that will set out the terms, parameters and limits, even, of what those powers would be.
Q126 Lord Morgan: I want to ask a slightly different question. I notice that you are Minister for Europe among other things. Could the forthcoming referendum on Europe affect relations between the different countries? There is a view in Wales, where I come from, that to a degree Wales should be thought of as a separate entity in that referendum. That is the Scottish view too, I take it.

Fiona Hyslop MSP: Yes, it is. Indeed, I am giving evidence to the House of Lords European Committee, next week, so I seem to be having a surfeit of Lords all at the same time.

Lord Morgan: We await that with interest.

Fiona Hyslop MSP: If we respect the union—remember the Act of Union in terms of the Scottish situation was of equals coming together—and if there were any major constitutional change in relation to our European situation, we think the people of Scotland should express their views of that change and no part of the United Kingdom should be taken out of the European Union against its wishes. Clearly, if the Scottish people, as the polls are suggesting, vote to remain in and the rest of the UK—polls are very tight—were to vote to leave, that would cause a real constitutional strain. There are strong views and opinions across the United Kingdom on these issues, and they are different views and opinions. In terms of the articulation of this, I have very severe concerns. I will express that with your colleagues next week, but it is a live issue and I am very engaged. It is another example of where we co-operate with the United Kingdom in different ways on Europe.

I will give you an example. I was in Brussels only two days after the major security issue there. Democracy has to continue, as I am sure you all agree. Although other meetings were cancelled, the ministerial meeting went ahead. Not for the first time, I represented the whole of the UK at that meeting. I was at the audio-visual and culture section of the Education, Youth, Culture and Sport Council in Brussels as the representative of the UK and spoke on behalf of the UK. Perhaps that might be an example of where there is interest in different areas. Climate change is a global issue but very much a European issue, and we work very co-operatively with the UK on those issues in relation to climate change, because we have a good story to tell in terms of our example. Rather than looking for the problems in resolving the state of the union, it might be very good to look at some of the positive examples and ask, “Why do we not have more of the better behaviours?” as opposed to a construct that is trying to provide words and principles rather than practice.

Lord Morgan: Do you have any discussions with the Welsh Government to see if some kind of uniformity of view might be achieved?

Fiona Hyslop MSP: Uniformity of view on what?

Lord Morgan: On what you have been saying about Europe.

Fiona Hyslop MSP: We have, for example, the Joint Ministerial Committee on Europe, which probably reflects more your previous inquiry on intergovernmental relations. We meet with our Welsh colleagues, and there have been joint letters from the Welsh and Northern Irish on some of these issues, depending on the state of the political situation in Northern Ireland. I cannot recall if the letter was supported or not by Northern Ireland. Ken might be able to correct me on this, but that was regarding the views on Wales not being taken out of the European Union against its wishes. These views have been expressed and are expressed between our First Ministers, and we have our First Ministers meeting David Cameron on Monday, I think. A number of issues will be on the agenda, not least, for example, the trade union legislation, where there is a clear majority in Scotland and the Scottish Parliament not to proceed with what we see as a draconian piece of legislation. It is issue by issue, whether it is Europe, trade unions or other things, where we work very well with our colleagues, and sometimes we have a common view. Quite often we have a
common view, and that is with different parties, remember, because it is a Labour First Minister in Wales. A lot of these issues are not about party politics. They are about other interests.

The Chairman: Did you want to add something, Mr Thomson?

Ken Thomson: No, I have nothing to add.

Q127 Lord Hunt of Wirral: This takes me back, Minister, to when I proudly, as Secretary of State for Wales, used to sign treaties with other motor regions of Europe: Baden-Württemberg, Catalonia, Lombardy and Rhône-Alpes. I suppose that leads me into my next question about a more overtly federal structure. Would the Scottish Government support something that set out the divisions of powers and responsibilities clearly? It is not really there at the moment.

Fiona Hyslop MSP: It is. It is in the Scotland Act and it is in the Wales Act, and it is in the legislation governing Northern Ireland. It is just not there for England. That is probably the issue.

Lord Hunt of Wirral: The evidence we have had is that it is quasi-federal, but you would see it as properly federal.

Fiona Hyslop MSP: We still hold the view that independence is the best solution. If we do not have independence, the improvements in the devolution settlement with Scotland are important. This probably reflects the last question: I am not going to stand in the way of the people of Wales and the Government of Wales in what they want to pursue, and they might want to pursue change that is of a different range and speed. Similarly, Northern Ireland has its specific requirements, and so does Scotland. You can have a system with multi-speed operations, with different degrees of devolution, but which reflect—going back to my point about sovereignty—what the people of Scotland want to see. I do not think there is a difficulty in setting that out.

The issue is whether you do that by bilateral enhanced devolution for each part of the United Kingdom or whether you need to do that in a construct that is centralised to a view from London and Westminster. If you do that, clearly a federal system would have to include England, and that is the challenge. If you think of federalism as just being about Scotland, Wales and Northern Ireland, you are missing the point of federalism. A federal system would have to include England, and what the people of England want in terms of powers clearly has not been articulated, although it is not for me to speak on their behalf.

Q128 Lord Cullen of Whitekirk: I would like to ask you about the social union. That may have a number of different meanings. What do the Scottish Government see as the meaning and significance of a social union?

Fiona Hyslop MSP: There are many different unions: economic, defence, the monarchy, constitutional and social. Social union is exactly what it says. It is about social relations, which means family, language and culture. I was brought up in Grantham in England. I bought my sweets from a certain corner shop before I moved to Ayrshire. In terms of our co-operation, those relations still stand and continue. There is a quote from David Cameron regarding relations with Ireland as an independent country. He recognised himself what are probably now the most enhanced relations between Ireland and the United Kingdom there have been. There is a social relationship that continues with Ireland, and that is the important part.

I will give you a good example. The BBC is part of the culture of our state, and we are currently in discussions about the renewal of the BBC charter. How we reflect ourselves to ourselves is very important in terms of the operation of the culture, what we see and how we ensure we can still share in it. I hate to tell you that “EastEnders” is still part of our social connection and social
relations; “Strictly” is; “Doctor Who” undoubtedly is—of course, there have been more Scottish Doctors than any others, I might add. Never undermine that social relationship, because that will continue. It is not about social benefits; it is not about fiscal sharing. It is about social and cultural attitudes.

**Lord Cullen of Whitekirk:** Yes, but the fact of the matter is that the words “social union” are also used to cover things like fiscal sharing of resources, sharing of risks and so on, under the general heading of social solidarity. You will know what I am talking about. What is your attitude to it? Do you think it is important?

**Fiona Hyslop MSP:** It is interesting: until I was preparing for this Committee, I had not seen it in that context at all. It has not been the language or, indeed, the understanding in Scotland of what is meant by that. It might be from your perspective.

**Lord Cullen of Whitekirk:** Now that you are here, you know what I am talking about: the way that income revenue can be redistributed, sharing of risks to do with welfare and pensions and so on. That subject matter is sometimes referred to as a social union. How significant or important do you see that being on a UK-wide basis?

**Fiona Hyslop MSP:** Certainly the Scottish contribution fiscally has been very strong over many years in terms of that pooling and sharing. It is a different construct and context, and it is interesting that we see things differently. I would talk about that as welfare or fiscal, and you are now in the argument of fiscal framework and in the territory of the Scotland Bill. One of the big concerns we now have about welfare and spending is that you could have a transfer of powers and responsibility for social protection and welfare, but if the economic and financial framework undershoots what should be required for that welfare provision, that would create a real anomaly in powers. In terms of that aspect, we pay our way and we always have done.

As to whether there should be more devolution of welfare, we think so. A simpler system is to make sure we have full transfer of the powers, the responsibility and the finance for those areas. In the current discussions about the Scotland Bill, our proposition as a Government is that there is an unsatisfactory settlement, but we are very much in the middle of those discussions, and Ken is probably more involved in that than I am.

**Lord Cullen of Whitekirk:** Putting it more generally, is there some benefit in revenue being distributed in such a way as to provide support where it is required? Do you see the benefit of being within a UK-wide system?

**Fiona Hyslop MSP:** Not necessarily, if it does not meet the outcome for the individual. You can have a very centralised system of welfare provision, but some of the most meaningful impacts for people are where you can have rapid reaction to local circumstances and local needs. Not everybody has the same experiences in all parts of the country in relation to what they need.

I will give you an example. Back in the end days of the last Labour Government, I worked with the then Employment Minister—I think it was Tony McNulty—of the UK, and one of the things we were trying to do was integrate employment services and benefits, which were clearly a reserved matter for the United Kingdom, with retraining, skilling and getting people back to work. The outcome is not about whether you have a wonderful centralised system that does not then have an impact on the people it is meant to serve. You can have a far more fluid system that is under local control, meets local needs, has better outcomes and gets people back to work in an improved way.

I went to Greenock, where we had a pilot integrating those services. That is part of the challenge we have. We had better results in getting people back to work by integrating employment and
welfare benefits with the skills and training responsibilities that were devolved. It is about what makes a better impact for individuals. One of the reasons we want to see the devolution of welfare is that we think we can help people get back to work, if they are able to—because some people are not—and suit their circumstances better than a very bureaucratic centralised system that is not reactive or a system where we have disagreements as to how the policy works.

If you have a policy, which the current UK Government have, that certain services will not kick in until after 12 months of unemployment, we think that is not the best way to get people back into work. Earlier interventions work. We could make those changes, were welfare devolved to us to allow us to do that. If welfare is centralised, you could then have a system where maybe you are pooling and sharing different revenues and distribution, but you are not having the impact. If you think that services like employment and welfare are to help people as opposed to being simply administrative, we can have better outcomes if decision-making is more devolved. I think the UK Government currently think that in relation to some of the suggestions around city deals or the northern powerhouse, et cetera. Some of the issues they might be looking at are in that territory, because they think they might get more rapid reaction.

**Lord Morgan**: There you completely diverge from the views of the Welsh Government, do you not? I am not saying they are right.

**Fiona Hyslop MSP**: It is horses for courses. Difference is not necessarily a problem. It is only a problem if you see it as a problem. Difference can be about being more reflective of how you can work and how you can operate. That is not a bad thing. As long as you can get the fiscal framework correct, which is absolutely crucial to the operation of the Scotland Bill, you might get better outcomes, and we think you would get better outcomes. But it might be different in different parts of the country.

**The Chairman**: There is no disagreement on the importance of the fiscal framework to the Scotland Bill.

**Fiona Hyslop MSP**: I am sure there is not.

**Q129 Lord MacGregor of Pulham Market**: I am glad that you mentioned the fiscal framework, because that is what I wanted to come on to and explore in more detail. We have heard that one of the purposes of unions is to spread wealth through fiscal redistribution. On what basis do you think that fiscal redistribution should take place, and how will fiscal redistribution in the UK be affected by the Scottish Parliament’s increasing revenue raising and spending power?

**Fiona Hyslop MSP**: Part of the challenge is that 70% of the taxes will remain at Westminster, even under the current provision. If you think about the fiscal framework just in distribution of what is already there, which reflects the last question in terms of welfare, you have a very narrow box. The point about fiscal distribution is that you should be able to generate wealth as well as spend it, and that is the challenge we have had in Scotland. We wanted to be able to generate more wealth, not just spend it. That comes back to, for example, my concern about the limited scope of what the fiscal framework is more generally.

If you wanted to do a tally of contribution, over many decades Scotland has contributed more to the UK Exchequer than it has necessarily distributed. If you take out some of the more centralised state-funded issues around defence and foreign affairs, London itself is probably the most subsidised part of the United Kingdom, for a number of reasons. Therefore, we can exchange political views as to the distribution, but that can operate at different levels. You would have a far more dynamic economy and a far more responsive society if you had more responsibility for fiscal
levers to raise and spend revenue. It is not unusual. Other parts of Europe and, for example, the United States do that on a regular basis. It is having a bit of dynamic creativity about what you do. That is one of the arguments for more devolution of fiscal responsibility, but Ken has been operating more in this territory in relation to the Scotland Bill.

Ken Thomson: The quotation that is going through my mind is what Churchill said about democracy: that it was the worst form of government, apart from all the other ones. You could say the same of the Barnett formula, I think. It is the worst formula for distributing money apart from all the other ones.

Lord MacGregor of Pulham Market: I was coming close to saying that myself.

Ken Thomson: To put the point a bit more seriously, the nature of the changes in the Scotland Act 2012, as well as the Scotland Bill in front of us, requires changes to the formula that distributes the money. That is exactly the challenge we are facing as both Governments: how you fulfil the agreement that was reached in the Smith Commission in a way that is clear and simple in operation, gives a reasonable certainty of outcome and supports, as the Cabinet Secretary said, dynamism and growth in the generation of revenue as well as in the distribution and spending of it.

Lord MacGregor of Pulham Market: These are very complex matters in relation to the fiscal framework, and obviously we cannot go through all this today, partly because we do not know what is going on in the negotiations. But I think you know that the Economic Affairs Select Committee of the House of Lords recommended that the fiscal framework will be central to future devolution arrangements, and the Scotland Bill cannot be properly understood or considered in its absence. That was very much the refrain in the Second Reading in the House of Lords from many contributors to the debate then. Do you agree with that?

Fiona Hyslop MSP: I agree that the fiscal framework is absolutely central. It is not about just the powers and legislation; it is about the financial arrangements that go with it. They are absolutely integral. It is interesting that you have people coming from different perspectives: clearly that committee, but also, for example, the STUC in Scotland and Anton Muscatelli, the principal of Glasgow University, who recently produced a very thoughtful paper, which is worth examining. He thinks that the current options would slash the Scottish budget by £7 billion over the next 10 years. When you get different perspectives from different analyses, which reflect our concerns as a Government, they are absolutely clear that the fiscal framework is central to these issues. It is not just the legislation; it is about the finance as well.

Lord MacGregor of Pulham Market: You agree with that general view. Until we are clear about where the fiscal arrangements are going in the negotiations between the Governments, a lot of what we are considering is undecided.

Fiona Hyslop MSP: It shows you that there is an imperative, going back to the importance of Governments working together, that the centrality of the fiscal arrangement must be given as much time, attention and focus as the legislation and powers.

Lord MacGregor of Pulham Market: Can I just move on from that slightly? The Scottish Government advocate full fiscal autonomy. We have been told by Professor Robert Hazell in an earlier hearing, addressing this question of full fiscal autonomy directly, and I quote, “First, it is completely unrealistic … There is no country in the world, no federal system, where one of the states or provinces has complete fiscal autonomy … Full fiscal autonomy is a complete opt-out from the social union”. Would you like to comment on that?
Fiona Hyslop MSP: I do not think that is the case at all, in terms of the operation of what you do. As to what you mean by a social union, it is perfectly possible for Scotland to not only raise its own revenues but also administer its own welfare. We could do it in a way that is more sympathetic and understanding of the Scottish situation and, as I was saying, have the opportunity to achieve better outcomes for people. That is perfectly possible. I am not a constitutional lawyer or an academic, but I do not think it is the case that every country or every state has to have a similar level of devolution or the same degree of federal powers for each and every part of the sub-state sector. You have variations in many parts of the world where you have different degrees of devolution of federal powers in terms of taxation, for example. If you look at Canada, they have different levels of taxation in different areas, from British Columbia to Quebec, et cetera. The idea that you have to have a one-size-fits-all form of either devolution or, indeed, tax system within a federal construct is not reflected by experience across the world.

Lord MacGregor of Pulham Market: The discussion on the fiscal framework will explore some of the issues of how that is handled, not least in terms of macroeconomic policy, currency, fiscal deficits in particular areas and all those sorts of issues. That clearly has to be explored, and we do not know at this stage what the outcome will be. I think you will agree, therefore, that we cannot take a final view on the fiscal framework until we hear what the fiscal agreement is, if it is agreed.

Ken Thomson: Indeed, our Ministers have said that a final view on the Scotland Bill is not possible until the outcome of the fiscal framework discussion.

The Chairman: Can I just ask you to clarify a point of fact? You fought the last election with full fiscal autonomy as part of your manifesto. I get the feeling that the Scottish Government have rolled back a bit from that commitment. Is that still a firm commitment and policy?

Fiona Hyslop MSP: We still think that fiscal autonomy is the correct solution, but, on the basis that it is not the agenda of the UK Government and they are not prepared to countenance it, we deal in the reality of where we are. We have to negotiate within the boundaries of what the UK Government are prepared to discuss with us. That is part of intergovernmental negotiation and relations. But, yes, fiscal autonomy is our position as a Government, and clearly in terms of Westminster you will see SNP MPs have been laying amendments to the Scotland Bill in that regard.

Lord MacGregor of Pulham Market: Can I ask you one last question on this area? This is a point that the Economic Affairs Select Committee in the House of Lords made as well. Given the declaration of continued support for the Barnett formula by the major political parties, the Smith Commission had to accept that the existing mechanism for funding devolved Administrations should be retained, but, if the aim is to produce a sustainable and long-term solution, retention of the Barnett formula is the wrong decision. Based on the earlier comment you made about the Barnett formula, you might agree with that. Should it not be based on relative need rather than the Barnett formula?

Ken Thomson: My first point in reply to that is that the Barnett formula has to be adapted in order to accommodate not just the proposals in the Scotland Bill but the fact of the Scotland Act 2012. It is about how we adjust the current system to take account of the increased devolution of tax-raising powers. The basis on which funds should be distributed is a separate question. The position that my Ministers have taken is that the right interpretation of Smith is to continue with the current system, adjusted as much as is necessary in order to accommodate the further devolution of tax-raising powers, but not going beyond that in a way that would leave Scotland less well off than it currently is. That is the principle of no detriment that was in the Smith Commission agreement.
The Chairman: I think you are suggesting the block should be adapted rather than the formula. The block will, of course, be cut into by the transfer of the tax-raising powers. The specific formula would remain as is.

Ken Thomson: It is how you adjust the block in light of the fact that more revenue would be raised at the Scottish Government’s own hand.

Fiona Hyslop MSP: If your question is about the sustainability of things, the no-detriment argument is really important and central, because that means no detriment either to the UK provisions or, indeed, the Scottish provisions. No detriment is a fundamental part of that. To provide that, what I think you are looking at is stability or a forecast or that kind of sustainability. That is very important.

The Chairman: We must press on. Thank you very much. That has been very interesting.

Q130 Lord Judge: It is perfectly clear, Minister, that you take the view that differences in the provision of different services by each of the four nations are perfectly acceptable. I think that is what I have understood you to say: it is up to each nation to decide what services it will provide. Have I got that right?

Fiona Hyslop MSP: Yes. It is the same for the German Länder; it is the same for the federal states in Canada and other places.

Lord Judge: On that basis, do you see any circumstances in which the differences between the provisions in the four nations will grow so great that there are risks to the union itself?

Fiona Hyslop MSP: It depends on how the union responds, and how the Parliaments and Governments respond to that. If you see differences as a threat, there may be a self-realised prophecy that they become a threat. If you see differences as a useful expression of being closer to the people and the connections and services that people need, that is a different situation. It may be reflective of how centralised the United Kingdom is already in terms of a lot of its provision; I am not sure if that is a piece of work this Committee or others have done.

It is clear that there are differences in the political views and priorities of the people of Scotland. You have a situation where, out of 59 MPs, there is only one Conservative, one Labour and one Liberal Democrat. Clearly, the political priorities of the people of Scotland in terms of provision is different from other parts of the United Kingdom, and that affects the ability of the union to flex within itself. As we said at the start of the discussion, of course I am a supporter of independence.

Lord Judge: That is taken.

Fiona Hyslop MSP: But we are not in that space. We are in the space of the union as it is now. The ability of the union to flex and respond is really important. Difference does not always have to be a threat. There is a general worry that, if you treat people as an other—the word is “othering” of people or institutions—you can start to build barriers where none existed. Perhaps I should reflect on how perhaps the House of Commons is behaving towards the views of people who are democratically, legitimately, representing the views and opinions of the people they represent. There is a danger of that difference becoming institutionalised by the very people who want to maintain a union. If you make people separate, they will become separate. It will be a self-fulfilling prophecy. Therefore, reflecting difference can be a positive for the union rather than a threat. An existential point that you are all probably having to reflect on is: what is the strength of the union? The strength of the union surely must be about how it responds to the individual different circumstances of its nations and the expression of them democratically. To treat people as an other is a very dangerous thing for the union.
Lord Judge: Let us just take a “for instance”, which is entirely hypothetical for my purposes. The people of Wales take a view about university fees; the people of Scotland take a view about university fees. One thinks the other is doing very well; the other thinks the other is doing very badly. At what stage does somebody start to say, “Hang on, we want to have a say”?

Fiona Hyslop MSP: It would be up to the parties that are standing for election at any point in time to be able to carry out that function. I am the Minister who took through the Scottish Parliament the legislation on the abolition of tuition fees. I remember at the time the debate in the UK Parliament about whether there should be an increase in tuition fees coming to the point about who should vote on what at Westminster, but, if you have a situation where you are privatising some of the funding that goes to universities by putting it on to individuals through tuition fees, clearly that has a consequential impact, because less funding will be going into education in England, and that could have a knock-on effect in Scotland. It is the same with the NHS: if you reduce the funding in the NHS in England, that has a consequence for Scotland, et cetera. There has to be freedom to do that.

In terms of Scotland, we have record numbers of Scottish, English and international students going to university, which is a very strong place to be. We have fewer of our young people coming out with the levels of debt that we see elsewhere. The debt levels of our young people coming out of university are far less than those in the rest of the UK. We would argue that that means they have more capability to buy a house or set up a business, unencumbered by debt. That has other benefits. We think that is a good thing.

Our universities have also been, through that period, funded by the public purse to enable them to achieve record levels of international respect, profile institutionally and research status. That was our political choice; it was a different choice, but it was a choice made by us. It has not had a negative effect on England or Wales. That is an example where you can have differences in policy that reflect our different political needs and priorities from the rest of the United Kingdom in different ways. But it has not necessarily had a negative effect on England and Wales.

The Chairman: I am going to have to ask my colleagues to accelerate a little and keep their questions fairly brief.

Q131 Lord MacGregor of Pulham Market: Very briefly, because we have touched on this, some of our witnesses and others have argued for a minimum level of welfare provision across the UK. Should there be a minimum level of welfare benefits set across the UK that devolved Governments can supplement but not reduce? If so, who should set the minimum level and how?

Fiona Hyslop MSP: The issue is what that minimum level is. You have a situation just now where we do not agree politically with the bedroom tax, so the Scottish Government are paying for mitigation of what is a UK welfare situation. Effectively, that means our taxpayers have to pay twice, in many ways, to maintain that position. That does not seem a very effective use of funding when, in our political view, it is right because we think it is a very bad and damaging initiative. It is one that we do not want people to suffer, so we will mitigate it, but that is money that could have been spent on health or education. First, minimum levels are over-bureaucratised; secondly, I do not think they will be very efficient or effective; and, thirdly, I do not think they will be very responsive in policy terms. It is a centrally imposed solution to something.

Lord MacGregor of Pulham Market: Effectively, you do not think that there should be a minimum level of welfare or particular welfare benefits.
Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party—Oral evidence (QQ 123-133)

Fiona Hyslop MSP: I do not think that concept has been thought through enough for us to examine it and give a comprehensive view. My instinctive response is that I do not know how effective it would be.

Ken Thomson: Having learnt to be a Private Secretary with you, Lord Chairman, I then became Donald Dewar’s Private Secretary at the time the Scotland Act was going through. The point on which he and his colleagues used to advocate devolution at the time was that it would allow Scottish solutions to Scottish circumstances. What we were discussing earlier in terms of revenue-raising and full fiscal autonomy is an extension of that principle, it could be argued. The same applies to welfare benefits. I think the point the Cabinet Secretary is making is that the level of benefit and the operation of the benefit system need to be tailored to the circumstances of people in Scotland, which was the point of devolution. I think the UK Government would say it is also the point of devolving social security powers in the Scotland Bill.

Lord MacGregor of Pulham Market: So the answer to the question is “no”?

Ken Thomson: Yes.

Q132 Lord Judge: Then comes this rather interesting question. We would all appreciate your views on this. What impact would, if it eventually came to pass, English votes for English laws have on the union?

Fiona Hyslop MSP: Our First Minister has quite clearly set out that we think the proposals for English votes for English laws are unacceptable. Politically, it was very dangerous for the Prime Minister the day after the referendum to respond to the articulation of the will of the Scottish people by immediately reflecting on the situation regarding England. There is a political danger in treating Members of Parliament as second class. Politically, you could not effectively in practice have a Scottish Member of Parliament ever becoming Prime Minister: what credibility politically would you have as a leader of your party, as a candidate for Prime Minister and operationally as a Prime Minister if there was major legislation that you could not vote on or express a view on? There are the practical areas, but also politically and constitutionally it is very dangerous territory, if you believe in the union. If you do not believe in the union, there is a point of analysis that would mean that, if you had this, it would lead to consequences.

Lord Judge: Have I understood this correctly? If you believe in the union, there should not be any system of English votes for English laws. If you do not believe in the union, it follows inevitably that each, as an independent country, will operate its own legal system.

Fiona Hyslop MSP: Those two statements do not necessarily follow. The first one I agree with: if you believe in the union, you have to treat people equitably. Going back to our discussion about tuition fees, that is an example where there are consequences to pieces of policy, proposals and legislation that, because of the financial impact, are ostensibly about the English health service, the English education system or the English transport system. They have consequences because of the subsequent distribution of consequentials. We are in the middle of a Budget process. Having had George Osborne’s Budget, next week, on the 16th, we will be setting out our budget. A lot of that is dependent on the distribution of funds that we know have come from the consequentials of decisions taken about policies that are to do with English areas. That is the danger of English votes for English laws. That would cause a real difficulty.

In terms of your second point, if you had English votes for English laws within a federal system or within a system of an English Parliament, that is a different matter from having it within what is a unitary Westminster parliamentary system.
Lord Judge: Is there such a thing as a West Lothian question?

Fiona Hyslop MSP: As the West Lothian Member of the Scottish Parliament, I am the West Lothian answer.

Lord Judge: That is a lovely answer. But it is still a question.

Ken Thomson: The other answer that is often given is that the best answer to the West Lothian question is to stop asking it.

Lord Judge: Forgive me, but that is not an answer.

Ken Thomson: I will give you a more serious answer. We have looked back over the votes in the House of Commons in the period from 2001 to 2014. We think that less than 1% of those votes would have had a different outcome if you took Members from Scottish constituencies out of the voting figures. It seems at the moment to be an answer to a question that is not a practical problem, because the Government have a majority.

Lord Judge: It may be rather different when, as has been pointed out more than once, there is such a very significant and important representation of Scottish nationalists in Parliament.

Fiona Hyslop MSP: If that is how you see that—

Lord Judge: I am asking a question; I am not saying how I see it.

Fiona Hyslop MSP: Why would representation from Scotland, from my constituents, constitutionally somehow be different because they have democratically elected to vote for a different party? Why is it that it becomes more acute now because of the political party rather than the country’s representation? Why does it become more acute because of the political nature of the people who vote in those 59 constituencies? That says more about the people who are asking the question.

Lord Judge: With respect, the question has been asked long before there was a huge number of Scottish nationalists in Parliament. It is not a question that has anything to do with it.

Q133 The Chairman: It is an issue we could debate all morning. I think we acknowledge that your first answer was the best answer we are going to get this morning. We will move on, if you do not mind, because we are getting near the end of our time. I would like to ask you the last question. Clearly, the Scottish Government are elected with a long-term objective of independence. The referendum voted in favour of the maintenance of the union. How do you reconcile your long-term objective of independence with the need to govern all the people of Scotland, recognising that Scotland is part of the United Kingdom?

Fiona Hyslop MSP: The same way that I have done day in, day out, from the first time I was appointed as a government Minister in 2007. We are quite clear in terms of our responsibilities to the people of Scotland: to govern and to govern well. The fact that we have been re-elected and that currently we are seeing very strong poll ratings is evidence that people trust us to govern for Scotland. Our constitutional aspirations remain, but we are quite clear we will roll up our sleeves, as we have done right from day one, and carry out our responsibilities as government Ministers.

The Chairman: Thank you very much. Mr Thomson, would you like to answer on the part of the Civil Service, which must in some way feel itself slightly torn, with loyalties to both Scotland and the United Kingdom?
Ken Thomson: I do not see it that way at all. The purpose of the Civil Service is to serve the Government of the day. The Government of today have their policies, and so we support those policies.

The Chairman: The Government of the day are the United Kingdom Government also.

Ken Thomson: In respect of the civil servants supporting the Scottish Government, our professional duty lies to our Ministers in the Scottish Government, and the professional duty of our counterparts in Whitehall lies in supporting the United Kingdom Government.

The Chairman: Do you see no tension?

Ken Thomson: I think the tension would arise if it were the other way around. If somehow I were saying to Fiona Hyslop, “I am here to do something for you, but I am not really your civil servant”, that is when it would not work. It is the same principle that you have on a change of party in Government: the loyalty of the Civil Service needs to transfer to the Ministers of the day.

Fiona Hyslop MSP: Perhaps I could finish by reflecting on the professionalism of the Civil Service. We have had officials that have worked at different times for both UK Governments and Scottish Governments, and the professionalism with which they carry out their duties is exemplary.

The Chairman: The one on your left had very good training. Minister, thank you very much indeed. We very much appreciate it. You have been very open with us and very full in your answers. You have given us lots of very interesting things to think about. Thank you so much, and you, Mr Thomson.

Fiona Hyslop MSP: Thank you very much indeed.

Ken Thomson: Thank you.
Introduction
1. The Institute for Government is pleased to have the opportunity to contribute to this inquiry on The Union and Devolution. The inquiry is addressing many questions that relate closely to the Institute’s objective of helping to enhance government effectiveness across the United Kingdom, including in terms of the functioning of devolution and relations between the four parts of the UK.
2. In the main, the process of devolution since 1999 has delivered a necessary and welcome set of reforms to what was an overly centralised constitution, unable to respond adequately to the varying needs and preferences of the nations and regions of the United Kingdom.
3. The new devolved institutions in Edinburgh, Cardiff and Belfast (as well as at the city level in London) have all faced difficulties and questions about their effectiveness, but all pass the crucial test that voters in each part of the country support their continued existence. Indeed, with the possible exception of Northern Ireland, there is also evidence that voters across the country are keen to see further powers devolved.
4. That said, we share the committee’s concern that changes to the devolution settlements have often occurred in a disjointed fashion, in response to short-term political pressures rather than consistent principles, and with insufficient attention being paid to the coherence of the British constitution as a whole, or to how Westminster and Whitehall should adapt.
5. The above factors may have contributed to the present period of constitutional instability. Greater stability in our constitutional arrangements is to be desired, but this should not be confused with stasis. Even in mature federal democracies the relationship between national and subnational government is commonly debated and reformed.
6. However, it is not ideal for constitutional questions to be permanently at the centre of the political agenda, and for the rules of the game to be in constant flux (as they have been in Wales ever since 1999, in Scotland since at least 2011, and at present at the English subnational level). Achieving greater clarity about the principles underpinning the Union and devolution could help move toward a situation where constitutional debate is of lower importance than ‘normal’ political questions about public services, taxation, law and order, and so forth. Below we discuss some areas in which constitutional principles are or should be visible in the operation of the UK’s territorial constitution.

Principles guiding the division of powers between national and devolved governments
7. The allocation of powers and functions to the devolved governments created in 1999 was not driven by a declared set of design principles. For instance, there was no application of a subsidiarity principle, in which decisions are taken at the lowest possible level. Neither was there much deliberation about what functions should be retained at a UK-wide level in the interests of the Union as a whole.
8. Rather, the approach adopted was to stick closely to existing arrangements for administrative devolution via the territorial offices. That is, the policy areas devolved to Edinburgh were those already within the purview of the Scotland Office, and likewise for the other devolved nations (with the exception that in Wales, primary legislative powers were not initially devolved). This gave rise to some oddities that reflect historical accident rather than rational design – such as
the devolution of social security administration and civil service management to Belfast but not to Edinburgh.

9. This approach had the great advantage of limiting administrative disruption and transitional costs, ensuring that the formal handover of executive power was a surprisingly simple affair. However, the lack of an underlying logic (other than path dependence) may have contributed to some of the subsequent constitutional instability in areas where the division of powers did not provide for a coherent and lasting settlement.

10. A second point to note about the division of powers is that the preferred approach (for Scotland and Northern Ireland at least) was to either devolve or reserve policy areas wholesale. The Welsh model was different, but has since moved in the same direction with the devolution of primary law-making powers and now the planned shift to a ‘reserved powers’ model. Unlike in some federal systems there have been no areas formally designated as shared competences, one result of which has been a neglect of intergovernmental arrangements to foster cooperation.

11. While the law itself can be written in black and white, in the real world of policymaking it is often impossible to maintain a watertight dividing line between devolved and reserved areas, leading to the emergence of ‘jagged edges’ such as in the interaction between devolved skills and reserved employment policies. The current Scotland Bill seems set to create more such policy areas (notably around tax and welfare) where responsibility is effectively shared between tiers of government, and governmental structures will need to adapt accordingly.

**Principles of the fiscal constitution**

12. Just as the allocation of functions to the devolved nations followed the contours of pre-1999 administrative devolution, so too was the system of fiscal devolution carried forward essentially unchanged through the Barnett ‘block grant and formula’ system.

13. The Barnett system’s chief advantage, in theory at least, is that it enables the setting of spending limits for the devolved governments to be carried out on the basis of automatic calculations, rather than via a probably messy process of political bargaining. Further, since the formula applies only to changes in expenditure, it ensures that existing budgets do not need to be renegotiated at each spending round.

14. However, the simplicity of the system also means that what might be considered desirable principles of a fiscal constitution are absent.

15. First, the Barnett block grant system does not take into account any assessment of need (however so defined), leading to criticism that certain parts of the UK (Wales and parts of England) are underfunded in comparison with others (notably Scotland). This has led to calls for reform particularly in Wales, where the government is now committed to introducing a funding floor, though precisely how this will be calculated remains to be confirmed. It is also an inherent oddity of the system that changes to devolved budgets are driven by political decisions taken with reference to England only.

16. Second, the current funding system does not directly encourage fiscal responsibility, in that spending governments have no responsibility for or control of their overall spending envelope. The system therefore does not directly incentivise devolved governments to take decisions that increase the size of their tax base. This is now changing, as a result of the Scotland Act 2012, the Wales Act 2014, the current Scotland bill, and potentially via the devolution of corporation tax to Northern Ireland. These developments are welcome, but many important details (such as how the block grants will be adjusted to account for devolved tax decisions) remain to be
clarified. Likewise the governments will need to reach agreement on principles governing the use of borrowing powers to ensure overall responsible management of the UK’s public finances.

17. Third, the system for devolution finance suffers from a lack of transparency. The system is controlled by the Treasury, which deals with the devolved administrations in a similar way to how it negotiates with Whitehall spending departments. Little detail is published on how the Barnett system operates in practice, so it is not possible to scrutinise how devolved government block grants are actually calculated. This limits accountability and given the growing complexity of the fiscal arrangements, it is something that should be corrected. The Treasury should show its workings.

Parliamentary sovereignty and constitutional entrenchment

18. In legal terms, devolution since 1999 has not qualified the fundamental principle of parliamentary sovereignty. This means that Westminster can still legislate in devolved areas and amend the powers of the devolved institutions, but in practice this is done only with the consent of the respective devolved legislatures, through the legislative consent convention.

19. The current Scotland Bill is now set to put the legislative consent convention into statute, as per the agreement reached through the Smith Commission process. However, the current version of the bill simply states (in clause 2) that Westminster “will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.”

20. The wording of this clause (including the presence of the word “normally”) means that it is unlikely to be judiciable. Putting this convention into statute is therefore likely only to have symbolic value. But symbols can be important, and the importance in this case is that in passing this legislation the UK Parliament would be signalling that untrammelled parliamentary sovereignty is no more.

21. A similar point can be made about clause 1 in the Scotland Bill that states “A Scottish Parliament is recognised as a permanent part of the United Kingdom’s constitutional arrangements.” This clause could in principle be amended or repealed by a future Act of Parliament, but this would be unthinkable in the present political context.

22. The fact that the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly (and also the London mayoralty) were established with the explicit backing of voters via referendums further raises their constitutional status above pure ‘creatures of statute’ that can be abolished by Parliament, such as the Audit Commission or Police and Crime Commissioners.

23. In effect, the devolved legislatures and governments can now be considered entrenched parts of the British constitution.

A voluntary Union of nations

24. The Union can now be said to embody the principle that was explicit in 1707: that this is a voluntary union of nations. In the Northern Ireland Act 1998 and the Edinburgh Agreement of 2012 (the accord that paved the way for the Scottish independence referendum), the UK government accepted the principle that a vote for Irish reunification or Scottish independence at a free and fair referendum would be respected.

25. But this is not the same as the UK Government having granted a unilateral right to secession. The 2014 referendum was held under specific agreed conditions, and the Edinburgh Agreement has now expired (it allowed for a single vote before the end of 2014). The Scottish Parliament thus has no permanent power to hold a binding referendum on independence (its power to hold a consultative poll is disputed). For it to be regarded as binding, any future independence
referendum should therefore also be carried out on conditions agreed between the two
governments. But in practice, if the SNP wins another majority at Holyrood next year it would
have a strong mandate to hold another referendum (assuming that is what its manifesto
pledges).

26. In the case of Northern Ireland, the power to hold a referendum on reunification under the
terms of the Northern Ireland Act is held by the UK Government, although the Act specifies that
this power shall be exercised by the Secretary of State “if at any time it appears likely to him
that a majority of those voting would express a wish that Northern Ireland should cease to be
part of the United Kingdom and form part of a united Ireland”.

A multi-level constitution?

27. It can also be argued that distinct constitutional principles exist at the devolved level itself. For
instance, in all three non-English devolved systems the legislatures are elected on the basis of a
proportional electoral system designed to embed power-sharing in the operation of devolved
politics (though in both Wales and Scotland, this has not prevented the election of majority
governments). In Northern Ireland the principle of power-sharing between the two
communities is at the very heart of the constitutional model adopted after 1999.

28. The Scottish Parliament and National Assembly for Wales also formally committed at their
outset to a set of founding principles that were intended to foster a “new politics” distinct from
(a particular view of) Westminster. At Holyrood, the four founding principles were power
sharing, accountability, access and participation, and equal opportunity. At Cardiff Bay, six
principles were agreed: the Welsh language, social justice, diversity, community regeneration,
social inclusion and equality of access.

29. In a further departure from Westminster majoritarian principles, the devolved legislatures are
not constitutionally sovereign even within their own spheres of competence, as primary
legislation can be struck down by the courts if found to breach EU law or the Human Rights Act,
which is not the case for Acts of the UK Parliament.

30. The current phase of devolution is also notable in that powers over important constitutional
issues such as the electoral system and the electoral franchise are themselves being devolved,
raising the possibility of further divergence between the constitutional principles in operation in
the different parts of the country.

Principles of intergovernmental relations

31. A final area where certain quasi-constitutional principles can or should be observed is in the
sphere of intergovernmental relations. The Memorandum of Understanding between the UK
and devolved governments commits all sides to the principles of good communication,
consultation and cooperation.

32. In practice, as many past reports (including by the Institute for Government and the House of
Lords Constitution Committee) have found, there has been a neglect of intergovernmental
systems, and an over-reliance on informal and ad hoc interaction. But as the territorial
constitution grows more complex, there is an increasing need for effective cooperation in policy
areas shared between Westminster and the devolved governments such as tax, welfare and
energy.

33. This will require reform of intergovernmental systems such as the joint ministerial committee
and bilateral coordination bodies between Whitehall and the respective devolved governments.
It may also raise bigger constitutional questions about the relationship between the four
nations of the UK. One perennial idea that may one day bloom is to transform the upper house
at Westminster into a representative chamber of the nations and regions (as in many federations).

34. As noted above in relation to fiscal matters, there should at the least be greater transparency and accountability of intergovernmental machinery, with greater information published about decisions taken through intergovernmental structures, and with ministers held to account by their respective parliament or assembly for intergovernmental agreements reached. Putting elements of the intergovernmental machinery into statute could be one way of ensuring effective accountability, although there could be drawbacks including reduced flexibility and potential for judicial challenge.

September 2015
Rt Hon Peter Riddell CBE, Director, Institute for Government, and Akash Paun, Fellow, Institute for Government

Q32  The Chairman: I am delighted now to be able to welcome our distinguished guests, Peter Riddell and Akash Paun, from the Institute for Government. I am particularly glad to be able to welcome them punctually because they arrived early and we are starting this session on time, which is the first time so far in this inquiry. From that you will deduce that there is an awful lot that we are interested in exploring. We are still feeling our way. Issues and themes are beginning to emerge but we have not yet tied them down. We are still very much at the exploring and asking stage. I do not think you need any introduction to our panel, but we are delighted to have you here representing the Institute for Government.

I will fire straight off with the first question. I should preface it by saying that some of our questions, of which I think you had prior notice, get into details of principles affecting devolution. I do not want to disguise the fact that we are very concerned about the union. The inquiry is into the union and devolution. We are exploring more the impact of devolution on the union at the moment, so feel free to develop your thoughts in that direction in reply to these questions. I was going to ask this first: what principles should underline the governance of the UK for the future, as well as any further devolution or decentralisation of power?

Rt Hon Peter Riddell: First, it would be good if there were principles, because if one looks back to post-1997, things were very much devised in relation to particular circumstances in Scotland and Wales. I would, fairly obviously, treat Northern Ireland slightly differently. We should not neglect London in that respect; even though it did not involve conferring law-making powers, it was the largest decentralisation, anyway, of them all. The real issue is how ad hoc they were. They were devised separately and since then there has been an element of catch-up, so using the word “principles” is slightly misleading in that respect. There were clear principles laid out, in our
submission, which both the Welsh Assembly and what became the Scottish Government adopted. But it is slightly overloading it to say that, because it has been much more ad hoc and responsive.

The Chairman: Yes. Would you like to add something on that?

Akash Paun: There are two distinctive features of the way that the devolution arrangements post-1999 were designed in terms of principles. One, as Peter mentioned, has been the very fragmented nature of thinking about the union as whole. We have had a siloed approach to constitutional policy-making and parallel processes, often with very little read-across, of constitutional development for the different parts of the country. That has been one feature: it is hard to identify clear and consistent principles that have guided the development of the territorial constitution as a whole.

The second point is that, to a large extent, the dominant approach for the devolutions over the three nations—I am not talking so much about within England—was to try to change as little as possible of the pre-1999 administrative devolution arrangements. You can see that in the division of powers between Scotland and the UK being based on what was already within the remit of the Scottish Office. You can see that very much in the fiscal settlement, with the continuation of the Barnett formula. You can also see it in the development of the memorandum of understanding on intergovernmental relations, which again was an evolution of what had happened pre-1999 in terms of negotiation and communication between the territorial offices and the rest of Whitehall.

One can understand why that approach was adopted; it made it much easier to implement what were fundamental constitutional changes—the creation of the new elected bodies at the devolved level—but it has meant that there was no clear guiding set of principles to ensure coherence of the constitution as a whole. We have now reached a point where there needs to be much more serious thought about what those principles should be. It is very important for us to ask these questions.

Rt Hon Peter Riddell: I have one point to add to what Akash has just said. This is less to do with principle than the fact that, in effect, what has happened over the 16 years is that there has been a reluctance to think in the centre about the union. One thing that has struck us a lot—and we have done a lot of work at the Institute for Government on this, led by Akash—has been the sense within Whitehall particularly, although also in Westminster, that says, “Right. Scotland, Wales and Northern Ireland are looking after their own affairs. We don’t have to think about them”. There is almost what some might call a silo or a ghetto—it is an interesting choice of language. Even where powers are reserved, the Whitehall departments with the reserved powers have always behaved as if Scotland or Wales do not really exist, even though—Akash did a very interesting report with some of my colleagues at the turn of the year on this—more civil servants are employed by central government in Wales and Scotland than by the Welsh Government and the Scottish Government, perhaps because they are with DWP and HMRC. Psychologically, people post-1999 were almost saying, “Oh well, we’ve done devolution”. This ties in exactly with what Akash has said. The lack of an overall view of principles at the time has led people to neglect what has happened.

The Chairman: Yes. You have covered a large area already, so thank you very much. I think that devolution has been demand-led—nobody would disagree with that now, although at the time it was hard to persuade people that that was what was happening. Do you think that that has been the cause of detriment to the union? Has the union been damaged by that demand-led devolution, where people have asked for it and been given it, which has fed their appetite to come back and ask for more?

Rt Hon Peter Riddell: It has undoubtedly been damaging, mainly because there has been an absence of thinking at the central UK level about these issues. Let me give one anecdote. I chaired
the advisory board of the ESRC constitutional change and devolution programme from about 1999 to 2005. The director was Charlie Jeffery, who is now a very distinguished academic in these areas in Edinburgh. While we had lively debates going round Belfast, Edinburgh and Cardiff—and partly, indeed, in the English regions—we could not find the slightest interest in London. That is an anecdote, but it is typical of the neglect of the issues at the centre. My answer to your question, Lord Lang, is that there was not any real thought about the union until very late in the day—you could argue about at which point in September last year people panicked and thought about the union.

The Chairman: Another interesting byway that we might go down.

Q33 Lord Morgan: I have another question, if I may. You rightly identify the difficulty in talking or thinking about the union, but do you think that that is enhanced by the existence of separate Wales and Scotland Offices? When I was last a member of this Committee, under Lord Norton’s chairmanship, we had a report on devolution that suggested abolishing those offices and having one grouped Secretary of State to deal with the external areas. What would you think about that?

Akash Paun: We came to a similar conclusion in the study that we did last year. One contributory cause of the fragmented thinking about the union as a whole was the fact that there were at least four or five separate centres—across the Cabinet Office, the Treasury and, as mentioned, the territorial offices—thinking about different parts of the settlement. We very much concluded that it was important for Whitehall to develop a stronger, more joined-up and more coherent centre to think about the union as a whole. That is not to say that we would expect there to be—we might come on to talk about this later—a completely symmetrical constitutional settlement, as of course there are very big differences between the different nations and regions, but certainly there should be greater thinking about the effects of changing one aspect of the territorial constitution on the union as a whole. Post-election this year, while certainly the Scotland Office and the Wales Office continue to exist and have separate Secretaries of State—in publicly facing terms, they are separate departments—I know that, behind the scenes, there have been some significant changes in how Whitehall is bringing those parts of the centre together. You may well take evidence from Sir Philip Rycroft, who heads the UK Governance Group in the Cabinet Office. As far as I understand it, the Scotland Office and the Wales Office, in terms of their administrative and policy functions, sit within that unified governance group along with parts of the Cabinet Office. There has been an attempt to create that more coherent centre. How much that has changed in practice might be something that we at the Institute look at and it may well be something that you in this Committee choose to look at as well.

Rt Hon Peter Riddell: I know from my experience, because I talk to them collectively, that they operate as a Civil Service unit, although, as Akash says, there are still Secretaries of State. When we have made the point about having a single Secretary of State, the classic answer is that, if it is a Scot, the Welsh will object—and you can take the story on. There is that problem, as has been found when, for example, there has been a Secretary of State for Wales who is not a Welsh MP, as has happened a few times, as you well know, Lord Morgan.

Lord Morgan: When there are Conservatives in power, yes.

Rt Hon Peter Riddell: There have been various problems on that score.

Q34 Lord Cullen of Whitekirk: May I ask you about shared rule in the context of devolution? To what extent is it an essential component of a devolution settlement or the consequence of it? Is it a desirable consequence or should it be minimised as far as possible?
Rt Hon Peter Riddell: It is inevitable. I will hand over to Akash, who has looked at this in more detail, but we have looked at federalism—and I do not remotely say that we are likely to go on to a fully federal structure in the UK, for the obvious reasons that your Committee heard about last week and we would endorse. For any country that has such a structure, it is inescapable, while you have welfare states et cetera, that you are going to have a degree of sharing. Germany has it and the US has extremely complicated arrangements of shared roles between the federal government and state governments. That is inevitable. The problem is clarity. As Akash rightly said, the 1997-99 legislation essentially decentralised administrative functions, so there was legislative devolution, but the more you transfer powers, the more problems you get, as is classically shown by the Scotland Bill, which you will be seeing soon, and what it does on welfare, which is incredibly complicated.

Akash Paun: I would certainly echo what Peter has just said. It is interesting to note the different models adopted for the three devolved nations in this respect. Certainly for Scotland and Northern Ireland post-1999, there was an attempt to have a pretty clear split and a sort of dualist concept of the division of power, whereas for Wales there was a much messier, intertwined sharing of powers and functions between Whitehall and the Welsh institutions, which they have tried to move away from—the draft Wales Bill this week is the latest step towards creating a clearer division through the reserved powers model. Conversely, in Scotland we are seeing the emergence, in areas such as tax and welfare, as well as other areas such as energy, of a more complex sharing of responsibility in those important policy areas. The trajectories of the different nations are somewhat different, but certainly the general lesson is that a watertight distinction between functions held at the national or federal level and at the sub-national or devolved level is an impossibility; there will always be overlaps. Therefore, you need to think about designing the institutions for intergovernmental co-operation, to ensure that there is effective policy-making and delivery of public services in those areas that cut across the boundary.

Lord Cullen of Whitekirk: To take that one stage further, to carry that out is it sufficient to leave the Governments to devise revised memorandums of understanding or is something stronger needed, perhaps legislation?

Akash Paun: There is an interesting debate about whether elements of the intergovernmental relations systems should be placed into statute. I know that this Committee has considered it, and that the Scottish Parliament’s Devolution (Further Powers) Committee recently recommended that certain key principles of intergovernmental relations should, potentially, be put into legislation—transparency and accountability in particular. I am sympathetic to that idea, because a problem with our intergovernmental systems is that they are not very transparent and are hard to hold to account. The more that big decisions and issues have to be resolved through intergovernmental co-ordination, therefore, the more it potentially becomes a problem and difficult for Parliaments to hold the Governments to account. That is an interesting idea. More generally, though, I do not think that one can put huge detail into statute on exactly how Governments should interact in particular policy areas. That could cause problems such as making things too inflexible. Things have to adapt and change over time.

Rt Hon Peter Riddell: In practice, the key will often be the politics of it. After all, one reason why things were fairly settled for the first few years of the devolution settlement was the similarity of political control, at least up to 2007. Now, you have every possible difference of political control between the capitals. That is one reason why, whatever your structure of rules or statute, there is conflict. That is true in other systems, too. It is strongly true in the US, for example, where there is conflict on the health reforms depending on who controls which level of government.
The Chairman: Thank you. That is all very interesting

Q35 Baroness Dean of Thornton-le-Fylde: Good morning. Can we turn to asymmetry and the impact of that on devolution, and indeed on the union issue? To what degree can we experience a divergence of economic and social cohesion before it starts to damage the union as such? Can we have different provisions in different parts of the four nations that form this country? For instance, would it be in devolution that you would set a base for everyone? Suppose that one of the four parts wants, through local taxation-raising, to pay more. How would that affect the three elements of political, economic and social cohesion?

Rt Hon Peter Riddell: Interestingly, that was the argument used in the debate of the late 1970s. I have been looking back at those—not just Kilbrandon, which is always worth rereading, but the objections raised then by Robin Cook and Neil Kinnock to the legislative proposals, which were basically on the grounds of social solidarity. Their argument, which I think was Aneurin Bevan’s argument, was that you need a strong central state to reduce inequalities in social provision—Lord Morgan will certainly correct me if I am wrong. Certainly, that was the argument that Robin Cook and Neil Kinnock used: without the central state, you might get big divergence. Of course, we get divergence anyway. There is a difference between saying what the entitlements are and what the performance is. That is true within England and within any system.

My own view partly goes back to the point I made on silos and ghettoisation. We have had very different fundamental provisions on, say, social care in Scotland compared to the rest of the UK, particularly England. After all, the change on university fees was pretty fundamental. In care for the elderly and on prescription charges, there are also very different approaches, but it is perfectly tolerable to do that. Akash and I were talking about this yesterday in thinking about our evidence. You might say that the health service is free at the point of use, but hold on: you have care for the elderly and prescription charges, so where do the boundaries lie? I think you could actually accept quite a lot of divergence—more than one might have expected.

I would have thought the pretty fundamental principles would be for acute care and emergency care—health that is free at the point of use—and for free education where the entitlement is now, I suppose, for up to age 18, and so on. Beyond that, there is quite substantial divergence. That gets back to the point made to you in evidence last week about the pooling of risk, which is where the union has a role. You need a pooling of risk on some of the fundamentals of welfare and, clearly, on pensions. But to go back to the final part of your question, we are talking about a floor; above that, you can tolerably have quite a lot of divergence. For all that people talk about postcode lotteries, in practice there has been a lot of divergence over the years.

Baroness Dean of Thornton-le-Fylde: The current situation in Scotland is different from that in Wales, obviously. Are you therefore saying that you could continue to have that situation in a more devolved nation?

Rt Hon Peter Riddell: Yes, I think you could. We do not know where the limit is. It is a complete hunch to say that it covers acute health, free at the point of use, but even there the practice is blurred if you talk about prescription charges and elderly care, which of course will grow in importance over the years. Then there is universal education, with the principles from 1870 onwards. Beyond that, you probably would recognise divergence—and divergence is perfectly acceptable.

Akash Paun: Just on what is practically possible now, in principle at the outset of devolution one might have sought to set out some minimum standards in the devolved areas of education and health—the issues that Peter was referring to. It would not be uncommon in many federal systems
to have a basic framework that all the sub-national governments had to meet at a minimum level. In areas that have been fully devolved, such as health and education, that ship has probably sailed, because any attempt now to impose minimum standards would, by definition, be a limitation on autonomy already devolved. But on some of those core social citizenship rights, such as access to basic healthcare free at the point of use, there is political consensus across the UK that would anyway constrain moving too far away from that.

If you look forward from where we are now, in the areas where elements of systems are starting to be devolved, such as tax and welfare, we are seeing minimum standards becoming part of the shared-rules system for devolution. There is, for instance, the Scotland Bill model of empowering the Scottish Parliament to top up benefits. You could interpret that as saying, “This is the basic level”, and then if a devolved nation wishes to go further, it can do so. Likewise, there is the sharing of the income tax system so that certain elements are held in common—the personal allowance and so on—but rates and bands can then be varied. In those kinds of areas, we are seeing that kind of model emerging.

Rt Hon Peter Riddell: I would have thought it important on economic union to go back to 1707, which one readily does. Having a single currency and single market are the fundamentals. It was interesting that in some of the debates last year leading up to the referendum, the concern in some of the Treasury papers was on corporation tax and such taxes. Once you start departing from that, you wonder what a union amounts to. I think that allowing divergence on currency is impossible. There is a very long history there, not least in what happened within Germany in the late 1940s, where it was the fundamental leading to the division of Germany. Certainly for a single market, company and corporate taxation are almost as important as some of the social elements.

Baroness Taylor of Bolton: I wanted to follow up on a particular point, although I should just say that I think that we are seeing some diversions, as there has been a discussion about corporation tax in Northern Ireland.

Rt Hon Peter Riddell: But it has taken a long time to do, for exactly that reason.

Q36 Baroness Taylor of Bolton: That is one of the issues that arises from having such an incremental approach without an overall framework. I wanted to ask about what you were saying about going so far and topping up. When we were talking earlier to Sir Kenneth, one thought that went through my mind—partly because he was talking of his experience of the north-east and Lanarkshire—was what would happen if we had different arrangements at the moment, when steel workers in the north-east and steel workers in Lanarkshire are both facing similar problems. If we had different redundancy arrangements or benefit arrangements, would that not cause a problem for social solidarity and the feeling that we are all part of one country?

Rt Hon Peter Riddell: I think that it would. Again, it comes back to Lord Cullen’s question on shared roles. There are overlapping responsibilities of the Scottish Government and the Department for Business, for example, in relation to what happens with this steel example. I think that there would be some differences, but clearly this is an example where it is desirable to have co-ordination on what happens with, say, redundancies; if there are redundancies in the Scottish steel plants made by the same company that has declared redundancies and closures in England, as is happening, there should be co-ordination. But there may well be differences in approach and you just have to accept that that is one of the aspects of devolution.

This raises a wholly different constitutional issue, which is the EU context. That is, of course, a big constraint on what you can do in relation to economic and industrial matters—state aid and all that. We should recognise that there may well be different responses in the degree of support
given to workers who lose their jobs and so on and so forth. We saw a bit of that two years ago in relation to the Grangemouth plant, where there was overlap between the Scottish Government and the involvement of the UK Government in some of the support issues.

**The Chairman:** I liked the phrase “jagged edges” in your written evidence. I think that that is a good way of summarising it.

**Q37 Lord Morgan:** We talked about asymmetry in terms of policy decisions—health service charges and matters of that kind. What about asymmetry in terms of institutional arrangements? I am thinking particularly of the fact that the Scottish Parliament had reserved powers in 1997, whereas the Welsh Assembly did not. That is not entirely cleared up even in the draft Bill—I picked it up yesterday, but you might not have seen it. Does that not suggest that, in key respects, asymmetry can be unfair?

**Akash Paun:** I think that a degree of asymmetry is unavoidable. We are talking about demand-led devolution and the demand for devolution varies in the different parts of the country. There are centuries of different development of institutions, such as the Scottish legal system, which does not have a parallel in Wales. Some quite significant asymmetry is possibly a necessary way to reflect the differential between the nations and regions. But I think that there is a problem when there has been asymmetrical development without a clear rationale behind it. Why was the Welsh model based initially on the very limited conferred powers, executive devolution-only model? That was largely for political reasons, because of divisions within the Labour Party and so on.

**Lord Morgan:** They gave bogus historical reasons, going back to Henry VIII.

**Akash Paun:** Yes, so I think that there has been a problem where we have ended up with asymmetry for tactical political reasons or simply because of a lack of consideration about connections between the debates in the different parts of the country. The corporation tax example was mentioned a moment ago as a more contemporary issue. There are reasons why Northern Ireland perhaps needs that power to compete with the Republic that maybe do not apply to Scotland or Wales, or indeed parts of England, but nobody seems to have had that debate. If we are going to move away from a single national corporation tax system, what is the basis on which we are doing that? Is the Northern Ireland situation so different that that power should not be extended to other parts of the country?

**Rt Hon Peter Riddell:** The gloss that I put on the point about the bogus historical reasons that led to the conferred powers model in 1997-99 is that it ensured that there would be instability. Sir Paul Silk, the previous witness in this chair, has done his best to remedy that in his various reports—and he has done a very good job, too. But that made it certain that the whole position would be unstable and that there would be the endless reviews and legislation that we have seen in Wales. That is the trouble, but the starting point was different from Scotland’s. That was inevitable. Again, reflecting back to the earlier point, everything is looked at in different contexts. That is the most striking thing in all my experience of it. Very few people are thinking UK-wide. Fortunately, as Akash mentioned, some in the Cabinet Office are now thinking in that way, but I am not entirely convinced that the governmental machinery more generally is looking at it in that wider context yet, as you heard from Oliver Letwin in the summer.

**Q38 Lord Judge:** We always seem to speak about devolution as if it is a Scotland or possibly Wales issue. What about English devolution? In particular, is a settlement that is intended to preserve the union one that must have, or should not have, English votes for English laws?
**Rt Hon Peter Riddell:** That is where one comes back to asymmetry. What we have seen in England so far has been the rejection of the rather half-baked ideas for regional devolution in the north-east, where there was a clear difference between the Prime Minister and the Deputy Prime Minister at the time over the merits or otherwise of it. That has certainly killed that off as a solution for some time. What we are now seeing—and I prefer the word “decentralisation” to “devolution”—are two parallel political exercises. No one is talking in England about conferring lawmaking powers. No one is saying that Manchester should be able to make laws; in fact, they are saying that Manchester should not be able to do terribly much except have control over spending. There are minimal changes on business rates; it is a tight constraint. So I prefer the word “decentralisation”. Essentially, it is a political response, saying, “Look, here’s what’s happening in Scotland and Wales. We will give you”—mainly the big cities, the old metropolitan counties—“some powers”, although there is some evidence of demand. I see that not as in any sense constitutionally symmetrical but as a political response. English votes for English laws—I am inclined to sigh at all that—I see as essentially a political response.

I rather go with the Bingham commission’s thinking that the McKay report offers a very sensible way through. The Commons Procedure Committee rightly suggested in its report on Monday that there should be a pilot to see how it works out. In a sense, this is completely notional now, because the Conservatives have a majority in both the UK and in England; it is an entirely notional thing. It becomes a practical issue only if there are Tory rebels, which, heaven forbid, there might be on odd issues. Now strikes me as a time that we could almost have an experiment on it. It is not an experiment that will be easy for the clerks to work out, as it is hideously complicated. It is essentially a political response and it is messy, but let us see how it works out. It does not produce constitutional symmetry, however.

**Lord Judge:** In saying, “Let’s see how it works out”, you are at least leaving open the possibility that Evel will not destroy the union.

**Rt Hon Peter Riddell:** Lord Judge, as ever, your pronouncements are carefully worded: “leaving open the possibility” that it might not destroy the union. If we had a different balance of parties in the Commons, that would cause real strain and difficulty. Undoubtedly, it would also be ammunition for the SNP, which is fairly obviously pursuing that. But because it is not at present a practical constraint, it would be an interesting test bed rather than anything else. If you had different political circumstances, then it could be quite explosive, yes.

**Q39 Lord Hunt of Wirral:** Now that we have the draft Wales Bill, which is moving to a reserved powers model similar to that currently operating in Scotland, it is right that we should look at England. Mr Riddell, I have always regarded you as a great thinker, so can you share with me your thoughts on this? When I was a Member of Parliament for an English constituency close to Liverpool, the battles with Manchester were profound. Because I was Welsh and the Secretary of State for Wales, I used to get attacked for siphoning all the resources over. At the time I thought that perhaps the solution lay in the German model of the Länder: that the north-west should be seen as a unit to which power is devolved under the doctrine of subsidiarity, rather than trying to separate England out through English laws, et cetera. What are your thoughts on the German model?

**Rt Hon Peter Riddell:** The German model was devised in rather extreme circumstances for Germany. It is of course not an entirely symmetrical model because there are quite different sizes of unit in Germany, even though there is nothing comparable to the 85% which England is within the UK. The problem is that while you can identify the north-west as a region, the north-east—the
most obviously definable region—rejected overwhelmingly what was then on offer. Are you saying that you would want to confer lawmaking powers? To my mind, that is the absolute essence of it. Then you get to another problem. As someone born in Devon, albeit with a lot of Scottish roots, I know that defining the south-west would be a nightmare for anyone. Defining the south-east is even more difficult. The problem so far—I remain to be convinced on this—is in defining the regions to do it, because if you are to do it for England, it would have to be for the whole of England rather than picking out just a couple of favoured regions. I do not see the political support for that yet. It is not impossible and these things develop but, when it has been tested out, as it was 11 years ago, it found no support.

Q40 Lord Maclennan of Rogart: We have been advised by the Bingham Centre that it would be sensible to have a charter for the United Kingdom, embodying principles and maybe the structure of government. If that were to have a serious effect on the union, it would seem that it should have public support. How would you engage with the public over such an issue? Do you think that it could be embodied in something more than legislation, which would be capable of being reversed by subsequent Governments?

Akash Paun: I will have the first attempt at that. I know that various people have been talking about this idea, but there are quite different potential models for what one could mean by a charter of the union. As we were talking about earlier, it is important that there is a clearer and more consistent set of principles underpinning the development of devolution across the UK as a whole. So if by “charter of the union” we meant some kind of declaratory statement, ideally agreed between the Governments, about how the union as a whole should work, that might have some merit. If we are talking about something based in legislation—in statute—then things get a bit tricky. First, such an instrument would presumably require the legislative consent of the devolved legislatures. It would be very odd if it was passed just at Westminster.

Then, of course, you are into rather complicated political territory if the purpose of a charter of the union is to bind in the devolved nations. I know that the Bingham report talks about, for instance, setting out a minimum period between independence referendums—15 years, if I recall correctly. So as a kind of unionist project, one could see that one might want to pass legislation restricting, say, the ability of Scotland to secede. Could one conceivably get the consent of the present Scottish Government for that? I would be surprised. The charter’s other potential purpose would be to put some of what the Bingham Centre calls its principles of constitutional unionism into law, which would be a fairly radical change. It talked about principles such as subsidiarity and so on being put into legislation; the implication of that would be to have the Supreme Court interpreting whether the principle was being followed in practice. We would be moving to something very much like a federal settlement, and very different from our current system. I am not sure that there has been sufficient thought about how that would work.

Rt Hon Peter Riddell: I am sceptical about what was set out in the Bingham report, even while I admire it and probably agree with 90% of that thoughtful and interesting document. As Akash says, if the Government of one of the main nations of the UK—and its likely Government for some time—reject it, as they almost certainly would, how do you proceed? That is the fundamental problem with it.

Lord Maclennan, you also raised a very interesting question of public engagement. I think that Robert Hazell referred last week to an experiment that is going on, funded by the ESRC, on a kind of unofficial constitutional convention at Southampton and Sheffield Universities. It will be interesting to see what that produces. It is not that I do not think it an interesting academic experiment, but I
am slightly sceptical, because there is not really much public engagement. This goes back to the point that in Scotland, and partially in Wales, there has been engagement on these fundamental constitutional questions. As for England, I see very little evidence of that at all. There may be a lot of engagement in Manchester or Liverpool and so on, saying “We want more control over the way we spend money”, but I do not see much engagement on any fundamental constitutional questions. So I am at present sceptical about how much political engagement you can get on that. On the charter you would either get into motherhood and apple pie, to go back to what I heard from the previous witnesses, or have something that is bitterly disputed. I am not sure what the utility of that would be.

The Chairman: We are running towards the end of our time. I will bring in Lord Morgan quickly and then Lady Taylor. We will then move to the last question.

Q41 Lord Morgan: I have in front of me the Bingham committee’s suggestions on the principle underlying a charter of the union. I just feel that there is nothing to make the heart sing. It has flat observations about economic frameworks and governmental links. The American constitution does make your heart sing; it makes you understand and be proud of what it means to be an American. You could say that the French constitution embodies the ideas of the rights of man and 1789. Ought we to have that value-led dimension to underpin such a document?

Rt Hon Peter Riddell: Yes, but value-led? The extremely distinguished gentlemen—it was gentlemen—who assembled in Philadelphia in 1787 on the US constitution were in particular historical circumstances, and they only just got it approved.

The Chairman: They were mainly Scottish.

Rt Hon Peter Riddell: Mainly Scottish, absolutely, but they had a degree of agreement on what they wanted to do which underpinned the statement of values, as well as having some distinguished people writing them. Here, there seems to be an absence of agreement. The danger is that you then get into wanting to write in social values. I always thought that was the problem with what Gordon Brown was saying when making speeches about Britishness. Some of what he said was also perfectly Swedish or Dutch; the principles he was outlining of social comity and equality of treatment were not distinctly British in any way at all. They were social democratic—one might even say north-west European—or whatever you like to call it. That is the trouble. Where do you go on that spectrum if not with a very general statement? I agree with you that it is not singing. That is partly a reflection of the deep divisions within the UK on its existence. It may also, alas, reflect the absence of Scottish-origin talent as in Philadelphia.

Q42 Baroness Taylor of Bolton: You said that you did not think that citizens’ assemblies would be very productive for public engagement. In terms of seeing a way forward that takes us away from demand-led increments and presents a bigger picture, which may give some template for what we could do in future, there has been a lot of discussion about having conventions, royal commissions or whatever. Some people have seen these as a way of putting the issue on the backburner; others have said, and I think I would agree, that if we had started this five or six years ago we might be in a better position today. What is your current thinking?

Rt Hon Peter Riddell: The citizens’ assemblies are an interesting idea but I do not think that they will widely engage. One problem is that once you get into the suggestion for a constitutional commission, which Labour and the Liberal Democrats backed—and which Labour under its new leadership is advancing—where do you stop? You would obviously include this House in any discussion. You would absolutely include the courts in it, because these are fundamental issues. As
Akash was saying, you would get into the role of the judiciary and certainly that of a second Chamber. We are not remotely near any sense of even broad principles to start such a discussion, so it is very difficult.

To be positive, it is crucial that the Government and the political parties behave as if they actually believed in a UK. By that I mean, to go back to the point I made initially, that they recognise that they have responsibilities in Scotland and Wales, rather than almost treading around them—Northern Ireland being slightly different, for obvious reasons—which means engaging with elected politicians in Scotland and Wales. That would be trying to break away from this silo mentality, because the union will atrophy unless Ministers and other politicians at Westminster behave as if there is a union. That applies to the Civil Service, too. The Civil Service has had a bit of a wake-up call. As I have said, there is some belated stuff going on there but a number of departments almost behave as if there is not a UK. That is a fundamental. You can look to charters of union but, as long as Scotland is in the position that it is, I am sceptical whether that will make much progress.

Q43 Lord Norton of Louth: We have obviously touched on the great deal of constitutional change that has taken place, and continues to take place, with a view to achieving a stable settlement. You can argue that that change is necessary, but it is not sufficient if you are to achieve stability in the union. What are the sufficient conditions? You have tended to rule out a charter, or perhaps you said that it is not the answer. How do we go about greater engagement? How do we get the Government themselves to engage with the concept of union and make the case for it? Are those the things we should be looking at to complement constitutional change, if we are to get some sort of stable settlement?

Akash Paun: That is a difficult one. I know that you have taken evidence from people such as Professor Tomkins, who made the case for a nation-building project at the UK-wide level. It is not something I have thought about a great deal, but the present Government here in Westminster may be interested in it. I go back to the point that I made before: if we are talking about passing some legislation to bring the parts of the country together, let alone steps towards a written constitution, that would have to be negotiated and agreed between the various Governments of the United Kingdom, which obviously complicates matters greatly.

It would be healthy if we could move towards a situation where constitutional questions were not at the top of the agenda. Obviously for this Committee they might be, and indeed from a research perspective it is sometimes interesting for us when everyone is talking about them. But in the end a stable settlement, as I think has happened in Canada with the rise and fall of a separatist movement in Québec—it had a slight but not major resurgence this week—is simply where other political issues have become more important. They have managed to find a stable equilibrium there that has sufficient consent across the different parts of the country. Now what these people are more interested in is, ultimately, what most voters are probably most interested in: effective public services, a healthy economy and so on. I think that should be the ultimate objective but I certainly do not have a path to advocate we go down to reach that point, I am afraid.

Rt Hon Peter Riddell: It essentially has to be about the political leadership taking the question seriously. You will not get anywhere unless you do that. My worry at present is—to go back to many of the questions that have been asked in the last 45 minutes—that we carry on with the disconnected piecemeal approach, where Scotland is looked at differently from Wales and England. Northern Ireland is always different. It is interesting that in Whitehall, England has been viewed through completely separate decision-making machinery from that of Scotland and Wales. There is absolutely no connection. I asked a very senior civil servant, “Do you talk to the people who do this
in Scotland and Wales?” They said, “We did have a conversation the other day”, but there was no
sense of connection. Essentially, the English stuff is being run by the Treasury with DCLG involved,
then you get the Cabinet Office and the territorial departments. You heard that in a sense from
Oliver Letwin, in his very revealing evidence. My argument is that they have to start thinking about
it and looking it as a whole, otherwise neglect could lead to some of the problems that Lord Norton
is describing.

The Chairman: Thank you very much indeed. It has been a fascinating session and full of insights.
We are most grateful. You thought about it carefully and you have been very helpful in informing
us. Thank you very much.

Rt Hon Peter Riddell: Good luck with your inquiry.
The Institute of Directors welcomes this opportunity to provide the Committee with evidence on this important and broad ranging issue. Needless to say, as an organisation representing the interests of business leaders, we do not have the expertise or inclination to respond to questions around characteristics of nation-statehood, nor the principles underlying the constitutional structure of the Union. However, we would like to address some of the questions around asymmetric devolution in the UK, especially in relation to the concerns of leaders across the business landscape.

**Introduction:**
The process of devolving power to Scotland, Wales, and Northern Ireland has undoubtedly impacted the business and economic landscape in those nations. Devolved administrations have enthusiastically taken up the opportunity to tailor support schemes more effectively at the business demographics that they govern. For instance, the popular small business bonus scheme in Scotland is a particular example of this and the Jobs Growth Wales Programme has also been hailed as a notable success. Meanwhile, there has been a steady rise in the relative share of inward investment into devolved nations since 200549.

This relative success of the gradual devolution of power to the nations has not been lost on the leaders of England’s cities and regions though, who have felt somewhat side-lined over the past decade. By some reckoning, Scotland has received a ‘significant bonus of around 15% to 18% in public spending’50 in relation to relative need. It is also the case that the Wales has spent on a per capita basis a great deal more on economic development than the UK government does in the North East51. The IoD therefore welcomes the Government’s intention to redress the balance through handing powers to English cities and regions through tailored arrangements, building on the work done during the last parliament to give local businesses a greater stake in the economic future of their area.

We have been clear that businesses across the UK see the ongoing drive for further devolution as an opportunity to spur growth, promote competition and kick-start regional economies. The results of a member survey in July 2015 showed that 65% of business leaders welcome the Government’s ongoing action to devolve powers to cities and regions. Within that survey, members showed support for devolving powers over housing and planning (78% support), transport (76%) and education and skills (52%). 52

At the same time the IoD has been supportive of the Chancellor’s move to devolve business rates, Businesses have looked for enterprise to be placed at the heart of the devolution agenda and this decision, alongside the creation/extension of 26 new enterprise zones and injection of £12bn into the Local Growth Fund reaffirms the Government’s intention to do just that. We also acknowledge that significant devolution of power goes hand in hand with devolution of accountability and that local areas may need to adjust their governance structures to take into account new powers. The ‘red-line’ of elected mayors in exchange for greater control – i.e. the power to raise as well as lower business rates – seems appropriate, therefore.

However, while broadly welcoming the new trend towards decentralisation, IoD members are cautious about the prospect of radical fiscal devolution. There is opposition among IoD members to

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49 Ernst and Young (2015) Attractiveness Survey
50 Unrevised oral evidence to House of Lords Select Committee on Constitution (2015)
51 IPPR North (2014) BBC News
52 IoD (2015) Business leaders call on local government to seize devolution opportunity
the idea of handing local councils the power to keep or alter the rates of national business or personal taxes such as national insurance, income tax, corporation tax and VAT. Small firms in particular will also be concerned that increasingly dividing up the administrative responsibility for setting rates and collecting tax may lead to a crippling compliance burden. We highlight more of the implications of devolution of tax powers below.

**Business stake in local decision making:**
However much of the focus for business in this debate has centred rightly on new tax and spending powers for local areas, there is an ongoing issue around how asymmetric devolution effects the stake that local businesses have in local decision making. Local Enterprise Partnerships were intended to be more private sector focused versions of the Regional Development Agencies and they were welcomed by many business leaders in 2011. However, the reality in 2015 is that disparities in the resourcing of LEPs across the country is leading to local businesses in some areas having much greater clout in local decision making than others. PWC has highlighted that ‘city-region LEPs, like Greater Manchester and Sheffield, already have more direct staff and resources at their disposal than in other areas.’ At the same time, some LEPs have much more productive working relationships with local authorities than others. The widening gulf between well and poorly equipped partnerships, as well as uncertainty about the formal nature of their relationship with combined authorities, could well lead to private enterprise in some areas falling well short of the influence enjoyed by their counterparts in other parts of the country.

This being the case, the IoD encourages ministers at DCLG to take much greater account of the voice and role of local businesses during discussions on future devolution deals.

**Devolution, Taxation Policy & Tax Raising Powers**
An econometric study analysing twenty-one OECD economies from 1970 to 2000 concluded that:

> "Our main finding is that government efficiency increases with the degree of fiscal decentralisation. This result appears to be robust to a number of different specifications and fiscal decentralisation measures."\(^{55}\)

In principle, we consider that devolving powers for individual taxation to the Nations and Regions ought to result in better recognition of the direct link between the level of taxation borne and the public services provided. This should increase the focus upon those services representing value for money.

Our caveat, however, concerns the imperative to simplify UK taxation for both businesses and individual taxpayers. For example, devolving corporation tax to the Regions would significantly increase its complexity and generate substantial compliance costs for business (and, indeed, HMRC) and the economic benefits would need to be demonstrated to be overwhelming to justify this. In principle, it might be possible to introduce limited elements of devolution for corporation tax (and income tax paid by unincorporated businesses) to encourage essential infrastructure spending on a broader basis to the existing Enterprise Zones. This doesn’t necessarily apply to Northern Ireland; the land border the country shares with the Republic of Ireland, in our view, trumps the preference for a single tax rate across the UK.

In essence, we consider that there ought to be a much higher threshold for devolving the taxation of business profits but those taxes with simpler compliance requirements such as business rates could be better administered – and deliver better results – at local or regional levels.

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\(^{53}\) On this note, we are concerned by suggestions arising from the Autumn Statement suggest the Chancellor has ‘opened the door’ to the devolution of corporation tax to Northern Ireland. A dangerous precedent is being set.

\(^{54}\) PWC (2015) *Delivering Local Growth*

Regulatory Devolution:
LEPs are not the sole route for businesses to benefit and engage with the devolution agenda. The championing of the Primary Authority scheme has been a notable success and reflects the ways in which de-centralisation should not necessarily be targeted simply on a geographic basis. The creation, and subsequent extension of Primary Authority – allowing businesses to select the regulators they want to work with, either sector or locality based – has been broadly popular with the businesses that have engaged with the scheme. It has handed businesses a greater stake in the way they are regulated and promoted much greater regulatory competition. Just as increasing –to a degree – levels of fiscal competition can lead to greater value for money in the provision of public services, so regulatory competition could help in trimming the bureaucracy that has plagued regulatory development and enforcement for many years.

In this sense, devolution of choice to businesses in terms of which regulators they want to partner with has been extremely useful. The challenge for the Department for Business is how to publicise the benefits of the scheme to the wider business audience. 7,000 businesses have taken it up so far but with nearly 2.5 million registered businesses in the UK, there is some way still to go before all reap the benefits of the initiative.

Devolution & Welfare
So far as welfare spending is concerned, we appreciate that there are opportunities to deliver better welfare outcomes for the same costs and/or the same welfare outcomes at a lower cost if services are provided upon a basis which better recognises the regional/metropolitan economic circumstances. By way of example, the need for welfare services ought to recognise local employment, health issues and transport issues.

About the IoD
The IoD was founded in 1903 and obtained a Royal Charter in 1906. It is an independent, non-party political organisation of approximately 35,000 individual members. Its aim is to serve, support, represent and set standards for directors to enable them to fulfil their leadership responsibilities in creating wealth for the benefit of business and society as a whole. The membership is drawn from right across the business spectrum. 71% of FTSE 100 companies and 51% of FTSE 350 companies have IoD members on their boards, but the majority of members, some 70%, comprise directors of small and medium-sized enterprises (SMEs), ranging from long-established businesses to start-up companies. IoD members’ organisations are entrepreneurial and growth-orientated, and more than half (57%) export goods and services internationally.

December 2015

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56 Only applies to specific functions in England and Wales.
57 In terms of local authorities finding efficiencies in order to accommodate lower levels of tax revenue.
Institute of Directors—Oral evidence (QQ 180-189)

Evidence Session No. 15 Heard in Public Questions 180 - 189

WEDNESDAY 16 DECEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord Maclellen of Rogart
Lord MacGregor of Pulham Market
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Stephen Herring, Head of Taxation, Institute of Directors, and Martin McTague, National Policy Vice Chairman, Federation of Small Businesses

Q180 The Chairman: Welcome, Mr Herring and Mr McTague. We are particularly grateful to you for coming, with your specialist interest in taxation matters and the relationship between that and business. It is one of the areas that we regard as important in the rather broad study we are doing of the relationship between the union of the United Kingdom and its devolved institutions. We are very grateful to you for being available. We have the best part of an hour, so I will dive straight into the questions. What are the most important elements of the union from a business perspective?

Stephen Herring: The UK has a market of 60-odd million people. We are an island, or an island and part of another island, and in most respects the interests of business and economic growth will be in the same direction. It is wrong to look upon each national region as economically distinct from one another, the whole can be better than the sum of the parts for most issues that affect business. That is not to say that there is not some tweaking necessary, and that some local, regional and city focuses are not appropriate, but for most purposes the UK is small enough not to need a whole range of different policies for businesses in different parts of the country.

The Chairman: Mr McTague, you represent the Federation of Small Businesses.

Martin McTague: Yes, which means there is massive variation across our almost 200,000 members. The best way of summarising it is to say that our members are largely more pragmatic than ideological about the issue. It tends to vary depending on the kind of businesses they are. Some trade cross-border and would probably put more emphasis on simplicity—lack of complexity—and keeping business costs down. A large percentage of our membership are community-based. They
are local businesses living and trading within their community. They probably do not see the bigger issues as dominant—the idea of some sort of cross-border relationship. That is a fair summary.

**The Chairman:** We will obviously get into some of the more detailed aspects with further questions. Do you recognise the concept of an economic union? We have been talked to about a social and political union. How do you see the overall thrust and definition of an economic union? Do you think that can be crystallised?

**Stephen Herring:** Yes. For many purposes, the UK is a single marketplace in itself. That is not to say that businesses are not involved in exporting to the European Union and beyond, but most businesses, the bulk of businesses, do not export. There is a small subset, but a lot of businesses provide and sell services and goods across local authority boundaries. This may be a feature of being an island nation—perhaps more so than if you look at the position of Belgium or the Netherlands, where there may be a greater percentage of cross-border business. The UK can be looked at as a single marketplace, and most economic growth and government policies can be focused on optimising outcomes on that basis.

**The Chairman:** Do you think there is an irreducible minimum of taxation that should be retained at the centre to maintain the integrity of the union?

**Stephen Herring:** Absolutely. Let me illustrate it by putting two different perspectives. We have the Scottish rate of income tax and the definition of a Scottish taxpayer, in my view, is reasonably well-drafted. There will be a relatively small number of people who cannot determine whether they are a Scottish taxpayer, because it focuses on residence. There are other areas like business rates where we know in what part of the country a commercial property might be; there is no doubt. If you go to the other end of the spectrum, with, say, corporation tax, which is trying to assess a profit and is a mixture of sales revenues and business operating costs, it is much more difficult to determine whether a profit might have arisen in the manufacturing plant in the North-West or in the sales centre in Scotland. When you are looking to devolve some taxes, it is much easier to look at those where there will be certainty and that will not involve a considerable amount of compliance cost. We have 35,000 members; 70% are SMEs and 30% are directors of listed companies. Compliance cost, and whether it will put another burden on business, always comes at the top of their list. Maybe devolution should focus on the simpler and more certain taxes, and avoid the more complex taxes with higher compliance costs.

**Martin McTague:** There are a lot of parallels with the EU debate on the benefits or otherwise of a single market. Many of our members—about 75%—do not export, so they will probably not appreciate the benefits of a single market. Until they are faced with barriers trading across borders, I do not think those issues will be uppermost in their mind. One example that would come home to small businesses is business rates reform, which is a big issue and is probably affected by devolution. There is some suggestion that rates or reliefs could be fixed locally. You could then end up with something like 300 different relief systems around the country and you could be faced with different rates. That so increases the complexity of the system that people would suddenly value the benefits of a single market where there is almost frictionless trading within the UK.

There is one possible exception. We have a very strong opinion among our Northern Ireland members. They believe in the importance of setting a competitive corporation tax rate because of the land border with the Republic. Broadly, that would be the exception.

**Baroness Taylor of Bolton:** Are you suggesting that increased divergence is going to undermine the union? In your terms, you see the union as a single market. If we get more divergence between Scotland, Wales and other places, or indeed in the regions, you are suggesting that in a sense it
undermines economic cohesion, which would then undermine the concept of the United Kingdom as a union as a whole.

**Stephen Herring:** I am sorry if it came across that that was what I was suggesting, because it is not. There are some macroeconomic and fiscal policies, such as control of the deficit, which our members always list at the top of their priorities, which need to be looked at on a national basis. Once you drop down to individual fiscal and tax policies, the impact of the compliance cost ought to be high up on the list. It should be a filter that says, “Even though we might wish to do that, if the compliance costs are too high, we should avoid it”. I gave the illustration of corporation tax.

Devolution is not actually that new for some other taxes. In the 1980s we had the launch of the enterprise zones, which gave particular focus, with business rates relief and capital allowances relief, to very small areas. I do not think something like that undermines the Union providing that it does not create a situation where there is automatic conflict between different areas. Broadly speaking, the enterprise zones were successful and they were very tightly focused. On a regional basis, I can understand why a particular region might say, “We need a particular link to a motorway and we would be willing to pay a little bit extra in business rates for that infrastructure spend”. I think up to 2% is allowed. “Even if it does not make the cut nationally, we would be willing to finance that for the benefit of the regional city businesses”.

**Baroness Taylor of Bolton:** In business planning, do you think that considerations of that kind are increasing at the moment?

**Stephen Herring:** Yes, I think they are. If you push more decisions about local business down to cities and regions, about 70% of our members—I gave the statistics in the paper—seem to think that they will get better decisions if they are made locally, because local businesses understand the particular priorities, perhaps more than Whitehall does.

**Baroness Taylor of Bolton:** They think that that is the likely outcome rather than a competing pull from different parts of the UK.

**Stephen Herring:** Yes. There is obviously a lot of concern that if corporation tax were to be devolved, or any tax, you could get a race to the bottom. We have much less concern about that. Provided there is democratic accountability where someone has to bear the cost or find the revenues somewhere else, or it is put to local electors which services are going to be cut to finance a tax reduction, we think that is a good thing. On the whole, regions are likely to make somewhat better decisions if more powers are devolved. I do not think it is inconsistent to have more devolution in the context of a strong United Kingdom; you do not need to have one or the other.

**Q181 Lord Hunt of Wirral:** Quite a lot has already been announced about devolution deals and decentralisation of taxes. Could you look at it overall and tell us what you think the effect on business generally will be?

**Martin McTague:** In terms of the deals?

**Lord Hunt of Wirral:** All the various things—the Autumn Statement and everything else.

**Martin McTague:** To answer the more general question, there is a belief in the small business community that devolution is broadly a good thing. Making decisions closer to the people affected is broadly good. In fact, there is even a view now that there is more of a requirement on central government to demonstrate why it should stay at the centre rather than the other way round, because it is not particularly efficient at the moment. When it comes to the deals that are being struck, at the moment the view is that it is almost like a private conversation between local
government and central government about divvying up what is currently spent at the centre that could be spent more locally. The really important stage will come when it gets down to the detail and what exactly is going to happen at local level once the big picture is painted in. At the moment, there is very little evidence that local government is effectively engaging with business at local level, but it will have to in order to make a success of that process.

**Stephen Herrin**: It is an interesting question, Lord Hunt. The one missing piece at the moment is this. We have a corporation tax road map already and there is going to be a business tax road map. Maybe some form of devolution road map is needed of the pros, cons, and features of the devolution of tax powers and tax incentives. It is not just about the rates; it is about any variations to the tax reliefs available. We may need something to underpin what is happening, so that you do not have a knee-jerk reaction to an individual power, but it is set against a framework showing the good and bad features of tax devolution. As I said, we would put corporation tax right at the bottom of the list if it concerned how taxes were raised, because so many businesses have different locations within the UK for manufacturing, sales units and distribution centres that it therefore seems to have a lot of the features of one of the worst taxes to devolve.

**Q182 Lord Norton of Louth**: This is a follow-up question. You have already stressed the value, from your members’ point of view, of decisions being taken more locally. At the moment, that is done on a bespoke basis. We have heard that there are problems with that. To some extent, that follows from what Mr McTague was just saying about the openness and transparency of the process. Do you think there is a case for greater symmetry in the exercise and that there should be more coherence rather than its just being done on a particular basis geared to the needs, or perceived needs, of a particular area?

**Martin McTague**: Our view is that symmetry is not important. We are quite comfortable with the idea that devolution should go along completely different tracks. It almost seems to be the essential component of devolution that you should be able to tailor the offer more closely to local needs. There are clearly quite big variations in capacity at local level. It is obvious that Manchester is in a completely different position from a lot of rural areas. That still leaves us with a lingering fear about what will happen to the rural areas, because a lot of it is about agglomeration. There are a lot of rural areas that bring very little to that process. Are they going to be left in some sort of vague hinterland of the new megacities? That is making lots of our rural members a bit nervous.

**Stephen Herrin**: The word symmetry is a very good challenge. My vision would be that that some degree of symmetry comes to exist at some point in the future and that each economic area, covering the whole country, whether rural, semi-rural, urban or metropolitan, arrives at the same fiscal destination. We do not have an issue if some get there faster because of their particular situation. I happen to be a Mancunian and I have often thought that maybe the reason why Manchester has arguably made the most progress is that, relatively speaking, the population of Manchester is smaller compared with other boroughs in its metropolitan area than would be the case for Birmingham in the West Midlands or for Leeds in West Yorkshire. There are particular features that might mean that someone is ready to fast-track a solution, but you might still have the vision that everyone is going to get there at some point. I do not think those are in contradiction to one another. I certainly would not like the idea that, because someone was ready to take more power sooner, you had to hold them back until another part of the country had determined whether it is Wessex or Western, or whatever it might be.
Lord Norton of Louth: Given that there is more unity for Manchester and you can move ahead more quickly than in areas where there is a mix between urban and rural, how much do you think your members have been involved in that process?

Martin McTague: Very little is the straightforward answer. It largely seems to be a debate about local government reorganisation, which is going on in parallel with discussions about the economic impact. One great illustration is what is going on in Yorkshire. There seems to be a tussle between various districts in Yorkshire on the fringe—the Leeds city region. That has virtually nothing to do with economics; it has everything to do with local government power, and maybe raw politics.

Stephen Herring: We have a reasonable number of members—I could not give you a statistic—actively engaged with the LEPs. If that becomes the chosen route, maybe there needs to be a little more focus on how LEPs are structured to make sure they remain properly representative of the businesses in the area. They have been the only show in town, so they have had the veto on business rate increases passed to them. That is an area where a bit more thought could be given by government.

Martin McTague: That is a really worrying point for us. In his speech, George Osborne said that the business members of the LEP would make the decision on the 2% precept. In some cases, you are talking about six people. There is very little transparency. There is no register of interests. There is precious little involvement with the small business community. It seems a pretty flaky way of deciding on such a big issue.

Lord Norton of Louth: You would say that at local level, in that context, involvement with the LEPS is top down rather than bottom up.

Martin McTague: The LEP is seen as a sort of scrutiny and oversight body, but for our members it does not perform that function effectively on behalf of the small business community. The nature of it means that it usually ends up with vested interests and large businesses being involved. That does not leave enough influence for small businesses.

Q183 Lord Cullen of Whitekirk: I want to ask about the implications of devolution and decentralisation, either already happening or prospective. I have the impression from what you have said already that it should make for greater accountability. How far is it clear to businesses who is responsible for what?

Stephen Herring: It is a very good question. It is not sufficiently clear. That is the first answer. We are at the very early stages of that happening. I am hopeful that decisions to be made locally, or regional city-based decisions, would focus on a particular infrastructure spend that was necessary for the area, or to support the growth of a new industry to reinforce the success that something has had. As more success is generated and more outcomes become visible, there will be more interest in taking part. We are at the very early stages at the moment. Business tends to look at what is happening today and tomorrow rather than at what is likely to happen in two, three, four or five years’ time. Once there are more examples of a particular infrastructure spend, business will get much more interested in having more involvement with those decisions.

Martin McTague: On the accountability point, business broadly likes the idea of simple lines of accountability. Sampling our membership opinion, it seems that they are broadly supportive of the idea of a mayor and would see that as a positive development. The real question marks remain over how you make scrutiny and accountability work more effectively.
Q184 Lord Lester of Herne Hill: As you know, so far devolution in England has been administrative. Do you think it would help if Parliament became involved and created some kind of devolution-enabling legislation?

Stephen Herring: If we are to get democratic input, it is essential. If devolution becomes so widespread, I do not think it can all be achieved through an administrative route. There will be a need for proper democratic structures that Parliament will need to introduce as the framework for that devolution.

Martin McTague: As I understand it, the process for administrative devolution is the Cities and Local Government Devolution Bill, which will establish the basis for it. Recent amendments that allow recalcitrant districts to be either dragooned in or drummed out of a combined authority raise more questions than they answer. We believe that the real question is probably whether it starts to go towards fiscal devolution. Our membership is more nervous about that process. There are still people of my age with memories of the 1980s, and the largesse of local councils using business resources, so a confidence-building exercise needs to be gone through. If you have administrative devolution and it starts to build up people’s confidence in the structures, accountability and management of that process, fiscal devolution is possible in the future.

Stephen Herring: It is an interesting area. At the moment, would a business in Northern Ireland, for example, say, “We don’t have devolution on the rate of corporation tax because it was actually decided in Westminster”? Would they be bothered about where the decision was made? They would be more bothered that the decision was made. That is probably a bit of a one-off, but as you go more into pushing powers downward, they need more of a framework. I do not think that businesses in Northern Ireland are particularly concerned that the decision to have a lower corporation tax rate was made in Westminster.

Lord Lester of Herne Hill: I want to be a bit clearer, Mr McTague. Are you in agreement with Mr Herring about the desirability of a legislative enabling framework, or not?

Martin McTague: The answer is that I thought we had one. I thought we were developing it as part of the legislative programme that is going through the Commons at the moment. Maybe I am behind the curve on that issue. I understand that is the framework that is being developed—the basis on which we will be able to devolve powers to local government.

Q185 Lord MacGregor of Pulham Market: We have already touched on the subject of tax. I was going to ask you questions about income tax and corporation tax separately, but let us take them together. You have in part already answered this. What impact might the devolution of income tax rates and potential divergences in rates and bands between Scotland, England and Wales have on business? The Economic Affairs Select Committee of this House said about that: “While we agree that income tax is a suitable candidate for devolution, we are concerned that a decision to devolve nearly all revenue, uniquely amongst countries in a similar position to the United Kingdom, has been adopted with undue haste and little assessment of the economic and political consequences”. Do you agree?

Stephen Herring: The Scottish rate of income tax is going to be set in the Scottish budget today. Of course, it is one of the things that is going to put pressure on politicians locally, whichever party or area they might represent. I have read a lot about this. It is right to say that if somebody knew there was just going to be a 1% increase or decrease, it probably would not affect business behaviour. An executive or an entrepreneur looking to set up a business would not be concerned if, instead of the Scottish rate of income tax being 10%, it were to be 9% or 11%. However, the second question is whether it becomes indicative of a direction of travel. That is very important, and you will not be
surprised to hear from someone speaking from the Institute of Directors that I hope it has more impact on keeping rates of tax down, rather than increasing rates of tax. It will mean that the focus in each area will be, “Are we concerned that we will become a less attractive location if we have a higher rate than elsewhere, even if we are not totally convinced that we will become a more attractive location if we have a lower rate?” Perhaps it could appear to be counterintuitive to have some proposal that will have a tendency to keep rates lower and reduce taxation.

**Lord MacGregor of Pulham Market**: Are you particularly talking about corporation tax in that context?

**Stephen Herring**: Income tax (on business profits) as well.

**Martin McTague**: The most practical example is the reaction of our Scottish members. They are broadly positive about the process. There was quite a lot of nervousness at the outset about where it was going, but now it is broadly positive. There is a feeling that some of the fears have been calmed. It can sometimes be a bit overstated. For example, there is a bit of tax competition going on in business rates. The Scottish business rates system is slightly below the levels that are set in England, but 99% of businesses are small and there is no evidence of mass migration across the border to take advantage of those rates. Broadly, so far, the impact on business and business opinion is minimal.

**Lord MacGregor of Pulham Market**: It is obviously very early days. You referred to the control of the deficit in one of your earlier answers. Suppose we see a situation arising in which, for the reasons you have described, income tax rate and corporation tax rate are kept reasonably low but expenditure continues to rise and there is a gap. That is not the theory of the whole proposal—if expenditure gets too high the pressure should be on the rates—but if that situation arose, how would you tackle it?

**Stephen Herring**: We cannot have devolved authorities overturning the plan to control the UK’s deficit—not only the annual deficit; it would be nice at some point in time to bring the aggregate £1.6 trillion of debt down as well. It must be very clear that if you have a certain level of tax and you spend more in one area, the only way you can meet that is by spending less in another. We cannot allow what has happened in some American cities, which have built up huge deficits that are then unsustainable and the cities go broke. That part of macroeconomic and monetary policy needs to remain firmly with Westminster.

**Martin McTague**: I share your concerns about the fact that there is a lopsided arrangement where the taxation is there and there is a reluctance to increase rates because of the politically negative impact. Equally, there is a cap on borrowing and something has to give. The Scottish Government are faced with those issues at the moment—how they are going to deal with spending. Having given a lot of broad promises about what they would do on spending, it is now going to be difficult to meet those spending obligations. From a business point of view, it undermines confidence, because you cannot really see a solution to that particular problem.

**Lord MacGregor of Pulham Market**: If the deficit grows—it may be that rates of tax and expenditure will be kept in line together—does that not put a huge emphasis on the outcome of the fiscal framework, which is still being negotiated?

**Stephen Herring**: Whatever happens as a backdrop to the economic situation, the deficit cannot be allowed to grow. I do not think it needs to if devolution is properly nuanced and passes down responsibility as well as powers. We cannot have a situation where the huge advantages of eliminating the fiscal deficit and bringing down the amount of government debt are thrown away by decisions made regionally. That cannot be the case. It still leaves a lot of powers regionally. We
have talked about business rates a lot. We have made a lot of comments about how business rates are, to use the old expression, unfit for purpose. A lot of the time, a microbusiness expands to become a small business and the rate reliefs are lost very quickly. You can leave considerable powers to tweak individual taxation aspects without threatening the overarching framework to eliminate the public sector deficit.

**Martin McTague:** The only way out of the conundrum is to borrow more in Scotland. There is obviously a limit on that, because you would be borrowing based on the UK’s fiscal security. At a more local level, there are a lot of assets in English local authorities that are not being used effectively and that could be put to work more effectively. As long as power is devolved to a more sensible local level, some of those decisions can be freed up. A lot more could be done at local level that is currently not happening at UK level because of lack of resource.

**Q186 Lord Judge:** I am afraid I am getting a bit confused. At one stage early on, Mr McTague, you said that the problem with different rates and different reliefs fixed locally led to uncertainty. On the other hand, you have given a strong indication that local businesses answering to local authority, regional and so on, is hugely advantageous. If I may say so, Mr Herring, I think you take the same view. What I would like to identify is what you consider to be macro in the context of devolution in Scotland, Wales and Northern Ireland. I understand you to say that, yes, at macro level, we have to have a national cross-border. Where does the macro line get drawn?

**Stephen Herring:** It gets drawn on monetary policy. We only have one pound. It has to be central between the Treasury and the Bank of England, wherever that line might be. The deficit position of the Exchequer and the aggregate level of debt need to be kept centrally under control. I do not think we really differ, but that still leaves tremendous scope for devolving decisions locally on the basis that, because the responsibility is delivered, you can have A, B and C but you cannot have D, or you can have A, B and D. There are different baskets of reliefs that might be appropriate for each area and they might, quite validly, make different choices of those reliefs, but it has to be against the fixed allocation of central Exchequer funds. If you spend more in one area you either have to spend less in another or have to raise the level of tax to finance it. Local authorities cannot be given carte blanche to do what they want and then say, “Sorry, we have fallen short of tax revenues”. The responsibility has to be devolved to meet those targets. There is a lot of opportunity to do that. I have worked in London and in different regions such as the East of England and the North-West. You do not need to go to many business gatherings to hear people say, “Well, I wish they had built that bypass rather than made the decision to do that”. There are significant opportunities for devolving power and choice to the regions without putting the country’s broader macroeconomic and monetary policies at risk.

**Lord Judge:** Are you inviting us to draw a distinction, in the last few sentences of your answer, between devolution in relation to Scotland, Wales and Northern Ireland and devolution within England?

**Stephen Herring:** Not at all, no. There are some powerful regional areas that could equally well have powers devolved to them, as has happened with Scotland, Wales and Northern Ireland, as long as democratic accountability can be put in place and the right and acceptable choices for that are made.

**Martin McTague:** I go back to the original point. We are broadly supportive of the devolution process. The complexity I was adding, which may be causing confusion, is that for some businesses it adds a layer of complexity to their business trading and it will inevitably add cost, but the broad picture is positive. To use that ugly European word, subsidiarity is what you are trying to achieve.
Institute of Directors—Oral evidence (QQ 180-189)

You are trying to get decision-making to the lowest reasonable level, where businesses can understand who is making the decision and they feel that they are in tune with conditions in their local market and local community, but for things such as the national debt, there is clearly an imperative that the decision is taken at UK level.

Q187 Lord Maclellan of Rogart: How do you retain the balance between national debt and freedom to raise or lower taxes at the local level, the devolved level and the national level? Should you have guidelines? Do you have some proposals to control the central funding that is going to local regions?

Stephen Herring: You need some very severe controls to make sure that tax collections and tax policies do not get out of kilter with spending. I would not like to think there was a scintilla of doubt that, if you wished to cut one tax, you would need to raise another or spend less to finance it. We cannot have all the decisions made by a number of different devolved nations and regions superseding the requirements for the UK economy as a whole, particularly as it will also be to the disadvantage of those nations and regions. The accountability and controls must be in place, but that should not be read as saying that there is not a lot that you can devolve. There are still a lot of choices that the nations and regions will be able to make. We see that in Scotland at the moment, with the pressures on whether the Scottish rate of income tax is to be altered.

Lord Maclellan of Rogart: Is it something that would be included in the legislation, or would it be debated between the Bank of England and local government? How do you enforce the balance that you are describing?

Stephen Herring: I would have to leave it to your good selves as to what the right parliamentary approach would be—whether control is exercised through Treasury allocation of funds or there is a framework of overarching legislation. From a business perspective, I am a bit more interested in the outcomes than the primary legislation they track back to, but must it be there? Yes, it must.

Baroness Taylor of Bolton: I want to pick up a point that Mr McTague mentioned earlier. A moment ago you were talking about subsidiarity, yet a few questions ago you were talking about LEPs and the difficulty of accountability from the small business point of view. I wonder what your answer is as to how you square that circle, given the difficulty that you outlined.

Martin McTague: It is interesting, because there is a real parallel with the debate about mayors. We do not think there is an obvious person in the LEP who is accountable to the small business community. That is a relatively easy thing for a LEP to resolve. All the chairman of the LEP has to do is to nominate one person who is completely accountable for the relationship with the small business community in their area. At the moment there is a pass-the-buck approach. There may be a guy who ran a chip shop 20 years ago who apparently has small business experience and who is notionally the small business representative but has no real responsibility to carry out that function.

It needs to be much clearer, and it can be made a lot clearer by the LEP boards.

Baroness Taylor of Bolton: You would accept just one nomination.

Martin McTague: It is not an ideal solution but it is certainly a step forward from what we have at the moment, which is no obvious link to the small business community.

Lord Lester of Herne Hill: Mr Herring, Lord Judge was asking you whether Northern Ireland should be treated as special and different or not; and I think you said, not.

Stephen Herring: The question was about Northern Ireland, Scotland and Wales. I agree; I said not. The one exception that trumps that is the fact that Northern Ireland has a land border with the
Republic, so I can see that there is a special requirement for a competitive rate of corporation tax for Northern Ireland. Whether that is something set by the Treasury, after consultation and, no doubt, lobbying from business in Northern Ireland, or set in Northern Ireland, I am less concerned about than the outcome, which is that, in a place where there is a land border, that part of the UK should have a rate that is competitive with the country on the other side of that border.

Q188 Lord Lester of Herne Hill: I have not actually asked my question yet. Are the issues of accountability and control—two of the words that have been used—to be viewed in the same way in Northern Ireland as in the rest of the United Kingdom, given that the polarisation of the political system in Northern Ireland is leaving the DUP and Sinn Fein to try to form a Government? Are you saying that is to be ignored in the way that we look at the framework?

Stephen Herring: You might be taking me into all sorts of constitutional and democratic issues beyond business.

Lord Lester of Herne Hill: We are a constitution committee.

Stephen Herring: Yes, but I am a mere spokesperson for business so maybe those issues do not always overlap or meet. For most of the time, the DUP and Sinn Fein seem to have worked pretty well together in Northern Ireland; in recent months, there have been more difficulties. The position is probably more unusual there, and might need more intervention by an “umpire” than perhaps in other parts of the United Kingdom.

Martin McTague: Maybe I can add something to that. Listening to some of our members in Northern Ireland, they say the devolution deal is more like a peace treaty than a proper devolution deal. The process is more about keeping warring factions at arm’s length than proper devolution. There may be a way to go before that process is more established, in the way we would understand it in the rest of the United Kingdom.

Lord MacGregor of Pulham Market: I want to come back to the answer you gave Lord Maclennan on the balance between fiscal raising and expenditure. You are making your position quite clear. You felt that you were in favour of devolution but you assumed that devolution would pass that responsibility down to the devolved Governments or authorities. What if, in fact, that did not happen and in the early stages taxes were lowered but expenditure was raised—for example, in Scotland—and you felt that that had some threat towards the fiscal deficit and the overall macroeconomic control of the Bank of England, as you described? Do you think that the mechanism is in place at the moment to prevent it happening?

Stephen Herring: The practical mechanism is that the devolved authorities will remain very dependent upon funds from the Exchequer to meet their spending through whatever formulas are in place at the time. It needs to be shown in practice with the approach adopted that there can be no prospect whatsoever of that occurring, because at the end of the day that will put interest rates up. It will have an impact on the value of the currency to the disadvantage not only of businesses in England, Wales and Northern Ireland but, using Scotland as an example, to businesses in Scotland. There is no room to allow some sort of unfinanced or unsustainable deficit to arise. The Treasury and the Ministers concerned cannot allow any risk of that happening, because it would be so detrimental to the UK, including the particular area that went down that route.

Lord MacGregor of Pulham Market: For businesses and your members, the outcome of the current discussion on the fiscal framework in Scotland will be rather crucial.

Stephen Herring: It will. Strangely enough, our members occasionally surprise me. We had a survey over a year ago to rank things in order of importance for a forthcoming Budget. Our membership
have quite a liking for tax cuts, particularly of business taxes, but well above their preference for that has been and continues to be their highlighting of the need to bring down the deficit, even above tax cuts that might directly advantage their particular businesses. Business can see that it really is critically important to the long-term success of the UK economy.

Q189 The Chairman: We have time for one more question, so I shall exercise the Chairman’s prerogative and ask it. At the heart of every parliamentary democracy is a whipping boy and it is almost invariably the Treasury or the finance department. Rightly and properly, they keep a very tight discipline on money expended in the public interest and they expect value for money. Do you think there is a problem? Is it developing well in this new decentralisation/governmental policy which has widespread all-party support, both nationally and locally, or do you think the Treasury has to have a rethink about how it goes about its business?

Stephen Herring: We have touched upon some areas where, maybe, a rethink is required. We have talked about the role of the LEPs, which may be the only choice available on business rates. There may be some need to think more about how business is represented regionally and in the cities where there are devolved powers. There are some lines in the sand about financing spending that needs to be done. I would like much firmer rules that a devolved authority needs properly to take account of the compliance burdens placed on businesses—on individuals as well, but principally on businesses—because we really do not want a dozen devolved authorities all calculating profits in a different manner. If you were trading in all of them, you would have 12 business tax and corporation tax computations to do under different sets of rules. That would be an absolute nightmare and very detrimental to the UK economy. We are in early days, but there are areas where some more thought needs to go into putting these down as the framework for future devolution.

Martin McTague: We are in a completely new world now. There is a massive change in thinking in the Treasury. I accept that it is the usual whipping boy for these decisions, but there is a really refreshing change in thinking. Previously it has been much too London-centric and it has allowed the north of England especially to fester as part of that process. There is a real change in that mood and we welcome it.

The Chairman: I ought to know but I do not. Does it have a presence on the ground in the northern parts of the country? If not, should it?

Martin McTague: Probably, yes. The one who springs to mind is James Wharton. He is the roving Northern Powerhouse Minister.

The Chairman: Yes; he is a Minister but he is not a civil servant. There has to be a Civil Service input.

Martin McTague: The Civil Service is still very much London-centric, but the guy behind me made sure that that did not prove an obstacle when it came to winning deals for Manchester.

The Chairman: We may be able to pursue that in the next session. If my colleagues have no further questions it remains only for me to thank both of you very much indeed. It has been extremely productive and very interesting. Thank you, Mr Herring, for your written submission, which was very useful. We are most grateful.
Mr James Jeavons—Written evidence (UDE0016)

1. This is submitted in my own personal capacity as an interested constituent of the U.K.

2. I agree that the devolution of powers within the U.K has been ad hoc and piecemeal.

3. The union is and should be about shared social values, economic policy and defensive strength, all achieved through the collective pooling of resources to make the U.K a globally competitive nation.

4. Having lived in Scotland during the recent independence referendum it is clear that there are some practical steps that could be taken to strengthen the union by improving existing U.K structures to ensure greater national credibility for the output of those institutions.

5. I feel that there is a strong clamour for greater local involvement in the decision making process through a more federal structure throughout the U.K.

6. Devolving power to the regions of Scotland, Wales and Northern Ireland has been a great success but the respective settlements must be more uniform to make them fair to all parts of the U.K. In addition, consideration should be given to creating regional assemblies in the North East of England, the North West, the Midlands, the South West and the South East, plus London. These regional assemblies should be responsible for the same matters, such as education, health care, policing and housing.

7. In order to ensure a more representative U.K government, the First Minister and Finance Minister of each regional assembly should be part of the cabinet with full voting rights.

8. The constitutional position and strength of the U.K parliament must be maintained and all MP’s must be able to vote on all matters before it. English Votes for English Laws is a very bad and potentially fatal idea for the union.

9. The U.K government and parliament must retain control of strategic matters that are vital to ensure the well-being of the union. This should include overall control of U.K economic policy, taxation, energy, defence and foreign policy. The U.K Parliament should also retain the right to review any legislation passed by a regional assembly, although I am unsure whether it should have the power to veto.

10. The recent general election has highlighted major democratic deficiencies in the current electoral system. In order for the U.K government and Parliament to retain credibility throughout the nation, reform of the voting system must take place. It is not right that the SNP can gain 56 seats with 4.7% of the national vote but UKIP gain only 1 seat with 12.6% of the national vote. There are other examples within the results too and the chosen example does not reflect any personal political preference. The Scottish system for Holyrood seems to work well as I have a constituency MSP and a list of other MSP’s whom I can contact and engage with. I find this approach democratically more representative and easier to engage an MSP who may actually agree with your views and effectively forward them in Parliament. Such reform will also give the U.K government the credibility in the regions that it currently lacks, especially
11. I also feel that any U.K government must be able to command more than 50% of the popular vote in order to have an actual democratic mandate to govern. Whilst I acknowledge this will lead to more coalition governments, it is better to govern in the collective interest than to keep changing things each time either Labour or the Conservative Party enter government. Billions of pounds are wasted each decade on implementing political ideologies that change from one government to the next.

12. The current online petitioning system is working well on the whole and should be retained and extended to all assemblies within the U.K.

13. Whilst the House of Lords fulfils a vital role in the constitution - especially when it comes to scrutinising legislation - it must be democratically elected and its’ membership restricted in order to control costs. The democratic position of the House of Lords is a major issue within the U.K and any such change will go a long way towards improving the credibility of the institution, strengthen its’ position within the U.K and strengthen the credibility of the union as a result.

14. The work of the House of Lords committee is to be commended but in order for a proper debate to be held into the subject, a Constitutional Commission should be set up so that everyone can have their say and a coherent solution that has national support can be advanced. All of these changes will probably need to be legislated on in Parliament, so the first and most important change in my opinion is the one suggested for the U.K Parliament voting system.

September 2015
Professor Charlie Jeffery, University of Edinburgh—Oral evidence (QQ 44-56)

Evidence Session No. 3  Heard in Public  Questions 44 - 56

Wednesday 28 October 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Maclellan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Professor Charlie Jeffery, University of Edinburgh, Professor Jim Gallagher, Nuffield College, University of Oxford, and Professor Alan Trench, University of Ulster

Q44 The Chairman: I welcome our three distinguished witnesses, all of whom have vast experience in constitutional and devolution issues. You are aware of the size and scale of the task we are undertaking and I think that with your particular skills we shall be able to cover a lot of it. Professor Jeffery is Senior Vice-Principal of Edinburgh University; apart from his many other activities, he was a member of the McKay commission, which is quite important in the context of where we are now. Professor Gallagher was the senior Whitehall civil servant involved in devolution for quite some time, Visiting Professor at Glasgow University and author of quite a lot of literature on this subject. He has achieved great things since the time when he was my Private Secretary.

Professor Jim Gallagher: It was the training.

The Chairman: You took that fly very effectively.

Professor Alan Trench, again, is very well-known. He is a Research Associate for the Constitution Unit of University College London and was an adviser to our Committee on the Barnett formula, which came up with a successful and effective report many years ago—it was immediately shelved by all political parties, which were frightened to tackle it.

You have all seen a list of questions that we will probably want to touch on and I hope that we will explore all those areas. I want to ask you all, as a general Second Reading approach: how deep is the damage to the UK that you see from where we are at present? What sort of action do you think in general terms is needed on the union and on the four nations, which I will call them for shorthand, to stabilise matters?
Professor Charlie Jeffery: Thank you very much, Chairman. That is a very big, expansive question, and I think it needs to be addressed partly in a historical sense. I think we have seen a failure since the mid-1990s, when we embarked on the devolution journey, of the central institutions of the UK to think about the coherence of the territorial constitution alongside the measures for decentralisation of that constitution. Since then, we have seen a pattern of reaction and often of tactical response that is very short-termist in its thinking and piecemeal in the way in which it treats each individual part of the UK. There are plenty of examples of that; I will focus just now on the Scottish one.

Our initial devolution settlement had a period of stability, right through to the point when the Scottish National Party became the governing party, at which point there was a response, in which Professor Gallagher was involved. That response led to what became the Scotland Bill, and we have seen that responsive mode again more recently. In fact we have in effect seen constitution-making by YouGov poll, in the sense that one poll showing a majority supporting yes and a group of others on the same weekend last year showing a neck-and-neck race prompted a very short-term, tactical, reactive and piecemeal response that has opened up a new phase in the constitutional journey, now with very clear spillovers that were not thought through in the debate about what on earth to do with England. That, frankly, is no way to run a constitution, but it has become a pattern, and no part of the UK’s central political institutions has shown the capacity to give sustained thought to UK-wide coherence and to stand back from the short-term reactions and think in the round. Unless something is done to disrupt that, I see the likelihood that we will continue with short-term tactical responses with no particular end destination in mind.

Professor Jim Gallagher: I agree with some of that. I agree in particular that the strategic UK response on the territorial constitution has been lacking and that the UK’s approach has been, if not tactical, then certainly reactive: that is, change happens—let us be blunt—when something happens in Scotland, and Northern Ireland marches to its own tune somewhere else. Typically, Wales is dragged along in the Scottish slipstream to the extent that it wants to be. So I agree with Charlie that reactiveness is a problem. Part of the answer to that problem is to look at it through the lens of what sort of United Kingdom we are seeking to create, particularly what its territorial constitution is—to use the phrase that Charlie used, which I strongly favour—and how that relates to the rest of its constitution.

That takes us on to an area where in some respects I disagree with Charlie. Although the UK response on the territorial constitution has been lacking and that the UK’s approach has been, if not tactical, then certainly reactive: that is, change happens—let us be blunt—when something happens in Scotland, and Northern Ireland marches to its own tune somewhere else. Typically, Wales is dragged along in the Scottish slipstream to the extent that it wants to be. So I agree with Charlie that reactiveness is a problem. Part of the answer to that problem is to look at it through the lens of what sort of United Kingdom we are seeking to create, particularly what its territorial constitution is—to use the phrase that Charlie used, which I strongly favour—and how that relates to the rest of its constitution.

Professor Alan Trench: I probably agree more with Professor Jeffery than Professor Gallagher does. I certainly agree that the UK has failed to understand and respond actively to the challenges of devolution and has been left operating in a reactive mode that has reinforced existing trends to
have a very different set of arrangements for each of Scotland, Wales and Northern Ireland, and arrangements that would go beyond what is necessary to respond directly to the circumstances in each of Scotland, Wales and Northern Ireland. One clear example of that emerges in the Wales Bill that was published about 10 days ago, which is supposed to be an attempt to deliver for Wales a Scottish model of devolution, or something very similar to it, on the reserve-powers approach. It ends up putting in all sorts of constraints in the way of the National Assembly that are missing from those set out for the Scottish Parliament in the Scotland Act 1998 and its subsequent amendments and changes, including the Scotland Bill that is presently before Parliament. I would also say that this is not merely—indeed, perhaps not even primarily—a large-scale macro-level problem of thinking about the UK as a state. It manifests itself very directly in a sequence of practical, tangible matters that are encountered in the day-to-day practice of government. It is dismaying that many of these are matters that were highlighted by this Committee in 2003 in a report carried out when it was then chaired by Lord Norton, and for which I had the pleasure of acting as a specialist adviser, which pointed out all these difficulties. That report—like, I am sorry to say, the Barnett formula report—hit the table and effectively received an acknowledgement from the Government but was not acted on. I think that things might be rather different now if it had been acted on in a timely manner.

I shall highlight three areas where this is a major concern to me. The first is the machinery of Whitehall and how it operates and deals with territorial matters, which is partly to do with the absence of any strong centre or department that has charge of formulating and implementing a strategy for the territorial constitution of the UK. The second is the approach taken within Whitehall to the machinery of intergovernmental co-ordination, which has developed along very different lines from those that the Committee foresaw in 2003, and indeed very problematic ones because in some ways co-ordination is even more limited than it was when the Committee carried out its inquiry. In some ways it has become more intensive, particularly with regard to finance matters, but in others it is more fragmented. The third relates to how the financial arrangements operate and the fact that the Treasury remains in control of all matters. This was of concern, of course, to the Barnett formula committee, but it has now become much more serious and acquired much greater stakes, particularly now that substantial tax devolution to Scotland is now on the cards.

**Q45 The Chairman:** Thank you. The union, of course, is made up of four countries, let us call them, of differing democracy and economic size. Do you think that the purpose and benefits of the union are perceived differently in those four different areas, and is that the reason?

**Professor Charlie Jeffery:** I think it is probably quite difficult at a general level to articulate purposes and benefits of the union, because that has simply not been the style of operation when we have been thinking about the component parts of the UK. You pointed to demography, which I think was code for England being 85% of the whole but the only part of the territorial constitution that does not have its own institutional recognition.

**The Chairman:** That is true, but it does not exclude the relevance of the reference to the others.

**Professor Charlie Jeffery:** Of course not, but in England we have seen an emergence of questioning of the purposes of the benefits of the union, which is relatively new. Because England is an 85% component, that is particularly significant. It was quite striking in the last UK election that one political party, the Conservative Party, stressed a number of specifically English themes, often in a quite localised frame and to some extent at wider manifesto level: English votes on English laws, which I am sure we will come back to; the idea of an English rate of income tax, which I think was
somewhat underdeveloped; the Carlisle principle, which was presented by the Prime Minister in a
visit to Cumbria, which was essentially about the protection of people this side of the Scottish
border from the consequences of decisions made by the Scottish Parliament that could be
disadvantageous to them; and the imagery of the Scottish National Party as threat, in some of those
very evocative campaign posters. It is no coincidence that that was the campaign theme. It could
equally have been taken forward by other political parties; I am not picking on one particular party.
It was no coincidence because there is growing evidence that people in England—all the way across
England—feel short-changed by the way in which the UK is governed. They feel short-changed in
the representational sense: the West Lothian question, to which English votes on English laws is
some kind of answer. They feel short-changed by disparities in levels of public spending between
the different parts of the UK; they feel this as a “fair share” argument, and that England is not
getting its fair share. That transforms the debate about the union. If the major parties are beginning
to pose instrumental questions—“Is this of value to us?”, “Are we getting a fair share?”—then that
really challenges the nature of the union as a whole. One of our colleagues who we often see in
engagements like this, Professor Vernon Bogdanor, has long said that the English do not need to
bang the drum and blow the bugle because they have the great preponderance of
representatives in the House of Commons, so England gets its way. Well, England does not feel that any more, and
that is a real challenge if one is seeking think about the purposes and benefits of the union.

Professor Jim Gallagher: Again, I agree with some of that, Lord Chairman. The interesting thing
about the purposes and benefits of union is that if one looks back over a period of decades or even
centuries, as it says in the literature, they have largely been regarded as banal and taken for
granted. They have been there and have not been reflected upon or challenged. Obviously Scottish
nationalism, in particular the referendum campaign, challenges them. I would assert that during
that campaign and indeed before it, certainly in the Scottish debate, it was possible to discern quite
well-defined and well-argued purposes and benefits of the union. Those purposes and benefits are,
broadly speaking, the same for each of the constituent parts, with a key difference that I shall come
back to in a moment. They are political, in the sense that they provide peace, security and external
representation—an international personality. They are economic in providing an integrated
domestic market and economic benefits from that, to a much greater degree than the European
single market seeks to provide. They are social, in providing a common social solidarity and sharing
of resources, however imperfectly, to support broadly common standards of welfare and public
services across the UK. Those are the purposes and benefits of union that were demonstrated and
argued in the Scottish referendum campaign, and in the end they won. They are the same for
Wales, Northern Ireland and indeed England, although they are not acknowledged or noticed in
England because the union, to the extent that it is thought about in England, is thought of as a
question of what those pesky Scots are up to. The difference is not in the purposes and benefits of
the union for each part of it but in the relationship between each of the constituent parts and the
union as a whole. The relationship between the smaller nations and the union is bound to be
different from the relationship between 85%, as Charlie says, and the union as a whole. England is
indeed the overwhelming part of the union; it is 10 times the size of Scotland, 20 times the size of
Wales and 30 times the size of Northern Ireland.

My view is that the nature of the union needs to be explained to the English, the Scots, the Welsh
and the Northern Irish as follows. The smaller nations have protected status in the form of devolved
legislatures. As Charlie says, and as Vernon has repeatedly said, if England wants something then it
will get it. The smaller nations therefore have a protected status in the form of devolved
legislatures so that, in so far as it is possible while retaining the benefits of the union, they can
make up their own minds and change things that they do not want, if they wish. For England,
however, one cannot have that same relationship, because to a substantial degree it is the United Kingdom. That crystallises in the fact that the Parliament at Westminster is both England’s Parliament and the UK’s, and the Government in Whitehall is England’s Government as well as the UK’s. By and large, that is unproblematic; there is political noise about it—there was a particularly painful set of political noises in the last general election campaign—but by and large it is not really a problem. On the few occasions when it is a problem, it is because England is split down the middle and the balance of opinion from the smaller nations might tip the question one way or another. That takes us into an issue that I am sure you will want to come back to, Chairman: the happy question of English votes. So the purposes and the benefits are the same but the relationship is, and should be, different.

**The Chairman:** Thank you. Professor Trench, you are allowed to say “I agree with the other two” if you wish.

**Professor Alan Trench:** I largely agree with them, but I would point out something that I am sure is obvious to the Committee: the differences between Scotland, Wales and Northern Ireland, not only in terms of population or age structures of population—there was a lot of discussion about that during the Scottish referendum campaign, particularly with reference to pension implications if Scotland were to become an independent state—but also in terms of the economics and how the financial arrangements of the Barnett formula work. It is worth recapping what I am sure your Lordships already know: Scotland is, more or less by UK standards, averagely wealthy, and receives a significant bonus of around 15% to 18% in public spending, if one’s benchmark for that is relative need. Wales is a pretty poor place and receives just about its fair share of public spending on the basis of relative need at present. Northern Ireland is also a pretty poor place, but is also privileged in the system of financial allocation through the Barnett formula to the tune, again, of around 10 to 12 percentage points compared to relative need. Scotland has very slightly higher relative need than the UK average; Wales and Northern Ireland have substantially higher. The fact that Scotland corresponds pretty closely to the UK average is itself remarkable. The UK is a pretty varied state. If one breaks England down into its various regions, at that point you start to see just how varied England is. London is of course the most varied by pretty much any standard or indicator—the most exceptional part of the UK. It may sometimes be far richer, better and more successful than the others; it might also have much greater pockets of deprivation, with more people living in higher levels of poverty and so on. London is a truly extraordinary place by any standard. The fact that Scotland can be average really is quite remarkable.

**Lord Morgan:** A very quick supplementary. Alan, nice to see you. You were indicating various areas in which Wales and Scotland differ. Would you not like to add a fourth, which is cultural identity, a theme that has not come up too much? The Welsh nationalist movement, as you well know, began with the Welsh language movement in the 1960s.

**Professor Alan Trench:** Indeed. There are a number of other respects that I did not want to go into where Wales differs. Language is perhaps the most significant and directly important, not least because, according to our best evidence, it is in regular use by a little over 20% of the population pretty much every day.

**Q46 Lord Morgan:** We have been discussing how to give more stability and permanence to the idea of the union in relation to devolution. There have been various proposals about this, notably from the Bingham Centre, which proposed a kind of charter of the union that would have statutory form. How would you feel about this? Would it be easy? How easy or difficult would it be to create a series of principles that meant anything in more than abstract generalities? What would the
likelihood be of it enduring or surviving, given the inevitable political changes in Governments and policies?

**Professor Alan Trench:** If I may, Lord Chairman, I will respond first. As I am sure the Committee knows, I was also an adviser to the Bingham Centre on that piece of work, so unsurprisingly I regard it as being a valuable and useful contribution. It is without doubt a difficult way forward. It will require a considerable amount of work to make happen. I remain unclear about the process by which one might adopt it, and that will be a major area of concern. The term to use for what Bingham is proposing is “retrofitting devolution”: retrofitting a UK-wide constitution on to this fissiparous sequence of interlocking and overlapping unions, for Scotland, Wales and Northern Ireland essentially with England, not necessarily with the centre, as they are two different things. One should not underestimate the difficulties of that. If the UK is to operate as a single state into the future, I cannot see how it can operate without that. So for all the difficulties that achieving it presents, how the UK would operate without something like that is something that I struggle to understand. For that reason, it is a very necessary direction in which to move.

**Professor Jim Gallagher:** I agree that the Bingham Centre stuff is a valuable contribution, and I agree that it is time for us to write down more of the territorial arrangements of the UK. Whether it is quite time to legislate with primary legislation, I am not sure. The thing that we have not quite got yet is the right set of drafting instructions for the legislation. We need to understand what the content of this territorial constitutional documentation should be, and we need to ask ourselves also which parts of it are appropriate for legislation and which parts might be done by some other means. The most obvious distinction is the extent to which our territorial fiscal constitution—how we share out the money—is written down. At the moment, if you were to search the statutes for how the different nations of the United Kingdom are funded for their public services, you would find only one provision that says, “The Secretary of State may from time to time pay grants”. That is not sufficient. To be fair, you would also find quite a lot of extra-statutory documentation in the form of Treasury publications essentially explaining how the Barnett formula works. Those are in fact very valuable documents, although they are insufficiently scrutinised. We probably need to find some intermediate status for those things that explains why what we do is a good thing and how it reflects the allocation of risks and resources across the UK, and perhaps a rather fuller ultimate statutory base for it. So yes, it needs a bit more writing down, but also a bit more thought before we actually take the pen into our hands.

**The Chairman:** Do you wish to add anything to that, Professor Jeffery?

**Professor Charlie Jeffery:** At the risk of prolonging the discussion, I will. Jim is going partly in the right direction, wondering about what would go into such a statement. However, such a statement has no particular meaning unless it is believed—unless there is a diffuse belief in the values that it is trying to embody, perhaps in some clearer elaboration of what our financial arrangements are for. That deeper dimension is absent. We have seen two attempts quite recently to invoke the deeper dimension of what it is all for. One of them we might call the Prime Minister’s union, which we heard about during the Scottish referendum last year: a kind of cultural appeal to history, heritage and shared achievement. It was largely backward-looking, not forward-looking. It did not say—not clearly, at least—why we all, Scots and other parts of the UK, would benefit, and why this would be a better place if Scotland stayed; it was about how things could get worse if Scotland left. The other union that we have heard about we might call Gordon Brown’s union, one focused on the idea of risk-sharing, particularly around welfare, and perhaps subject to the financial arrangements that Jim was talking about. Thinking in that way has a fairly noble history in other states as a way of generating common purpose for a union of disparate parts. I am not sure that it is believed very
much anymore; I think that there has been a loss of belief in the UK as a framework for solidarity and redistribution in Scotland, and quite likely in parts of England as well. More generally, it has been lost in England as an understanding of how to share this space with Scotland. Lots of the grievances that we reveal in public attitudes in England are about the sense that “our” money is going to fund “them”. That is not a very promising way to invoke that kind of solidarity across a state. I think that we lack the deeper values that could give meaning to whatever it is we would articulate in detail in such a charter.

Lord Cullen of Whitekirk: Just to take Professor Gallagher a bit further, if there were to be some statement of practical principles, should they include some indication of the conditions on which the union is dependent—in other words, its stability and existence? As I think you yourself have pointed out, with taxation there may be a point at which you put in peril the union itself. Should that form part of any statement?

Professor Jim Gallagher: Any statement that explained how the union worked would have to have an allocation of powers and responsibilities, including taxation and spending powers, which were consistent with its maintenance. It would be contradictory to say that the union could include an allocation of powers and responsibilities that were not actually consistent with the union. I shall make that concrete, because I suspect that there are many real examples of that argument in the public domain at the moment: if the Scottish Parliament, and Scotland as a whole, were to become—in the jargon—fully fiscally autonomous, and send a cheque here once a year to cover the cost of the Army, that would not be a union, for two of the three reasons that I set out earlier. First, it would not be a genuine economic union because there would be no fiscal transfers to stabilise economic activity across the territory; it would be more like the eurozone than a sterling zone. Secondly, to follow up Charlie’s point, with which I agree, at least in part, it certainly would not be a union of social solidarity. I would not imagine a statement of the union that included that allocation of powers and responsibilities. I do not however think that we would have to write down a list of the forbidden degrees, as it were, alongside the description of the marriage.

Q47 Lord Hunt of Wirral: It is very difficult to translate the discussion about a set of principles from the academic to the practical but, recognising that you have already placed the drafting process into the “difficult”, or perhaps even the “too difficult”, box, say that you did draft such principles, how would you incorporate them into the work of Governments and Parliaments around the UK? What changes might be needed in Westminster and Whitehall to ensure that those principles were followed at UK level?

Professor Alan Trench: I take it that you were putting that question to me. The way in which we at the Bingham Centre envisaged these matters working was that there would be an overarching document called the charter of the union, which would probably, though not necessarily, take the form of a statute of this place. The British system knows no higher law than a statute of this place, and we wanted it to be as high a form of law as it could possibly be.

Lord Hunt of Wirral: Or a court decision?

Professor Alan Trench: That gets one into a really arcane tangle about the rules of recognition and which takes precedence. In terms of politically adopted statements of law, statute is the highest form of law that we know. Equally, it would need to be adopted following a broad process of engagement with the devolved legislatures and with the wider conception of what the UK is about, or a wider collection of people. It would need to reflect something that was quite big, rather than simply being an Act of this Parliament in a way that ordinary legislation is. That would not necessarily change the way devolution operated in relation to Scotland, Wales and Northern Ireland.
on a day-to-day basis because the statute of the union would sit above, as it were; it would not replace the existing devolution statutes. Those statutes, spelling out the roles, functions and powers of the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and their respective Executives, would remain in place, but equally would be subject to possible change in future. The object of the charter would be to provide a framework within which those changes were considered and discussed and, if needed, to provide a broader framework for the court to assist it in determining how to approach devolution matters.

Professor Jim Gallagher: Could I add something, Chairman? I come to this from the perspective of someone who is looking to find things that will work and is scratching around for some principles to make sense of what needs to be done, rather than the other way around. If there were some sort of territorial constitutional statement, in whatever legal form, to some degree at least it would have to guide the behaviour of UK Ministers; they would have to be under some sort of obligation to follow it. Secondly, and this is quite important, there should be someone in the UK Government whose job it is to worry about these things.

Lord Hunt of Wirral: As well as the Prime Minister?

Professor Alan Trench: That was indeed another of the Bingham recommendations, and indeed echoed one going back at least to this Committee’s report in 2003, as well as earlier discussions.

The Chairman: My colleagues want to ask supplementaries. Perhaps before Professor Jeffery speaks, I will ask Lord Maclennan and then Lord Judge to speak.

Lord Maclennan of Rogart: I wondered if we might gain assent for the charter through some form of convention across the country.

Professor Alan Trench: That is a logical implication of the way one might do that. We deliberately did not want to call for a constitutional convention, not least because we were drafting our report in anticipation of an election at which a convention was one party’s manifesto commitment and not a commitment of other parties. We did not want to entangle ourselves in uncertainties about the outcome of the election and the possible composition of the Government. However, a constitutional convention is probably the most effective way of doing that. That in turn raises major questions about the nature of that convention, of course—its composition, its remit and how it should work.

Q48 Lord Judge: Why should those who seek independence participate in the creation of a charter? Why should they, if a charter were to be created, accept it?

Professor Alan Trench: The latter question is a very difficult one, understandably. The former question, however, has a very straightforward answer, which is that they represent a very substantial slice of Scottish public opinion. As we know, 45% supported independence last year in the referendum and the SNP still commands very broad support in Scotland, a little short of 50%. One cannot simply ignore the will of 50% of the population of Scotland. Apart from the political—

Lord Judge: I am sorry to interrupt you, but who would represent that at this great meeting or convention, or however it is dressed up?

Professor Alan Trench: That is one of the many problems with a constitutional convention. There clearly has to be a role within it not only for the Scottish Government but much more so for representatives of the Scottish Parliament. Equally, they are not necessarily the only people who would speak for Scotland. In the same way, it would be wrong for MPs to be the only people who were to speak for England. A variety of interests from England would need to be engaged, whether
through local authorities or through other bodies. The question of how one would want to engage with something that would be of a manageable size but also command genuine respect for its composition is key, but it is far from straightforward to answer.

**Professor Jim Gallagher**: I do not think that this is just about process—who would go to a convention and how many people there would be and all that stuff. I think that your question is: what role, or what attitude, would a separatist movement take to an integrating project?

**Lord Judge**: Exactly.

**Professor Jim Gallagher**: That is the critical thing. I would say two things in response. First, as the Scottish Government, the Scottish National Party has an obligation to represent the entire Scottish population, at least in relation to devolved matters as far as this is concerned. Secondly, of course, they might look like a monolithic and successful separatist movement heading unerringly towards their goal, but they are as confused and mixed up as the rest of us; at least as many of them, I strongly suspect, are in their hearts autonomists rather than separatists. I recently said, in a separate paper, that it is time for them to demonstrate something that I have called constitutional generosity and remember that they have to represent everyone and try to unite the Scottish nation rather than continue to divide it. Whether they will is a different question.

**Professor Charlie Jeffery**: There are a few things to comment on, but I will limit myself. A process—I will leave the mechanism to one side for a moment—may well be integrative, but it could also be about rebalancing amid the integration. There is the possibility that a separatist, pro-independence movement could find a level of rebalancing that, as Jim suggested, might be where the critical mass of opinion is in Scotland and, in that sense, would be a point acceptable across the political spectrum in Scotland. Another reason for accepting it, of course, would be to see it as a staging post on the long march, which is I suspect a little bit more where we have been in recent constitutional debates.

I wanted to make a wider point, though. Whether it is a convention or an intergovernmental negotiation—whatever it is—which would produce some kind of principles of union, we should not forget that that would require change here in these buildings and the buildings in Whitehall. I expect that many would see a component of a charter or whatever we would call it as suggesting that there would be a minimum level of welfare in all parts of the UK. Some parts could decide to go above it and some may wish to stay at that minimum. If we were to think in that way, that would mean that central political institutions—to put it bluntly, the Treasury—would need to agree with other political institutions with a different basis of legitimacy what those minimum standards were. It could not simply be imposed; it could not be driven simply by Whitehall. It would need to be agreed by the contracting parties. I do not yet see a willingness in Whitehall or indeed in the two Houses of Parliament to agree that kind of diminution of the sovereignty of the UK Parliament and of the Government whose legitimacy is based on it. Until we have a willingness to do that, I do not think that a charter around our territorial constitution could be stable.

**Q49 Baroness Taylor of Bolton**: You mentioned minimum welfare. When we were talking last week, I was struck by an example of real difficulty that could arise if we only had minimum welfare and allowed topping-up. In the case of the steelworkers in the north-east and in Lanarkshire in Scotland, we have exactly the same problem, with steelworkers being made redundant, by the same company on occasions. If we have a situation where those steelworkers in the north-east have a minimum requirement and those in another part of the United Kingdom, who are being made redundant for exactly the same reasons at exactly the same time, get a top-up, how will that help social solidarity?
Professor Charlie Jeffery: It would draw attention to differences—that is for sure. Let me take the steel point in a slightly different direction. I imagine that some kind of charter of union would have something to say about a UK single market and that some level of common regulation should extend across the UK. However, we would very quickly see pressures—we are seeing some of them at the moment around steel—for particular parts of the UK to want to intervene in the market to secure the future of an industry and the future of employment in that industry in that place. That may not be the same kind of pressure or a pressure so resonant as to produce similar action elsewhere. We would have to be willing to accept that kind of difference among the contracting parties. That is a very difficult thing to imagine, partly for the reason that I mentioned of conceding power from the UK centre and partly in understanding the impact on public opinion in different parts of the UK if there are manifestly differences of approach in different parts of the UK. Those are hard to reconcile.

Q50 Lord Maclennan of Rogart: Can we have a stable constitution for the United Kingdom if we have asymmetrical devolution of powers to the member nations? Will we not face the possibility of countries wanting to get ahead of other countries, all the time diminishing the stability?

Professor Jim Gallagher: I do not see why we should not be stable on the basis of asymmetry. As Alan Trench said, the different parts of the UK have demographic, economic and social differences. Things that matter in Wales might not matter in Scotland; things that matter in Northern Ireland certainly quite often do not matter in Wales and Scotland. It is not just a question of leapfrogging and always asking for more powers. It is interesting that neither Wales nor Northern Ireland, for understandable economic reasons, is banging the drum to be able to control income tax. So I do not think that this is simply a one-way ratchet.

The Chairman: But once you have a division of economic powers where part of the United Kingdom might be able, for instance, to give more assistance to steel than others, surely you are creating an unstable situation.

Professor Jim Gallagher: When you were Secretary of State for Scotland, Chairman, you exercised economic powers that were not available in the north of England.

The Chairman: But I did it within a unitary Parliament, using the powers of that Parliament. The regional assistance policies that applied in Scotland were at the same level as those that applied in England; it just happened that a larger proportion of Scotland qualified for assistance.

Professor Jim Gallagher: And you had a Scottish Development Agency that had no parallel south of the border.

The Chairman: That is true. Again, though, it was set up within the confines of the UK Parliament in a unitary state.

Professor Jim Gallagher: Any devolved economic variability inside the UK could be set up in the context of the UK Parliament

The Chairman: Sorry, I have excluded the other witnesses. Please feel free to join in.

Professor Charlie Jeffery: I think that I made these points at an early stage. We have embarked upon a practice of short-term reactions to political pressures in different parts of the UK that is helping to produce that asymmetry. With asymmetry come at least the seeds of instability, because you tend to get spillovers from one part of the UK to the next, or senses of fairness or unfairness deriving from particular powers that one place has in comparison to another. That might be contained were there to be values that might underpin a sufficient sense of coherence across the
UK as a whole, but without those values, and without them being clearly understood in different parts of the UK, it is very difficult to see a system like that stabilising because it will always be vulnerable, to put it crudely, to the next opinion poll.

**Professor Alan Trench:** I am somewhat sceptical about the idea of constitutional stability. Constitutions are always changing in their meaning, if not in the words that are used within them. In federal systems around the world, you can distinguish broadly between countries that are able to change their constitutions quite easily and do so quite often—Switzerland being a notable example, Germany perhaps being another—and countries in which constitutional change becomes almost impossible because of veto powers for varying units, of which the United States, Canada and Australia are pretty good examples. The Swiss completely rewrote their formal constitution in 1999 and they amend it extensively quite frequently. By those standards, the Swiss constitution is a pretty easy one to revise. In a sense, the UK has the problem of having an extremely flexible constitution because it is unwritten. This perhaps contributes to an excessive degree of belief in its flexibility and that anything can be done if people want it, because in reality very often that has been the case. If, however, one is going to manage a complex multinational devolved union, that cannot be the case anymore; you have to entrench these things rather more, if not formally, then in people’s understandings of them. None the less, this will necessarily need to be changeable according to varying circumstances. That is one advantage of the model of the charter of the union with a devolution statute sitting beneath it that the Bingham recommendations offer: it would still be possible to change individual devolution statutes, if that were necessary, within the overarching framework of the overall charter.

**Lord Maclellan of Rogart:** If we had a charter that was popularly supported, would that not provide stability?

**Professor Alan Trench:** That would be the hope. Equally, though, what it meant would necessarily change over time as circumstances changed. Even if the words remained the same, how those words were understood and applied might well change. That is a necessary note of caution to go with a greater degree of stability, that this is relative rather than an absolute.

**Baroness Taylor of Bolton:** I think we are talking about two different things that are essential. We have to be careful how we do this. I want to go back to what you said about retrofitting the constitution. Parliaments cannot bind their successors, yet we are talking about retrofitting a framework, which seems slightly unusual and peculiar. I am not saying that it is not worth doing but my point, which echoes something that Lord Judge was saying, is that it is about getting people to buy into it. It will be very difficult, despite the responsibilities of the Scottish Government, to get a Government who are intent on independence to buy into it. The stability does not necessarily come from the wording of anything that we write; it comes from convincing people that it is a proper settlement and you get stability from that cohesion. So unless we have the cohesion, we do not get the bind or the stability. Whatever we write on paper, that is still the crux of the problem.

**Professor Alan Trench:** That is all quite true, but the problem that remains is that if you do not write these things down, and in particular provide a clear framework for how the UK Government operates, the UK Government will act as if they were unconstrained—the problem that Professor Gallagher was highlighting earlier.

**Baroness Taylor of Bolton:** It is tempting.

**Professor Alan Trench:** It is a very practical reality on pretty much every level, from the most macro constitutional issues to the very detailed day-to-day practice from the point of view of devolved government—with the partial exception of Northern Ireland, simply because Northern Ireland was
never part of the British system of public administration, as Northern Ireland’s administration comes out of the old Irish administrative system, so there is a pre-1922 set of arrangements that distinguish Northern Ireland from what goes on in Great Britain. That clearer framework to structure what happens through the UK Government is the part that is perhaps most acutely needed, as well as something that says, “This is what the union stands for and does, and this is how the union works”, which then points out to Scotland, Wales and Northern Ireland, “This is what the union does for you. There are things that it can’t do; maybe you want to make a different arrangement if you don’t want those, but this is what the union can do”.

Professor Jim Gallagher: Our way of dealing with this issue and defining what the UK offered to the devolved nations was to reserve things to the UK Government, so we reserved economic policy and social security. That looked like an allocation of power, and it was, but it was actually a statement of principle about commonality. One of the things that some kind of territorial constitution or charter would do would be to make clear that it was not merely a grab for power by people here but a statement about what is shared across the UK.

Q51 Lord Cullen of Whitekirk: With regard to reservation, what powers need to be reserved within the union? I am not asking for a list—they have been published by writers and organisations—but what should underlie the right choice, as it were, as to what should be reserved? Would it apply across the board to devolution wherever it took place in the United Kingdom? Is there a need to spell that out so that it is quite clear in advance in future?

Professor Alan Trench: I will start, if I may, because I have recently done some work for a project by the Constitution Unit and the Welsh Governance Centre on the reserved powers model for Wales. I had to go away and look at the indicative published schedule from the UK Government of matters that might be reserved, from a Command Paper that they published last February called Powers for a Purpose, and to compare that with what is in Schedule 5 to the Scotland Act 1998 and the matters that are excepted and reserved in the Northern Irish context. It is quite remarkable how varied those lists are. Notwithstanding the distinction in Northern Ireland between excepted and reserved matters, the functions that are protected for the UK level vary a good deal, as they do in the way in which they are expressed. Often, matters that take half a line for Northern Ireland take a sentence or two for Scotland and, now that we have the draft Wales Bill, a paragraph for Wales. So working out what should be devolved in that very formalistic sense has become longer and longer the more that Whitehall has thought about it.

I would say that you need to reserve a certain range of functions to the UK level if the UK is to function as a meaningful state, and that those are going to refer largely to the three unions that we have been talking about—the economic, political and social. That becomes the underlying rationale for reserving them. There is a big decision to be made about whether, in the absence of an explicit rationale for reserving something, it should at least be devolvable if not devolved, and, if so, by what mechanism. I hesitate to resort to Spain as an example in these matters—I am afraid that for comparative purposes I generally take the view that if Spain does something, that may be a good reason not to do it—but the Spanish model that was put in place after 1978 for varying forms of devolving functions to the autonomous communities may actually offer us a bit of light here.

Professor Jim Gallagher: In short, I think that the analysis of the Calman commission which underlay the economic, social and political unions remains valid and remains the basis on which the UK should have its common offering. The only change I would make to that would be, first, to accept its recommendation—which nobody did—that there should be a statement of certain common welfare offerings; and secondly, to accept the proposition that in the Scotland Bill which is
before the House at the moment, welfare should be regarded as a minimum which is addable to—most, certainly, provided centrally but supplementable by Scotland. That analysis has been done.

Professor Charlie Jeffery: May I take the opportunity to disagree with something that Jim said a few minutes ago, which I think addresses your question as well? The reservation of powers, back at the foundational stages of the union, was a statement of principle. It was a statement of the then practice of the Scottish Office, which was subject to democratic procedure. The stages we have seen since have been articulated very effectively as principle, but have been enacted by negotiation around both the Calman powers and, more recently, the Smith commission powers, which have been entirely contingent on the persuasiveness or other means of the negotiating parties. This has not been a process driven by principle. I suspect that if you are looking for an enduring settlement with a clearly understood set of reserved powers at the centre which are respected by everybody, we need to start thinking about principle rather than the contingences of negotiation processes.

Baroness Taylor of Bolton: So if we had a set of reserved powers at the centre, as a principle, would you still envisage a system where different parts of the UK, in a demand-led way, could start to bid for taking more powers? Do you envisage that that could be sustainable as a settlement, or would we get back to where we are now, with a system of leap-frogging?

Professor Charlie Jeffery: You can find a more or less irreducible list. I know you do not want to have lists, but taking a particular reading of the independence White Paper of the Scottish Government last year, you could read it in some ways as suggesting that, even with Scottish independence, national defence, aspects of external representation and currency would remain shared powers at the UK level, even if there were two separate states operating.

Getting beyond that becomes more challenging, because once you start moving into areas of market regulation, welfare and taxation, you have an allocational element. The allocational element is where more instrumental calculations begin to form, which will produce different understandings of what is right and good for each place. Wales has a very different interest in income tax powers, as has been said, because, I think, the decision-makers in Wales do not see any particular instrumental benefit coming to Wales from that. There is a different calculation in Scotland. So we would need to be happy with an irreducible core and then variation beyond that core. The extent to which we can articulate a set of values which encompasses both of those dimensions is as yet unclear to me.

Professor Jim Gallagher: The interesting thing is the extent to which such principles might also guide devolution within England.

Professor Alan Trench: One thing we should not overlook is the importance of how further functions that are devolved are to be financed. It is much easier for Scotland to decide it is going to take a punt on not being adequately funded for further devolved functions because it is generously funded at the moment. That is not an option that is open in Wales because Wales is not generously funded at present. That may explain part of the caution of the Welsh Government over accepting and demanding further functions, particularly when it comes to the welfare area. They have had their fingers, if not burned, singed somewhat on a couple of occasions already and appear to be in no mood to take any further chances.

Baroness Taylor of Bolton: I am assuming that you all rule out a federal arrangement as a solution to this.

Professor Alan Trench: It depends what you mean by a federal arrangement. Do you mean a four-nation or four-unit federal arrangement, or do you mean something more complicated than that? We are already very close to the point at which we have that sort of relationship between Scotland,
Wales and—with certain qualifications because of the oddities of the Belfast agreement—Northern Ireland, on the one hand, and the centre on the other. England is the big bit that alters that. The practices of Parliament and Whitehall profoundly alter that. Then you come to the questions about England. Since the idea of a regionalised England, consisting of eight or 10 regions that would function more or less as constituent units, seems to be off the table, then it is very hard to see how a federal UK has any sort of medium-term, let alone long-term, future.

Q52 Lord Brennan: The Scotland Act speaks of fiscal responsibility being adopted if the Government of Scotland wish to adopt it in certain formats. Most of the reserved powers that we have on the list under the question have macroeconomic consequences. Professor Gallagher, you said that not enough is written down about this fiscal arrangement. I want to ask each of you whether you think that there should be a reserved power, properly identified, for the UK Government to intervene where fiscal irresistibility is such as to damage the macroeconomic interest of the entire union.

Professor Jim Gallagher: Let me kick off on that since you blamed me, as it were, for it. First of all, I think the issue is not the extent to which the Scottish Parliament, the Welsh Assembly or others have tax powers but the nature of the budgetary obligation that is placed on them: do they have to balance the books? There are two arguments one can make, both of which are perfectly plausible. The first is that subnational Governments should, taking one year with another, balance the books, because there is then no impact at the net level for the UK. If you were to give them borrowing powers and allow them to run a Keynesian deficit and try to promote economic growth in their region by borrowing, it would impact the whole UK. There would be the risk, which every federal state which has this arrangement faces, that it would be assumed that the central Government would always stand behind them, no matter how irresponsible they were. This goes back to the founding of the United States and whether the federal Government would stand behind the borrowing of the individual states. The tax powers themselves are not the issue. In fact, giving devolved Administrations tax is more a responsibility than it is a power, because it requires them to balance both sides of the fiscal equation, at least to some degree. One of the persistent problems of the Scottish political discourse is that devolved institutions are presented as nice people who spend money while Westminster is a wicked institution which raises it. It is therefore possible for them to be politically irresponsible and say that if it was not for the bad people down here, every good thing would happen under their Administration, which is manifestly nonsense. To that extent, I am very keen on fiscal responsibility. My personal view on borrowing powers is that all of the Scottish Parliament’s capital expenditure should be funded by borrowing undertaken by them, not merely any additional borrowing that they chose to do. That would give the market the opportunity to send some signals about the extent to which their policies are sensible. I do not myself favour the capacity of a substate institution in the UK to indulge in long-term deficit financing; although in the long run the market might fix that for us too.

Professor Charlie Jeffery: Very briefly, going back to the point I made earlier to Baroness Taylor, the vision of Scottish independence given last year was one that also included the notion of a fiscal compact with the UK central Government, in particular around levels of borrowing, as a price for being part of a single currency area. I see that as a fairly uncontroversial issue. If we or at least some people could imagine that as part of a two-state solution, we can envisage it as part of a single-state solution were there to be something like the Keynesian borrowing powers that Jim was talking about as part of a package.

Professor Alan Trench: One thing about the powers that are proposed for devolution under the current Scotland Bill is that it is very hard for those ever to amount to a licence for fiscal
irresponsibility. As the person who originally formulated this model through the Institute for Public Policy Research Devo More and Welfare project, that was one of the considerations that we carefully kept in mind. Simply, the nature of the taxes that are devolved means that in a sense you do not need a fiscal compact under what is proposed, although without question you would if you were to go down the path of full fiscal autonomy. It is worth saying that that has been somewhat messed up by the Treasury, which seems to think that serious harm could be caused within England by the existence of these powers and has tried to articulate that through the way in which it has formulated the “no detriment” principle. I think that that formulation is gravely dangerous; it is one of the great flaws in the structure of the Scotland Bill—although obviously it is not in the Bill itself. But it is part of the way the Government presently intend to implement that Bill. That is going to be a recipe for disagreement, for blame shifting and for some very bad-tempered relations between Scotland and the UK Government.

Lord Brennan: I did not ask about the consequences of a completely independent Scotland where, for example, you have uncontrolled debt arising in a small sterling area in a common economic zone. It is presumably the case that with that kind of model, if there were full independence, you might finish up with a quasi-Greek situation in which London is the “central banker” and has to rescue Scotland. I do not want to go into that in detail, but in the debate that we had when the independence argument was going on last year, people were often using the phrase “no going back”. That is not an easy concept to apply to central government finances in London if one part of the country has gone haywire, even though it is independent.

Professor Jim Gallagher: The only history we have to guide us is that of the UK’s relationship with the Republic of Ireland in the 1920s and 1930s. You will remember that Ireland was not in a formal currency union with the United Kingdom, but chose to tie its currency to the pound by a very old-fashioned currency board mechanism. The idea was to keep as many pounds sterling in a box in Dublin as they allowed Irish pounds to circulate in the Irish economy. That was a bad thing for Ireland for all sorts of reasons, but two interesting things followed from it. One was that in the end Britain did not ask Ireland for a share of the national debt. It wrote that off in the 1930s for two reasons, the first of which was that there was no money to be had and, secondly, a war was about to be fought, so good relations trumped it in the end. I think that it is probably unfruitful to speculate about what would have happened with the currency had the vote been yes in Scotland. There is a nice counterfactual novel to be written about where we would be now, but this is not the place to write it.

Professor Charlie Jeffery: I feel that I may have deflected us a bit by talking about the Scottish independence White Paper. My point was not to reopen the debates of last year but to suggest that, at least from some perspectives—these were not agreed by those on the other side—you can envisage a fairly small amount of federal union and very extensive decentralisation to the component parts of that union. In effect, that White Paper was a description or an evocation of something like a confederal system. Some of the lessons from that can be that there are institutional mechanisms which can serve even a highly decentralised union within a single state. That was my purpose in raising it, not to set Jim off on the events of last year.

The Chairman: They were interesting.

Q53 Lord MacGregor of Pulham Market: To what degree can policy on service delivery diverge in different parts of the UK before compromising the social or economic union? In fact, this covers some of the points that you have just been making.
**Professor Jim Gallagher**: Could I answer that, because I think this is something that Lord Cullen might be interested in? What is really striking, if one looks back over the 300 years of the Scottish union, is the extent to which at the beginning we were willing to tolerate really very large policy differences that, if we sought to invent them today, we would find very difficult. So people in Wales talk about devolving the criminal and the civil law and creating a Welsh jurisdiction; if history had not meant that we had retained the Scottish jurisdiction to this day, and it works perfectly well, people would be saying that that would be awfully difficult in Scotland too. So far as social policy is concerned, there is scope for quite wide variation and I think that the legal system demonstrates that.

**Lord MacGregor of Pulham Market**: Could you elaborate a little more on a statement you made in a recent paper, which I shall quote: “Resources are shared across the UK so that the same key aspects of welfare can be guaranteed to all citizens. So at least 50% of the resources of the devolved bodies should come from shared national taxation, but the devolved nations bear the economic risk on their own resources for the remainder.”

**Professor Jim Gallagher**: Yes, the 50% is not quite plucked out of the air in that it could be 45% or 55%, to take two numbers at random. The key to understanding it is that this is not about social security, pensions and welfare, which are uniform across the United Kingdom; it is an argument as to why and on what basis the United Kingdom should share common tax resources to fund devolved services. So the devolved institutions will be funded by a mixture of own resources and shared national resources. Why do we share national resources? Not merely because it is easier to collect taxes nationally, but because we want to ensure that, even if they are not legally enforceable, there is a set of common social rights across the United Kingdom. This is what Charlie described earlier as the Gordon Brown view of the union. Common social rights, which I think I probably mentioned in that paper, in my view are access to healthcare free at the point of need and at the very least access to free schooling across the United Kingdom. I took those two as being where the 50% comes from, roughly speaking, by adding together the health budget and the schools budget.

**Lord MacGregor of Pulham Market**: So in university tuition fees, care for the elderly and a whole host of other areas where one of the devolved institutions would want to do more, would the financing of that be their fiscal responsibility?

**Professor Jim Gallagher**: Yes. As it happens, there are two ways in which you can choose to do something different. One is to reprioritise your existing budget and the other—and so far no Scottish Government have ever done this—is to take a big bold decision that if you want more public services you have to have more taxation. This comes back to the point that I was making to Lord Brennan about the benefits of fiscal responsibility. Until such time as the Scottish political system has to look at both sides of the equation, it will remain fiscally irresponsible not in the sense that it will borrow the UK into bankruptcy but in the sense that it will continue to make unfunded promises and blame somebody else for not delivering them.

**Lord MacGregor of Pulham Market**: So it would have to have the tax-raising powers to deal with those areas where they were making provision way beyond the UK ones.

**Professor Jim Gallagher**: Yes, it would have to have sufficient tax-raising powers to do that. People say, “Well, they are not getting very much in the way of taxes”. First, the Scottish Parliament has, for the past 20 years or so, had £4 billion tax powers in the form of local taxation. The striking thing is that council tax has been frozen in cash terms for eight of those years. It has some small taxes now such as stamp duty land tax and landfill tax, but the big tax would be income tax. It is the
largest single UK tax. It is a tax that is buoyant because incomes go up and down. It is a tax that is perceptible—people notice it and therefore it is quite hard, to be fair, to increase it. But it is also a tax, particularly under the Scotland Bill model, where Scottish Ministers are able to play tunes around the progressivity of the system. So devolving it is a good thing.

Professor Charlie Jeffery: May I add a comment? I think that, ultimately, the answer to your question, Lord MacGregor, about how much policy and service delivery can diverge will depend on how much the peoples of the different parts of the UK are prepared to tolerate. There has to be a sense of legitimacy in the system as a whole. I have been with colleagues at Cardiff University doing regular public attitudes work in England about what people in England think of constitutional relationships across the UK. It is rather interesting that people in England are quite happy with the idea of the Scottish Parliament having extensive tax and welfare devolution. That is one part of the equation. What they are not happy with is the idea that Scotland has higher funding per capita than does England and they are not happy in those circumstances with Scottish MPs having a part in decision-making on English business in the House of Commons. There you see some sense of a potential compact that could satisfy the peoples of different parts of the UK. It is effectively about self-reliance in a fiscal sense and self-government in an accountability sense. If one can produce arrangements that work in different parts of the UK and which embody that self-reliance and accountability, we could probably get away with quite significant variations in service delivery. However that is probably easier said than done.

Lord MacGregor of Pulham Market: But that would also re-raise the question of the Barnett formula, would it not?

Professor Charlie Jeffery: Absolutely.

Professor Alan Trench: Can I say something about the Barnett formula? The Barnett formula has to be consigned to history. It means a number of things, as you all know only too well. It is used as shorthand for the amounts of money that the devolved Governments receive and by implication an unfairness to England, because England does not receive as generous an allocation as Scotland in particular. In some ways, that is actually the least objectionable bit of the Barnett formula, although it causes many problems. Between the fact that it has grossly defective machinery that gives all decisions to the Treasury, which bears no resemblance now to the practical division of administrative and political power across the UK, and the fact that, at the same time, what the Barnett formula does is impliedly to tie devolved public services broadly speaking to an English model—although much less so for Scotland, because Scotland is generously funded—that becomes really difficult. Decisions that are taken for England, such as that England will abolish university tuition fees, then triggers a reduction in the block grant which is noticeable for Scotland, Wales and Northern Ireland. They are then stuck with following suit, cutting some other service in order to maintain subsidised teaching and funding for humanities subjects or finding themselves stuck with a variety of other options, none of them very attractive. They do not get a say in the decision that is made for England, but they are affected by the consequence of that. Finding a way through that is profoundly difficult, but substantial financial autonomy and tax devolution is a big part of the answer to that.

Q54 The Chairman: Professor Gallagher, you are on record as saying that the Scotland Bill welfare provisions are incoherent. Accepting that it was the product of an agreement that was very hard to reach, can it be reconfigured in a way that that could make it less incoherent without breaching the terms of that agreement?
Professor Jim Gallagher: You might be right that I used the word “incoherent”, Chairman. I certainly think that they are imperfect—that is for sure. If I remember correctly, my objections to them are relatively small, but important. First, it must be as clear as it can be that the devolved welfare powers are exercisable at the choice of the devolved Administration. They are not reliant on the agreement of UK Ministers to operate in principle. Obviously, there are practical questions about who might pay out the money and so on. Secondly, a coherent proposition is that, to the extent that the minimum levels of welfare that the UK chooses to provide are regarded as inappropriate by the Scottish political world, the Scottish Parliament should, if it is willing to raise the money, have the ability to supplement them. At the moment, it seems to me that it gets 90% of the way there. For example, it gets a power recommended by Professor Trench’s commission to top up UK welfare so that, if the tax credit system were to be cut, the Scottish Parliament has the legal power to supplement it. Where it falls short is in the case where the UK chooses not to meet a need at all by means of a reserved benefit. There, the provisions that allow the Scottish Parliament to do that are not sufficiently clear or strong. I will give you a concrete example of that: if the UK Government decided that housing benefit were no longer payable to persons aged between 18 and 24, which I think is a proposition on the table, I do not see why the Scottish Parliament, if it chose, should not be able to legislate to fill that gap. At the moment, its powers to do that are constrained by being short-term rather than permanent. Those are my problems.

Professor Alan Trench: As Professor Gallagher noted, many of the ideas that underpinned the Smith commission’s recommendations for welfare originated in work that we also did in the IPPR’s Devo More project. We were very clear in that a broad, general and unconstrained power was needed to top up welfare to provide additional benefit as the Scottish Parliament saw fit from within the overall package of devolved resources—whether that is own-source taxation or from the block grant. If it wanted to pay an enhanced housing benefit to people aged between 18 and 24, it would be completely free to do that, but it would have to find the funds for that whether by putting up taxation, reducing education spending or whatever. It is regrettable that that has not come through as clearly as it might, doubly so because there is in fact a neat legal mechanism that could have been used to do that, which is to alter the status of social security schemes that are presently reserved matters under Schedule 5 and turn them into matters protected from amendment under Schedule 4 to the Scotland Act. It would not be possible then for the Scottish Parliament to derogate from the UK levels and arrangements, but it would be fully able to introduce its own provisions.

Lord MacGregor of Pulham Market: We have mainly been talking about fiscal autonomy in relation to welfare benefits and that sort of thing. In all the other areas, the Constitution Reform Group, for example, and others have said in evidence to us where they believe that all the powers and financing must be reserved for a state to remain a state—foreign affairs, defence, national security, macroeconomic and monetary policy, immigration, nationality and various other matters. If one of the territorial Governments objects very strongly to the amount of money that has been spent on defence, presumably that would be a reserved power and would be settled at the national level.

Professor Jim Gallagher: Yes.

The Chairman: Thank you. We are getting towards injury time but we have a big subject that we still want to address in detail, which is England, so I shall bring in Lord Judge.

Q55 Lord Judge: We have touched on England from the very start. I think that Professor Gallagher asked the rhetorical question, “What does the union mean for England?” I have a simple question.
What are the chances of survival of a system which settled all these matters but in which there was no legislative devolution to England for English matters?

**Professor Jim Gallagher:** I think that the chances of survival of such a system are quite good. There are two potential models of legislative devolution. One is that there might be a Birmingham Parliament, but I do not think that that proposition is being seriously considered anywhere. The second is that there might be an English Parliament. If instability is to be created by English legislative powers, an English Parliament is the way to do it, because an English Parliament produces an English Government, and an English Government becomes dominant in English politics in the same way as the Scottish Government are dominant in Scottish politics, and the vestigial federal level is not disabled. It seems to me that stability requires that this place remains England’s legislature. That is not to say that there is not scope for procedures in the other place that give English MPs a vote and a voice. I do not myself object to any proposal that says that they should even have a veto over legislative change that genuinely affects only England. To take a common example, I cannot see why English MPs should not have a veto over changing the law on fox hunting. I cannot imagine why anyone would want to have it or ban it, so I care not at all, and I care not constitutionally either.

Looking towards the issue on the table, I do not think that the Government’s present proposals do the job here because they have not correctly considered the spillover questions. This is not to do with Barnett consequentials—forget about them. This is to do with the extent to which English tax decisions determine the overall tax framework and the overall funding framework of the United Kingdom. A Government who, ex hypothesi, had to rely on Scottish or Northern Irish votes, or who could not get their English income tax legislation through, would not be able to deliver their Budget and would no longer be stable. I think that the Government’s proposals have many strengths: they have the right approach; they are doing it through Commons Standing Orders; and they understand that we are talking about procedural changes which give a special voice to English Members. However, I think that their application of it to taxation, and in some respects to secondary legislation, is imperfect. Nevertheless, in my view that is the basis of a stable solution.

**The Chairman:** You are quoted as saying that it could make England ungovernable. Could you talk us down that path, although not too excessively?

**Professor Jim Gallagher:** Let us imagine that there is a UK Government who depend on Welsh Members, for the sake of argument—1950 is the only example of that, by the way. Let us imagine that the Welsh Members were not allowed to vote on English income tax but that they were allowed to vote on every aspect of public expenditure, which is what is envisaged. At that point, the Government would be able to secure a majority for their spending programme but unable to secure a majority for their financing programme. The English Members who were determining English income tax would have all the power of taxation but none of the responsibility of spending for England. That, it seems to me, would be an unstable situation that would make England ungovernable.

**Professor Alan Trench:** I do not see any innate problem in not representing England, as Professor Gallagher said. I think that you need to go in the direction of English votes for English laws, but there are some really profound problems with what the UK Government have proposed and what has now been adopted in the other place. It is another symptom of this reactive approach, which means that devolution is treated as an event, not a process, to turn on its head Ron Davies’s famous remark. A much broader approach needs to be taken to make English votes for English laws work in a sustainable way, and I shall highlight three possibilities.
The first is a point that was recommended by the McKay commission as the counterweight to the procedural mechanism for delivering English votes for English laws. That was a devolution committee. Its recommendation was a Committee of the House of Commons. My view is that a Joint Committee of both Houses may well be better. Of course, apart from anything else, the commission could talk only about recommendations for England because that was the limit of its remit. In the absence of a high-level Committee within Parliament that draws attention to devolution questions looked at in the round, the problems that arise from spillover issues in particular are going to exist, remain and become worse, so a Committee like that would provide a means of identifying and perhaps resolving those problems, and also, upstream, of pre-empting them.

That relates to the second problem presented by English votes for English laws in its present form, which is to do with how Whitehall is organised and how legislation is framed. The tendency of course has been to use a legislative slot as possession of a scarce commodity within Whitehall and for departments to put as much into the Bill that fills that slot as they possibly can with little regard to the territorial pattern that that follows. Of course, most Whitehall departments have a curious combination of England-only, England and Wales, Great Britain-wide and sometimes UK-wide functions. Taking the Home Office as an example, it has responsibilities for policing in England and Wales but for immigration and nationality in relation to the whole of the UK. If the Home Office, for example, gets a legislative slot, ensuring that that slot relates clearly to England, or not, is part of the difficulty.

The third difficulty goes back to the discussion that we have already had during this session about finance and how finance is organised. I remain very concerned about the extent to which financial arrangements may be determined by English MPs only but will have significant knock-on effects for devolved budgets. There are ways to address that. They involve a pretty wholesale redrafting of how Parliament as a whole, but particularly the other place, handles supply. In the absence of those, it starts to look rather messy to me.

The Chairman: Professor Jeffery, I know that you have made a special study of this subject, so please share your thoughts.

Professor Charlie Jeffery: I worry that I may advance into territory that you may wish to question us on in a bit more detail. On the specific question on legislative devolution to or within England, if you had asked that 15 years ago, there would have been no problem. However, I think that a problem has emerged more recently—a perception in England that the system is unfair both in an instrumental sense about the distribution of resources across the UK and in an accountability sense of who makes decisions on my behalf. If you imagine legislative devolution to include English votes for English laws, or similar adaptations to House of Commons business, then I do not think you can imagine a stable situation without that kind of legislative devolution. Within England, I think that that is pretty irrelevant. I do not see measures to empower in various ways subnational units within England as at all responding to those concerns about the allocation of resources and the unaccountability. I see the northern powerhouse, or city regions, or whatever language is being currently used, as a technocratic solution. It is an economic policy issue. It is about enabling different parts of the UK to build sustainable centres of economic activity. It is not about democratic representation and I do not think it should be understood as that. People in England, from our research, clearly do not understand city region devolution, or regional devolution in any form, as responding to the concerns they have about how they are governed.

The Chairman: We will come on to the city powerhouses on a later question. Can I bring in Lord Norton?
Q56 Lord Norton of Louth: I move on from the last question because I think we have covered English votes for English laws. It is really a case of moving beyond the constitutional aspects because obviously there is significant constitutional change, which we argue is necessary but not sufficient if you are going to create a stable union. So it is really a case of what we can and should do beyond the constitutional changes. Even at the level of constitutional changes, how do you get people to respond to them, know about them and see the value of the union? Discuss.

Professor Charlie Jeffery: Discuss, indeed. I would probably go back to the themes that I was raising at the very outset—that there has to be some articulation of a sense of shared purpose, which we have not seen, at least in a compelling and sustained way, amid the various responses we have made in Scotland, Wales, Northern Ireland and now England to senses of dissatisfaction.

Lord Norton of Louth: How do we get from here to there? I think that is the key point.

Professor Charlie Jeffery: We—and probably by that I mean rather more you as part of the central political institutions of the UK—need to think about it in a sustained way. You will recall, Lord Norton, that Jim Bulpitt, a colleague at the University of Warwick, who, sadly, is no longer with us, talked about statecraft and territorial statecraft. We have seen, I am afraid, a real absence of territorial statecraft—thinking about how the state as a whole can accommodate the demands for decentralisation in its various parts. Unless we do that, we will continue on this ratchet process of gradual disintegration. I do not necessarily mean by that the formation of separate states but I do mean a gradual process of disintegration which is fluid and uncontrolled.

Professor Jim Gallagher: I agree with much of that analysis but would add two things. It certainly requires the political leadership of the United Kingdom in a broad sense to have a common understanding of what the union is for. I do not think it is particularly difficult to describe that. As Charlie says, doing it in a consistent and compelling way is the challenge. I think the institutional mechanisms need to change. I go back to something I said before: somebody has to have this as his or her job, and at the moment nobody does. I think there are very particular challenges in Scotland, where you have an unusually energetic and active nationalist party, for which the political competition is at present weak. If the United Kingdom political parties as institutions believe in the UK, they have to think about, at a tactical and personell level, how they deal with that question. I echo something that Alan said, which is that of course we will never get to a crystallised final state. There will always be people in Scotland, and perhaps some people in Wales, who do not want to remain in the United Kingdom. Some accommodation may well be reached with them in my view but it will not stop that potential source of instability for the long run. And Northern Ireland has its own history and story which suggests that it is never in our lifetimes going to be a settled matter that no one worries about. So let us not try to get to perfection, but I think there are better places we could be than we are today.

Lord Norton of Louth: Presumably the body you envisage, which at present does not exist, which would have that responsibility, would have to be fairly high-powered or vested with quite strong political authority to be proactive in the way that you are proposing.

Professor Jim Gallagher: Absolutely. One of the striking things about the British political system is that it struggles to deal with more than one big question at one time. The eye of Mordor was on the Scottish referendum for a period but it has moved on now. I think you will find that it is about to alight on this place for different reasons. We need the capacity to have multi-channel government, which does more than one thing at a time. All things in government are ultimately the Prime Minister’s responsibility, but you need a senior Cabinet Minister with a substantial department of
state, money to spend, authority in the Cabinet and the vision to do the statecraft that Charlie has described. Applications are now in for this post.

Professor Alan Trench: I have nothing to add to what has already been said.

Lord Morgan: Can I ask an incidental question? In terms of clarity of decision-making at the centre, we would need help if we had followed the view of this Committee 12 or 13 years ago and abolished the Welsh and Scottish Offices as redundant.

Professor Jim Gallagher: One would not so much abolish as combine.

The Chairman: We have leapfrogged over the question of decentralisation and the cities but, given the time, it is unfair to keep you here any longer. If you feel inclined to write to us about that, and on whether or not stability can be created through that sort of decentralisation and powerhouses that are being developed in England, then please do. Also, if you feel there is anything on the reform of the House of Lords—a subject we have not raised with you—on which you would like to unburden yourselves from the safety of some miles away, or on any other issue, we would welcome it. We are extremely grateful to you for sharing these extremely interesting replies with us today. Thank you so much.
Rt Hon Carwyn Jones AM, First Minister of Wales—Oral evidence (QQ 242-254)

Evidence Session No. 18  Heard in Public  Questions 242 - 254

THURSDAY 21 JANUARY 2016

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

Rt Hon Carwyn Jones AM, First Minister of Wales, and Dr Hugh Rawlings, Director, Constitution Affairs and Inter-Governmental Relations

Q242 The Chairman: First Minister, we are very grateful to you for being available to talk to us as we start addressing the issue that we are inquiring into—the union and the devolved institutions. We are glad to have the chance to do it here in Wales and to gather quite a wide range of opinion over the day, which I think will be useful to our inquiry. We are also glad to welcome Dr Rawlings, who is welcome to contribute at his own discretion, or at your discretion, First Minister, in the course of the discussion.

To start with, let me ask you a broad, general question. What people mean by the union varies quite a lot. Some people talk about trade and security, others segment it into a social union, a political union and an economic union. What does it mean to you, and what do you think the important features of it are, particularly in a Welsh context?

Carwyn Jones AM: Thank you. I take the same view as the Prime Minister, to an extent: that this is a union of four nations, a voluntary union in that regard but a union with advantages, particularly for Wales. The economic union is important, given that it give us access to a far larger single market than Wales alone would be. We benefit from being part of what is seen as a stable environment for business and investment. The political union is of advantage to us. It gives us a voice on the world stage via the UK’s representation in other countries that we would not otherwise have, of course. Then there is the social union. We know that we have much in common with others in the UK, and that is expressed through the solidarity that the union gives us. At the end of the day it is financially advantageous for us to be part of the UK. We benefit from significant fiscal transfers that would leave us otherwise with far less in the coffers. There are many advantages in that case. Some of the UK has changed a great deal over the years. It is more recognised now as a union of four nations, but I see that as a strength rather than a weakness, because it recognises identity while also recognising the common purpose that we have within the state.
Rt Hon Carwyn Jones AM, First Minister of Wales—Oral evidence (QQ 242-254)

The Chairman: Are there any distinctive features of it that are particularly of interest in Wales that might have a less high priority in other parts of the United Kingdom?

Carwyn Jones AM: I suppose that it is the relationship between the devolved Government and the UK Government. We live in an age where, I would argue, the traditional concept of parliamentary sovereignty does not really apply. The idea that all power comes from Westminster and is allocated, for want of a better word, to the devolved Governments is not something that I think the public would understand. There are other models, such as the system of pooled sovereignty in Canada, which gives us the opportunity to look at models that were at one time suited to what the UK used to be but not what it is now. There is much to do in terms of the UK’s constitution. I think that we are beyond the scenario where tinkering will work. We have had the asymmetric devolution since 1999. It is workable, but there needs to be a fundamental examination of how the UK can be made to work better.

The Chairman: Thank you very much. Perhaps we can now proceed to some of the detailed aspects of what we are talking about. I will bring in Lord Judge.

Q243 Lord Judge: Tinkering will not work. Sovereignty from Westminster is inappropriate nowadays. What constitutional arrangement, if you could summarise it, would provide the best, most stable settlement for the continuation of the United Kingdom? As a follow-up, is it federalism, and what aspects of federalism would appeal to you?

Carwyn Jones AM: Federalism has an appeal to us in Wales, but across the UK it is hamstrung by the fact that England is so big. Where you have a substantial percentage of the population in one of the four nations, it makes federalism more difficult to implement. In many ways the constitutional questions surrounding Scotland, Wales and Northern Ireland are easier to answer than the question that surrounds England. What do you do with a nation that is so big? Do you look to create regional government within England? It was tried in the north-east of England some years ago now. That did not prove to be popular. Do you create an English parliament, which in some ways is a very practical way of dealing with devolution to England, although again you have a parliament that is of itself very large? These are not easy questions to answer because of the situation in England. For me, federalism, if we were a state with a number of different entities within it that were not equal in size but did not have the disparity that we have in the UK, would be the way forward.

Q244 Lord Morgan: Bore da. As you know, the histories of Wales and Scotland are very different. The starting points for devolution were very different. Indeed, enthusiasm in the two nations was very different. Nevertheless, there has been a growing tendency for Wales and Scotland to pursue the same kind of path, debating the implications, for example, of the Smith commission for Wales and so on. What do you feel is likely to happen? Do you think that Wales will continue to follow the same kind of direction prescribed for Scotland, or do you think there will remain fundamental differences between the two?

Carwyn Jones AM: I think that for some time there will be differences. I do not see that asymmetry is of itself a problem. We see that asymmetry in Spain, for example, with different levels of powers and responsibilities. But I take the view that we should start from the position that if something is devolved in Scotland, why should it not be devolved in Wales? There may be reasons for that. I will give you an example. If it was recommended that the criminal justice system were to be devolved in the next year or two, we would struggle. It is a substantial cost and we would need to build up the expertise to deal with that system, whereas in Scotland of course it already existed. It is correct to say that support for devolution in Scotland built gradually over the years. In Wales the story was rather different, although arguably there was an enormous change between 1979 and 1997 in
people’s perception of devolution, but it was a wafer-thin yes vote. When we had the referendum in 2011 there was an overwhelming vote for powers that would have been seen as highly unlikely to be made available to the National Assembly even 10 years previously. So there has been an enormous sea change. All the opinion polls talk of people being in favour of devolution, at least of criminal justice. I think the fear that existed in 1997, that this was all a bit much and how would we manage, has gone and that level of confidence has been built. That said, of course, from our point of view we would not argue—I would not argue—that there needs to be complete symmetry, particularly in the short term.

**Lord Morgan:** Yes, I see. Some have argued that asymmetry can perhaps mean inequality; that some features may, for example, be conferred on Scotland and its Government that are not present in Wales.

**Carwyn Jones AM:** We see that already, for example with regard to taxation arrangements. One particular example is air passenger duty, where we are at a severe disadvantage compared to Scotland. It has been devolved to Scotland but not to Wales, for no logical reason that we can see. I think there is a tendency in the UK Government to view devolution still through the prism of Scotland and forget about the effects on Wales and Northern Ireland. The vow was a prime example of that at the time of the Scottish referendum. No thought was given to what that meant for Wales at all. When the devolution of air passenger duty was proposed for Scotland, we asked the inevitable question, “What about Wales?” and it clearly had not been thought about. “You can’t have it”. “Why?” “You just can’t”. That is the answer we get. We do not get reasoned answers that we can follow through, we just get, “No”. It is the same at the moment with the issue of a distinct jurisdiction. The reasons for not having a distinct jurisdiction have gone. They are not even being argued by the UK Government any more. It is simply a question of, “We just don’t like it”. From our point of view, I suppose the level of frustration that brings can be imagined.

**Q245 The Chairman:** There is a clear distinction between Scotland and Wales in the sense that in Scotland, the governing party at the moment, which had always been active since devolution, has the objective of independence, whereas in Wales, you are, as I read in speeches and comments made by you and the Government, and as you have indicated today, supportive of the United Kingdom. You reject federalism. Devolution has been demand-led over the last few years and it may be that Wales has been less demanding, which I personally would regard as a good thing, but it enables you to see what you think Wales particularly needs rather than what Scotland needs. Is that your view? Am I right?

**Carwyn Jones AM:** I think there has been a difference in the political climate in Scotland compared to Wales. I have made no bones as leader of my party that we are strongly devolutionist. We take the view that there needs to be more devolution to Wales, although of course we stop short of independence. The danger is that there is a feeling in Scotland and Wales that powers have to be wrestled out of Westminster rather than there being a rational discussion as to what the future of the UK as a whole should be. One of the suggestions that I have put forward for some time now is that of a constitutional convention. What does that mean? To my mind, it would involve the four Governments using the JMC to move forward with a process of putting a convention together and consulting the public, and for that convention to come forward with proposals, particularly with regard to the difficult issue of what happens to England. But I do not think that these issues can be resolved quickly. I fear that what we have seen over the past few years is a series of discussions about devolution that have taken place in different rooms. The UK is in one room with Scotland, in another room with Wales and in another room with Northern Ireland. We need to be in the same room to work out what the stable future of the UK should be.
Q246 Lord MacGregor of Pulham Market: I would like to ask you about the social union and fiscal issues. The Welsh Government have stated their belief in the importance of the sharing of risks and resources as part of the UK’s social union. Does increasing the level of fiscal responsibility for devolved Administrations—i.e., can you increase the benefits in welfare and social benefits provided you also raise the additional taxes to pay for them—risk increasing inequality by reducing the UK-wide redistribution that we achieve at the moment? I noticed your very interesting paper to us, where you make some criticisms of the Barnett formula, with which I would entirely agree, and say that it would be desirable to move to a needs-based system. You can do that if you have welfare provision—tax and welfare—on a UK-wide basis. I think it will be more difficult under the devolution proposals to see how you avoid the problem of disparity of welfare benefits, because of the requirement to raise taxes.

Carwyn Jones AM: I agree. I am not in favour of the devolution of welfare benefits. I know they are devolved in Northern Ireland, but we see, of course, what has happened there until quite recently because of the difficulties of obtaining agreement on what the benefits system in Northern Ireland should look like in the future. The benefits system is one of those mechanisms that helps to ensure that money goes where it is most needed. We do not argue that the benefits system should be devolved. We have not argued that individual benefits should be devolved, but they have been devolved in the past despite us not wanting them to be. Council tax benefit was one example of where that happened. It was not something we wanted, but it was devolved to us anyway—but with only 90% of the budget, so we had to find £20 million in order to plug the gap. There is talk now of attendance allowance being devolved, which again is not something we would push for. We know that of the people who claim attendance allowance, 7.1% are from Wales. Our population share is 4.8% and our Barnett consequential will be 6.2%, so if we end up in a situation where attendance allowance is devolved and a Barnett consequential or Barnett share allocated, we will lose out. I am firmly of the view that there are some issues, and the benefits system is one of them, that should remain at a much wider level—the GB level, in effect. General taxation is in that category. There should be some flexibility, but I would not advocate devolving the entire tax system, because for us in Wales that would mean that we would not benefit from the fiscal transfers that we do now.

Lord MacGregor of Pulham Market: So there are parts of devolution in Scotland, in this area, that you do not want to see in Wales.

Carwyn Jones AM: That is correct. At the heart of the problem for us is Barnett. There are proposals to devolve elements of income tax to us in the future, but the difficulty is that even with that, a substantial amount of our funding—I think around 70%—would still come via Barnett. Barnett to our mind is flawed. Our fear is that as we take on income tax-varying powers, unless Barnett is dealt with we will basically lock in what for us is inequality in our funding. Barnett was devised in 1979. From our viewpoint it makes no sense to see it preserved for the future. I agree with what you said: a proper, updated, needs-based formula is what is required. That would give us a much firmer base on which to build up our income tax-varying powers. I do not want to see a scenario where, because of the operation of Barnett, a future Government might feel that they have to raise taxes in order to fill the gap that is there because the proper amount of funding is not being made available to Wales because of a lack of an updated, needs-based formula.

Lord MacGregor of Pulham Market: You are clearly going to look for a different devolution from what is happening in Scotland under the Scotland Bill to try to solve this sort of problem.

Carwyn Jones AM: My view has always been that the structure of devolution should be the same in Scotland and in Wales. Northern Ireland is a little different, given its third category of deferred
powers. The structure should essentially be the same, even if the powers are different. Now, the structure of devolution is different in Wales and Scotland. For me, once you establish the structure, you can look at what powers should be devolved, but the devolution of powers should be in the hands primarily of the people of Wales and Scotland and based on what they decide.

**Q247 Lord Morgan:** We have been talking quite a lot about the structure. Of course, service delivery and policies have inevitably varied considerably between the different nations—devolution of its essence means diversity—and areas such as health and education show very considerable variety in what has happened to them in the different nations. How would you assess this? Do you feel that there are risks in too divergent provision of policies in these and other areas, or that this is a beneficial tendency and you wish it to go further?

**Carwyn Jones AM:** It is an inevitable consequence of devolution that there will be difference. I do not think that is unhelpful in the sense that if, for example, one UK nation follows a certain path, it is possible for the others to see how that develops. Last month, for example, the Human Transplantation (Wales) Act came into force here in Wales, changing the consent regime for organ donation. It is being watched by other nations in the UK to see how it operates. We have not taken the view that those organs should be retained in Wales, as we want to make them available for those who need them across the UK. It is true that there will be other areas of policy developments in the nations of the UK that will take a different course. It is inevitable that that will happen, but I see it as a way of other nations seeing how particular policy develops to see whether it is appropriate to adopt that policy themselves.

**Q248 Baroness Dean of Thornton-le-Fylde:** Good morning, First Minister. We touched upon with Lord MacGregor the possibility of differing levels of welfare social benefits. The Scotland Bill going through the House of Lords at the moment provides the means to do that if necessary. I read with interest your speech of October 2014, updated in June last year, where you were very clear—as you have been this morning—about not being supportive of the differential in benefits. Would you accept that the argument for going down that route may actually be unstoppable, particularly going back to the point you made at first about the regions in England having been rejected but now seeing the emergence of the northern powerhouse and possibly one to the east? If we see different areas of public policy set across the UK in the devolved Governments, who should set the benefits? Should there be a minimum benefit that people can receive? Who should set that?

**Carwyn Jones AM:** In some areas, such as welfare, I think that that is right; I accept that welfare should be a GB-wide matter. It should be a matter for the UK Government. I do not argue for the devolution of the benefits system because, bluntly, we would be in a more difficult financial position. I think that it is one of the bonds that holds the UK together. If you take the welfare system apart, you begin to unravel one of the UK’s major common themes. I do not think that it is possible to have a minimum standard because, first, what would that mean? Secondly, it could not be right that the UK Government set it as that would undermine devolution itself. What do we mean by minimum standard? Do we mean, for example, that there should be council tax equalisation across the UK? Do we mean that there should be identical delivery of the health service across the UK—and, if so, whose rules apply?

**Baroness Dean of Thornton-le-Fylde:** I am thinking more of the benefit levels that individuals receive.

**Carwyn Jones AM:** No, I am firmly of the view that benefit levels should be the same across GB.
Baroness Dean of Thornton-le-Fylde: It is difficult to reconcile the two views because the Scottish Government Minister, Fiona Hyslop, said to us that to look at a minimum set of standards in benefits would be too bureaucratic and would go against the actual principle of devolution, too. It is contained within the Scottish Bill at the moment and the view from Scotland is that—I do not demur from your point—it is all being driven by Scottish devolution. So it seems that we almost have an intractable view from Wales which is different from that of Scotland. How do we resolve that issue? Who will set the minimum?

Carwyn Jones AM: I come from a very different position from Fiona. She takes the view that there should be wholesale devolution in the form of independence, clearly. That would mean that the benefits system would not exist across GB. In devolved areas, I think that it is pretty much impossible to set minimum standards. Standards are supervised and enforced by the electorate to whom legislatures are answerable. When it comes to non-devolved areas, it is a matter for the UK Government to set minimum standards. There is a risk in Scotland now that we are beginning to see the unravelling of one of those areas that made membership of the UK attractive to Scotland. That is not a position I take. I believe that there are a number of areas where a common approach across the UK is the right one. If you look at the welfare benefits system and general taxation, they are ways of reallocating money to areas of greatest need.

Q249 Lord Cullen of Whitekirk: Would the Welsh Government support a new charter or statute of union setting out the principles underlying the union and devolution, the voluntary nature of the union and the principles for relations between the Governments of the nations in the UK? That idea has had a mixed reception. Some have welcomed it; others have said that, assuming it is not rejected by one of the nations, it might not serve any practical purpose because of the differences between the different nations. What are your views?

Carwyn Jones AM: I think that it is important in principle. As ever, the devil is in the detail, but a recognition that this is an equal partnership of nations, which is what the Prime Minister said at the time of the Scottish referendum, would be welcome. Also, of course, we have memoranda of understanding with individual government departments in Whitehall. It is not a coherent system. If we were to have a coherent set of principles that governed the relationship between the UK Government and all the devolved Administrations—principles that were transparent, well understood and consistent—it would help immensely in terms of being able to form the UK that we need for the 21st century, based on those principles. We do not have them at the moment. We have a situation where devolution has taken place at different rates and speeds across different parts of the UK without really any thought being given to what it means for the UK as a whole.

Lord Cullen of Whitekirk: But if one of the principles was concerned, say, with social solidarity between nations, could that encounter some problems?

Carwyn Jones AM: It depends on how you look at it. First, it could be argued that that would mean some kind of minimum standard across the UK, which might be possible as long as it was agreed by all four Administrations. That is absolutely important; it cannot just be imposed by one on the other three. It might involve mutual recognition of benefits, but that takes us down the line of what we see within Europe. I am not sure that that is what we want to see as a model for the UK. So in principle, I think that it is right to say that you could get to a position where there is a charter of common rights and responsibilities, for want of better words, which is understood across the UK—but it would have to be agreed by the four Administrations for it to have any validity.
Q250 The Chairman: As I understand it, First Minister, the memorandum of understanding has principles embodied in it. Are you suggesting to us that that is not sufficient, or that the wording there is inadequate?

Carwyn Jones AM: There are several memoranda. From our point of view, we do not have a single memorandum of understanding with the UK Government.

The Chairman: I think that it was in the one that is at present extant, and presumably will be in the one that is being negotiated at the moment under intergovernmental relations discussions.

Carwyn Jones AM: This is the one via the JMC particularly, through that route. The memoranda in the past have tended to be with individual UK government departments and about the way that they deal with the Welsh Government. But it is correct to say that work is being done on how the JMC works more effectively. The JMC has tended to become a place of full and frank discussion, particularly the main plenary session when that takes place. So it does not really lead to anything. It is a place where grievances are aired. That is not really what the JMC was designed to be primarily, to my mind. The JMC is not truly a partnership of four Administrations. At the end of the day, it is still entirely within the hands of the UK Government. I will give one example. The dispute resolution process is laid out and we understand how it works, but the process ultimately leads to a dispute being resolved by the UK Government. If we are in dispute with the UK Government, there is a process by which the defendant is, as it were, also the judge. We suggested, for example, a situation where there might be an independent arbitration process, but that was not accepted. So, again, there are issues with the JMC in terms of how it works and having faith in the dispute resolution process in terms of it being truly objective.

The Chairman: We are broadly on the same page as you on this because you very kindly took part in our inquiry on intergovernmental relations. We submitted our report and published it. The Government have not yet responded to it after many months, but there is a good reason for that: a lot of work is going on within government. We hope that we will have a response soon, and we hope that some of your concerns and ours will be met at that time. So we are both waiting for that. Can I bring in Lord Norton?

Q251 Lord Norton of Louth: Perhaps we could look at this from a somewhat different perspective. The talks so far have been on intergovernmental relationships: that is, what can be agreed between the different Administrations. But of course we cannot leave the public out in terms of how they do it or indeed how they comprehend the changes that are taking place. Of course now you have difference between the UK Government, the Welsh Government and—it flows from your written submission as well—there will be further changes. So it is about how the public keep abreast of what is happening and how they make sense of it. That is quite fundamental, because if they do not understand who is responsible for what, you can see that there will be big problems with regard to both Governments. So is there a mechanism by which one can address that so that the public are aware of who is responsible for what? It is a fundamental issue of accountability.

Carwyn Jones AM: It is; it is difficult. I do not think that people necessarily understand what the different levels of government actually do. In Wales, we have a particular issue in that most people get their news, particularly printed news, from newspapers that are not published here and that do not produce Welsh editions. In Scotland, there is a strong print media sector; the London papers produce Scottish editions, but they do not bother as far as Wales is concerned—for a lot of people they may as well be reading papers that are published in New York for all the coverage they give to Wales. Broadcasting is different. There is much greater penetration of broadcasting, particularly the BBC. Many people get their news from the BBC’s Welsh programmes, which helps to plug the gap in
that sense—but it can be difficult. The closer you get to the border, the more you will find that people have their aerials tuned in to transmitters from across the border, because geographically, it has been that way for many years even though the situation has improved in terms of Welsh transmitters. Some parts of the north-east of Wales could not get Welsh programming until quite recently. So there is that difficulty.

Social media can help to bridge that gap, but let us not pretend—it is a solution only in the short term. But it can be difficult for people to understand who does what. It has improved; there is no question about that. People tend to assume now that the Welsh Government are responsible, even in areas where we are not. Speaking personally about the people who come to my surgery as an elected AM, when I first began it was very sparsely populated, but now it is the exact opposite. People will come with all manner of issues that are not devolved, because they assume that they are. There will never be a perfect solution to this, because most people do not follow the constitutional niceties of the UK with any great interest. But we tend to find that in the main it works; most people have a relative understanding of who does what, but the level of understanding is not what I would want it to be.

Lord Norton of Louth: Is there anything that government or indeed Governments could do to help in terms of dissemination? Is there more that could be done that you are not already doing?

Carwyn Jones AM: The problem is that, if it is left to elected politicians—and I plead guilty in this regard—the issue of who does what would revolve around who is being blamed for what. So this would have to be done objectively. The debate around informing the public of who is responsible for what area of policy has tended to be around “Well, it’s your fault”. That is what we have seen. Again, it is not easy. You could teach the constitution in some way in schools—you might be able to do it that way—but you would not reach the adult population, and in Wales we have a particular difficulty with the way the media operates here.

Lord Norton of Louth: I completely endorse your point about education. Citizenship education is the way, but it will take time to work through, because it only gets those who are being taught.

Carwyn Jones AM: I tend to find that children know more than their parents, mainly because they have grown up with the idea of devolution—it is nothing new to them. Thousands of children have visited this place over the years, and that again helps to communicate the message of what the Assembly does. There is a Wales Bill, which I have not mentioned yet and which is fraught with problems, but one good thing about the Wales Bill—and it has some good aspects in its current form—is that it would allow the Assembly to change its name to a Parliament. Personally I am in favour of that, because people understand better what a Parliament does because they are used to the term. Certainly one thing that I want to see in the next Assembly term is that we move to a situation where we call ourselves a Welsh Parliament. That would help immensely in terms of people understanding what this institution is and what it does.

The Chairman: I think you wanted to ask a question about the Sewel convention.

Q252 Lord Norton of Louth: Yes. Moving on to an aspect you have just mentioned, the draft Wales Bill, the Sewel convention is in there but it is also in the present Scotland Bill going through Parliament. We had quite a long discussion on Clause 2 of the Scotland Bill and the Sewel convention, including one issue of whether it would be justiciable or not. Another issue is whether it effectively transposes the Sewel convention into statute as opposed to simply stating the Sewel convention. One of the Scottish Ministers said to the Committee, “You need to enact the convention rather than the quotation”—and, as I said, it is in the draft Wales Bill. Do you have a
view on the Sewel convention being transposed into statute or the words of Lord Sewel being put in statute? The two things are somewhat different.

**Carwyn Jones AM:** I do. The convention should be stronger. Of course, if the proposal is to enshrine the convention in law to make it justiciable, that of course undermines parliamentary sovereignty, so we move on then to the debate about parliamentary sovereignty and what it means in the 21st century. The same should apply to Wales. Practically, however, our devolution settlement is vaguer and will be even more vague if the Bill in its current form goes through; we may as well book a permanent seat in the Supreme Court in that regard. So it helps to resolve the issue in terms of the convention being taken seriously, but you will still have arguments as to whether something is devolved or not. Because of the nature of the current settlement, what would happen with the new settlement is a constant argument in Wales.

I will give one example of where there is a dispute at this moment in time. The Trade Union Bill—much of which is not devolved; we do not like it but we accept that it is not devolved—seeks to impose new duties and conditions in devolved public services. We take the view, based on the Agricultural Wages Board judgment, that because this is partially devolved, it rests within our powers. The view of the UK Government is that it does not and that it rests firmly in the field of employment—that is exactly the argument we had over the Bill in the Supreme Court—and so it is not devolved. Next week we will produce our equivalent of a Sewel Motion—a legislative consent Motion—where we will object to the UK Government legislating in what we regard as a devolved area. I have no doubt that they will ignore it. They will then proceed to legislate. We will then in the Assembly introduce a Bill to repeal those sections of the Act that we feel are devolved, and we will end up back in the Supreme Court. We know that. So it is not simply a question of embedding the convention in law; from the Welsh perspective, there is a huge amount of work to be done in terms of avoiding a situation where—at the moment this is what will happen—almost every Bill ends up in the Supreme Court.

**Lord Norton of Louth:** So Clause 2 of the draft Bill at the moment is, shall we say, not the ideal. What would be the ideal?

**Carwyn Jones AM:** In terms of the convention?

**Lord Norton of Louth:** Yes. Should it be left out? Should the Bill be redrafted?

**Carwyn Jones AM:** No. I am firmly in favour of enshrining in law the need to obtain consent to legislate in devolved areas. Again, that undermines parliamentary sovereignty, which is not something I would defend anyway in its current form. It also removes what is already there in Scottish and Welsh devolution legislation, where the UK Government can if they wish legislate in devolved areas. Should we worry about that? I would argue that we should not, as it provides greater clarity. But simply having the convention enshrined in law for Scotland is not good enough—it has to be there for Wales as well. That is one part of the discussion. The other part is defining what is and is not devolved. So we find ourselves in the situation with the Trade Union Bill where the argument that it is devolved in Wales is stronger than the argument in Scotland—which for us is a uniquely amusing situation.

**Lord Norton of Louth:** Yes, there is an argument about the drafting of the Bill in terms of what the convention actually means, because there is the convention and what Lord Sewel said, and they are different. What flows from that is defining what is actually devolved for the purpose of the application.

**Carwyn Jones AM:** Then, of course, it ceases to become a convention.
Lord Norton of Louth: Yes. The Government are trying to say that it is still a convention in statute, and that is part of the problem.

Dr Hugh Rawlings: Perhaps I could add a word on that. The Wales Bill is very interesting in that respect because it replicates Lord Sewel’s convention, as does the Scotland Bill. From our point of view, what is as important in terms of intergovernmental practice is that the Assembly’s consent is required for legislation which amends its powers. That is not written into the version that is in front of the House of Lords at the moment in the Scotland Bill. Yet, paradoxically, although the Wales Bill repeats what is in the Scotland Bill, in the Explanatory Notes to the Wales Bill it is asserted correctly by the UK Government that, because this Bill amends the Assembly’s powers, the Assembly’s consent must be required, which is not what is said in either the Scotland Bill or the Wales Bill. The statement in the Scotland Bill, replicated in the Wales Bill, about the limitations on Parliament’s powers to legislate in respect of devolved matters is clearly inadequate and incomplete.

The Chairman: We spent quite a lot of heated time on this in the Committee stage of the Scotland Bill, as you will know, and we got precisely nowhere, so I will move on if I may.

Q253 Lord Morgan: Could I raise the legal aspects which you referred to, First Minister, bearing in mind not only that you are First Minister but that you are also a barrister?

Carwyn Jones AM: I am not insured.

Lord Morgan: I think that you trained in Aberystwyth. You were on record as saying that there should be separate jurisdictions for England and Wales and that this would aid the devolution process. I wonder whether you would like to explain to us what the advantages of that would be.

Carwyn Jones AM: The argument that I am making now is for distinct rather than separate jurisdictions, and I shall explain what I mean by that. It has been the norm in the past that where a legislature is established, so a jurisdiction follows—Northern Ireland was an example of that in 1920. It is regarded as normal that that should happen. In that sense, the current England and Wales jurisdiction is abnormal because it has two legislatures within it that pass laws in the same policy areas. I do not know of anywhere else in the world where that happens; there is usually a distinction between what legislatures do. The difficulty that we have is that the current Wales Bill is predicated—this has been confirmed to us by Ministry of Justice officials—on the idea that there should be minimal divergence in the law between England and Wales. That cuts across the 2011 referendum result; it is not what the people of Wales voted for. The idea that somehow the creation of law for England and Wales that applies only in Wales should be an aberration—that laws that are different in Wales should in some way be unusual—is not what the people voted for in 2011.

For me, a separate jurisdiction means the Northern Ireland-style jurisdiction—or indeed that of Scotland, although it is based on separate principles in Scotland—where you have a physically separate court system, a separate court of appeal, a separate justice system and a separate penal system. All those things attract cost. For example, setting up our own self-contained prison system would be hugely expensive. Another example is that we do not have a women’s prison in Wales. In that sense, it is not an attractive option.

I had previously taken the view that a jurisdiction was not necessary to make sure that we had a robust devolution settlement but, given that it is at the very heart of the current Wales Bill, it is difficult to see how it would work without there being some separation of the jurisdictions.

It is said that we are moving in the Wales Bill towards a reserved powers model, but the model itself, as expressed in the Bill, states that in effect the law in its entirety is reserved. That means...
that any powers in terms of changing the law that the Assembly might have are conferred powers. To me, it is not a reserved powers model if an enormous area like the entire legal system and the law—which is what it says in effect—is reserved.

A separate jurisdiction would of course mean separate professions. It would mean the administrative separation of the courts, which carries disadvantages. The Lord Chief Justice has said that, to his mind, it is possible to have a distinction in the jurisdictions but with a shared court system and a shared penal system. I am immensely attracted to that idea. So in effect we would have a distinct jurisdiction. There would be, formally, Welsh courts and a Welsh jurisdiction, but the court system would be common, as would the legal professions, and so you would avoid the need to set up an expensive framework around the justice system. You then create, properly, Welsh law and not England and Wales law that applies in Wales. We have a bizarre scenario where we can change the law in England but we cannot apply it there because England and Wales is a jurisdiction. If you look at the prefaces to legislation, they say, “This changes the law of England and Wales but only in England”. A more complicated way of doing things I cannot begin to imagine. And it confuses the public. Last week, Simon Thomas, an Assembly Member here, raised the issue of a constituent of his. The constituent had referred to legislation that had gone through Westminster. The preface said, “This changes the law of England and Wales” but the constituent had not realised that it applied only in England. It causes needless confusion, to my mind. So, for me, a distinct jurisdiction would mean a shared court system and shared legal professions—there is no difficulty there; it makes perfect sense for us to do that—but with a formal separation of the jurisdictions so that there would be the courts of Wales and the Welsh jurisdiction. That is the norm everywhere else in the world, certainly in Commonwealth jurisdictions.

Lord Morgan: Thank you. Presumably you think that the case for that is becoming more urgent in the sense that more and more Welsh legislation is coming through.

Carwyn Jones AM: It is the case now that judges who wish to sit in Wales increasingly need to be trained in the law of Wales, particularly, for example, in areas such as housing—the law of landlord and tenant, where there are now significant differences in the law. It is not difficult. Lawyers are used to operating on a set of principles but with different laws in different common law jurisdictions. That is not a problem. I have spoken to senior judges who have offered me examples of counsel coming to Welsh courts and arguing the wrong law, because they assume that because the jurisdiction is the same, the law must be the same as well. I have suggested that perhaps these people should have wasted costs orders made against them but that might be too harsh. However, it is an issue.

If you are a London-based barrister and you are not familiar with the legal situation in Wales, you will assume, because England and Wales is a single jurisdiction, that the law must be the same in that jurisdiction. It is no good for the professions and in particular it is no good for the clients. It would be far clearer if it was understood that Wales was a jurisdiction, that it had a court system that was shared, and that Wales was a common law jurisdiction where there were no barriers to entry at all for those who practise. We see this in Northern Ireland. There are now many London-based legal firms which have moved into Northern Ireland since the peace process. They see no difficulty in operating in what is a common law jurisdiction with some different laws. That is exactly what Wales would be.

Lord Morgan: That was very clear. Thank you very much.

The Chairman: We are running short of time, First Minister. I hope you will allow us another two minutes so that Lord MacGregor can ask his question.
Q254 Lord MacGregor of Pulham Market: Very quickly, what effect could English laws for English votes have on the union?

Carwyn Jones AM: I do not think it works. For example, going back to the point I made earlier, where legislation alters the law of England and Wales but applies only in England, who votes? Do Welsh MPs get a vote in those circumstances because it alters the law of England and Wales, or is it only English MPs because it applies only in England? That is a problem. It is very difficult to have an institution where members are allowed to vote only in certain circumstances—it is either a UK Parliament or it is not. Even when there was substantial devolution in Northern Ireland in the days of Stormont, Northern Ireland MPs could still vote. There were fewer of them in those days as a proportion of the population, but there was no suggestion of, “You can’t vote in particular areas, I’m afraid, because you are not really MPs along the same lines as everybody else”. From our point of view, we are concerned that we may see a situation where legislation is produced that affects only England, so the logic is that English MPs would vote but that legislation would have an effect on the Barnett consequentials that go to Scotland, Wales and Northern Ireland, which apparently would mean that Scottish, Welsh and Northern Irish MPs would not be able to vote even though there is a financial effect of that legislation going through.

Let us say, for example, that legislation went through the UK Parliament that changed the nature of the health service in England. This is not on the table—I am not offering a hypothesis here—but let us say that a Government came to power and said, “We are going to move towards a model of co-financing. We are going to say to people that we will pay some but you have to pay 20%”—the kind of model that exists in France. That could mean that the Department of Health’s budget was reduced. Even though that affects only England and the way in which the NHS is financed in England, because the budget of the department would be reduced, obviously, there would be a consequential Barnett reduction in the budgets of the devolved Administrations. So what appears to be an English law that affects only England actually affects to the whole of the UK.

Lord MacGregor of Pulham Market: That is possibly another reason for getting rid of the Barnett formula.

The Chairman: We are all on the same page there.

Lord MacGregor of Pulham Market: You can see a situation in which in the UK Parliament it is the Scottish MPs who, because of their numbers, may have the decisive vote on an issue that affects only England, whereas there are no other MPs able to affect that vote in Scotland, if you see what I mean. I can see a situation in which this becomes more and more of an issue and irritates more and more of one’s constituents—although a Scot, I was formerly an English Member of Parliament—and there will be increasing pressure. If you do not think English votes for English laws are the right answer, what is the right answer to this English question?

Carwyn Jones AM: It is difficult to see beyond the establishment of an English parliament or regional assemblies in England. None of these solutions is easy, but if you create a physically separate institution, you do not have the problem of English votes for English laws, or indeed the converse, which is fair, that votes from other nations in the UK affect the law in England. An English parliament is one idea. It is not ideal but it would certainly help to create the separation that would be required.

There is another issue with English votes for English laws. If MPs from Scotland and Wales cannot vote on substantial areas of legislation, do we then move to a situation where it is not really possible to be Prime Minister if you are from a Scottish or Welsh constituency because you would
have a programme for government that you could not actually vote on yourself? There are issues as to what that means for the union in that regard as well.

Lord MacGregor of Pulham Market: That suggests an interesting solution. Just to finish on this, the way in which this is constructed now, where the Speaker specifies that this is purely English legislation without the impacts that you are suggesting some other things might have on Wales or Scotland, is that not a sensible solution, and if not, what is?

Carwyn Jones AM: It depends on how that is applied. In principle it sounds attractive, but I am not sure that in practice it works very well. For example, a housing Bill went through Westminster last week or the week before, and I think that Welsh MPs voted even though it does not affect Wales. Because there are clauses in the Bill that give powers to Welsh Ministers, Welsh MPs voted even though we have no intention at all of implementing those clauses. Another example is that there are occasions when legislation will pass through Westminster that offers a vehicle for changing the law in Wales more quickly than passing our own legislation in the Assembly. So we pass legislative consent Motions and then we see Welsh clauses incorporated, usually into England and Wales Bills. It is not something that we would do normally, but there are occasions when that would happen. Should Welsh MPs be able to vote on those clauses, given that all they do is transfer power to the Assembly? We do have areas where we have executive responsibility but not legislative responsibility. What happens then? If the law is changed, for example in an area where we have executive responsibility, do Welsh MPs get the vote then, even though the reality is that the power that would be exercised entirely at the discretion of Welsh Ministers? It is never easy. It is clearer in Scotland, because that junction of executive and legislative powers is clearer than it is in Wales. But what do you do when you have a scenario where you have legislation that seeks to change the law in Wales but the law in Wales cannot be changed without the consent of Welsh Ministers anyway?

The Chairman: First Minister, we are extremely grateful to you for giving us so much time. We knew we had a difficult task ahead of us and you have confirmed that because some of your answers do not make our lives any easier. It has been enormously educational, extremely useful and very informative, and we very much appreciate it. Thank you, First Minister, and thank you, Dr Rawlings.
I have previously discussed before this Committee the report of a Commission, which I chaired, set up by the Bingham Centre for the Rule of Law, which I direct, entitled *A Constitutional Crossroads: Ways Forward for the United Kingdom* (The Bingham Centre Report). I would like to submit that Report in evidence now again, and in this paper briefly to outline the salient issues which I believe now need to be addressed by the Committee.

2. I should start by relating to you that all the members of my Commission were concerned to learn at the outset of our inquiry how little thought had been given to issues of devolution in the round. Your Committee has remarked in its March 2015 that the piecemeal development of devolution has led to a neglect of the larger picture, as has the Institute of Government. For various reasons, not least Probably because of the political urgency of dealing with issues in Northern Ireland and Scotland in particular, policy-making has concentrated on what powers should be devolved to the three nations, and on financing. What has been lacking has been attention to the principles that bind the nations and regions or, importantly, the mechanisms necessary to facilitate relationships between the nations and between them and the United Kingdom. Overall, we found that our arrangements for devolution lack certainty and continuity, coherence, and clear governing principles.

3. One reason for this is the typical view in this country that our problems are unique; that our lack of codified constitution and our asymmetrical model of devolution are such that we are exempt from considering suitable models in other countries, particularly those that adopt a ‘federal’ system. Federalism has a bad name in this country because it connotes in the European context a move to a centralised system yet, anomalously, in the domestic context it connotes a system of excessive autonomy. What is overlooked is that that different federal systems combine different models of centralisation and autonomy. Just as different unitary systems often include significant elements of decentralisation. Few states today are

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58 The members of the Committee were: Sir Jeffrey Jowell QC (Chair), Professor Linda Colley, Gerald Holtham, Professor John Kay, Sir Maurice Kay, Professor Monica McWilliams, Professor Emerita Elizabeth Meehan, Philip Stephens, Professor Adam Tomkins (Rapporteur) and Alan Trench (Advisor).
wholly unitary or wholly decentralised. They all contain elements of shared rule and elements of self-rule and it is the mix of the two that need careful consideration.

4. Nevertheless, an ideal federal system does contain certain elements which might provide some degree of benchmark by which we can evaluate the needs of our system especially if, as the Smith Report on Scotland recently proposed, devolution to Scotland should become “permanent”. (As the Bingham Report says, if we accept that our parliament is sovereign, a permanent devolutionary settlement is not possible, as it may be altered or revoked by any future parliament).

5. The Canadian scholar Ronald Watts is cited in the Bingham Centre Report at page 13 as defining a federal system as containing five features:

- Two or more tiers of government, each acting directly with the people;
- A written, supreme constitution, with a division of powers which cannot be changed unilaterally;
- Proportionate representation of the devolved authorities at the centre (normally in the upper house of parliament);
- An ‘umpire’ to resolve disputes (normally a constitutional court), and
- Settled mechanisms to facilitate inter-governmental co-operation (because federalism requires shared power).

6. The UK contains two of these requirements, namely, the first (two or more tiers of government), and the fourth (an ‘umpire’ in the form of the Supreme Court of the United Kingdom). Of the other three requirements we do not have a codified constitution and although there are mechanisms to facilitate inter-governmental co-operation, the Bingham Centre Report considered those to lack the necessary qualities of the rule of law, transparency and accountability. Finally, on the question of representation of the devolved authorities at the centre, despite the fact that members of the House of Commons represent constituencies in the devolved areas, and that some members of the House of Lords have a connection to the devolved areas, we have no formal or indirect political representation from the nations to parliament. In federal systems these are regarded as a
means of melding the perspectives of self-rule and shared rule within the central political arena.

7. In our view Smith was correct that devolution should now be declared permanent. That might be the situation already under convention and practical reality, but not in our constitutional law. The only water-tight way to ensure that permanence is, however, by means of a written constitution, which our report recommends to lead us out of what Tom Bingham describes as, constitutionally speaking, “a trackless desert without map or compass”. Such a constitution would most securely provide the advantage of clear ground-rules to serve as a framework for our territorial arrangements; to set out the underlying principles as well as securing their permanence.

8. A written constitution would take time, as it should, but in view of the political ‘vows’ for maxi-devolution to Scotland, and the need for speedy action in that matter, we believe that the promised further devolution should be accompanied now by a statute (a ‘Charter [or Statute] of the Union [and Nations]’) which sets out the fundamental principles of our devolution settlement. Such a Charter should first make clear that devolution is as permanent as our principle of parliamentary sovereignty allows. Second, it should set out a principle of autonomy or subsidiarity - that each nation should have a government with powers that enable it most effectively to respond to the needs of its people. Thirdly, it would also make clear the necessity of issues that require a shared and centralised approach, such as common security, defence and a common economic framework. Fourthly, it should set out the principle of social solidarity and the conditions necessary for the pooling and sharing of risks and resources. Fifthly, it should set out core shared values such as democracy, the rule of law, personal liberty and rights. It is surely unacceptable that fundamental rights can be treated differently in different parts of the United Kingdom – as is possible now. Finally, the Charter should set out that the specific devolution statutes should be subject to its provisions and provide how future constitutional arrangements should be amended.

9. Such a Charter would go a long way towards providing the coherence and stability that is now missing and also assist in the task of settling not only what powers should be divested from the centre but also those that facilitate sharing, interaction and concerns with mutual interests.
10. I shall not now set out all the detail of all the Bingham Centre Report (including recommendations about the English question, reform of the House of Lords and reform of the funding of devolved governments) but refer the Committee to two particular issues which in my view need immediate attention.

11. First, the issue mentioned in paragraph 8 above relating to the failure of rule of law and transparency in respect of inter-governmental arrangements. These are characterised now by excessive informality, regulated if at all by concordats, memorandums of understanding, guidance notes and conventions. Parliamentary scrutiny is minimal. A clearer statutory framework is necessary here too in the interest of certainty and accountability. The new Charter or other statute should subject these arrangements to more formal accountability. We suggest too that a new Secretary of State for the Union and Nations would provide a more effective overview of inter-governmental arrangements at executive level than the separate secretaries of state for Scotland, Wales and Northern Ireland now provide.

12. Secondly, the role of the “umpire” should not be neglected. Our Supreme Court has proved itself more that equal to that task already, in accordance with principles which guide interpretation to the extent of recognising that devolved authorities, although ‘creatures of UK statute’, unlike local authorities possess powers as plenary lawmakers (a principle that might also be codified). As Welsh law may increasingly diverge from English law (as it is presently beginning to do) we recommend that all devolution cases are heard by enlarged panels in the Supreme Court (7-9 justices rather than the normal 5) including a judge from Wales as well as Scotland and Northern Ireland.

13. In conclusion, the quest for more certainty and coherence in our territorial patterns does not mean that we can expect perfectly balanced and clear solutions, or that we should or could abandon our a-symmetrical arrangements. What is needed, however, is a commitment to over-riding principles which would provide the map and compass better to navigate the arrangements and to make them fair, coherent and stable for all parts of the UK. These are vital components of national harmony, local identity and effective governance.

October 2015
Professor Sir Jeffrey Jowell QC, Director of the Bingham Centre on the Rule of Law—Oral evidence (QQ 1-9)

Transcript to be found under Professor Adam Tomkins, University of Glasgow
Justice for Wales—Written evidence (UDE0025)

1. Justice for Wales is a gathering of lawyers who have come together in a non-partisan campaign to call for the reestablishment of a Welsh jurisdiction separate from England. On 23.09.2015, we launched the pamphlet “Justice for Wales”, a copy of which is sent with this response.59

2. This response deals with some of the specific questions posed in the call for evidence, and we send with it other material that we believe the committee will find of interest.

The Union

1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

3. We do not believe that it is useful for us to respond to the first question posed. Although we recognise that it is of interest, as a group making a collective response we believe that we can be of most assistance to the committee responding to other questions.

4. One key principle of the Union between England, Wales, Scotland and Northern Ireland can easily be identified; that it is a voluntary union. This is distinct from, say, the United States (where the right to leave the Union was the subject of the civil war) or Spain (where there is a Constitutional guarantee of the country’s territorial integrity, and Madrid’s attitude towards the question of an independence referendum in Catalonia can be contrasted with the approach to the referendum on Scottish independence here). We think that the voluntary nature of the Union is highly valuable.

5. We believe that a key principle in the Union’s dealings with Wales has been to regard Wales as essentially part of England, not to be treated in the same way as the other devolved nations. We believe that this principle is objectionable, and that it should be replaced with the following principles;

59 In Word format as the call for evidence requires.
(a) The Union should only do what it is necessary for it to do – defence is an obvious matter, the maintaining of a single market inside the Union is highly desirable. The Union needs to be responsible for the UK’s foreign relations, including our membership of the EU. That means that the Union must be able to ensure that all constituent countries of the Union meet EU requirements, even in devolved areas;

(b) The devolved nations (and England, in whatever arrangements its people and their representatives may decide to adopt) should be free to take on as much competence as they wish consistently with maintaining the Union;

(c) That there should be a presumption in favour of devolved competence;

(d) That any matter that is within the devolved competence of any of the constituent nations of the Union should be open to being devolved to any of the other nations.

Devolution

3. On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

4. Are there applicable examples from other countries with multi-level governance structures?

6 We have answered question 3 in the course of our answer to question 2 above.

7 There are examples. We consider that, of federal countries, common-law countries such as Australia or Canada are the most comparable. Their institutions and political and legal culture are more similar to our own than, say, those of Mexico or Germany. The number of states in the United States goes to mitigate the population imbalance between, say, California and Wyoming, and whilst no single Australian state or Canadian

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Note: there is a question regarding what happens when devolved assemblies bring international treaties into direct effect through primary legislation, as has recently been done in Wales in relation to the UN Convention on the rights of the child. Our view is that where the treaty concerns a devolved area this does not weaken the union, but does create a shift in the relationship between international organisations and the constituent nations of the UK that is worth considering further. Whilst the Union must be able to ensure compliance with the international obligations of the UK, that central ability should be without prejudice to the devolved legislatures’ ability to bring treaties into direct effect.

We mean no slight to the people of Quebec.
province contains the overwhelming bulk of those countries’ populations as England does in the UK, the small number of states & provinces may make for better comparison of the relationship between proportionally large units such as New South Wales or Ontario and smaller ones such as Tasmania or Newfoundland and Labrador.

8 The quasi-federal nature of the UK at present is perhaps most closely comparable with Spain. However, Spain’s political and legal culture are very different from Britain’s, its written constitution’s guarantee of territorial integrity contrasts with our voluntary union, Spain’s arguments against Catalan independence have been whole legal rather than making a positive case for their continued union, and we do not consider it a model that the UK should copy.

Implementation

5. How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

9 We consider that a formal acknowledgement of the principles set out in our answer to 2 above would be a first step. They cannot be formally embedded in the UK’s constitution unless a written constitution were adopted. Whether that should be done is a question on which we do not have a collective view. Although there are legal questions about whether it could be done, we think that it could be, and that the courts would recognise the political reality that a decision to end the doctrine of parliamentary sovereignty had been made.

10 The principles can be entrenched to a degree by enacting legislation that reflects them (e.g. by devolving all that can be devolved, subject perhaps only to a decision by a devolved legislature to vote to take on any competence that it does not currently exercise) and by co-ordinating between the devolved and Union governments. Ultimately this will require a development in the UK’s political culture, which is likely to flow from such legislation and co-ordination. At present, we believe that the UK’s political culture regards Wales as less equal than the other Celtic nations.

62 Subsidiarity and reciprocity.
Practical steps to strengthen the Union

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

7. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?

8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

9. Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

11 The impact of the asymmetry impacts most upon Wales. Wales has a lower level of self-government than the other devolved nations, and is joined in a legal jurisdiction with a nation whose population is massively larger than ours. The asymmetry, which has persisted ever since the introduction of devolution (we recognise that it has however been mitigated) not only reflects, but we believe perpetuates the attitude that Wales somehow deserves a lower level of devolution than the other devolved nations.

12 We consider that, so long as asymmetries exist, there will be the potential for grievances and for misunderstandings as to which governments should be blamed for whatever dissatisfies a particular citizen. This is detrimental to all in the Union. It cannot help if, for example, people in England (and even in Wales) do not understand that, in Wales, the NHS is the responsibility of a different government.

13 Devolution to local government within England is, we consider, a matter for England. It is wrong in principle to compare the self-government enjoyed by nations that choose voluntarily to remain in the Union with that which those nations may choose to devolve to their own constituent parts.

14 We recognise that devolving welfare and tax powers has considerable potential to impact on the future of the Union. We note that the devolved legislatures already have some taxation power. To the extent that their budgets are determined (or perceived to
by political choices made at UK level that concern only England, we note that there is a difference between supply (how much money the UK government decides to raise in taxation) and spending (how much it decides to spend on any subject). Beyond those observations, it is difficult for a non-partisan group with members from across the political spectrum to have a common position.

15 As to question 8, we think that the principles we set out in the answer to question 2 above would be a valuable guide. Rather than thinking about devolution piecemeal to each of the Celtic nations, we think it would be beneficial to think through what the Union is about and what it needs to do. We also consider that the continuance of the Union is as much about sentiment as economic benefits. It is likely to continue so long as each one of its constituent nations feels part of a family with the others.

16 Question 9 goes to the very issue about which Justice for Wales came together. We do not believe that the UK’s current constitutional and legal structure is able to provide a stable foundation for the devolution settlement. We believe that England and Wales need to separate their justice systems. There is a wide acceptance in Wales that, sooner or later, such a separation is inevitable. Experience supports this, in that there is no example of which we know in which two nations, with two primary legislative bodies, share a common justice system as do England and Wales. It therefore follows that, until the separation is made, a stable foundation will be lacking – because it is acknowledged that the joint jurisdiction is unstable and will, sooner or later, come to an end.

17 It would not be possible to set out within the confines of a 6 page submission the entirety of the reasons why we believe that the common jurisdiction is flawed. We refer the Committee to our pamphlet. We also commend to the Committee the submissions prepared by some of our number in response to the Welsh Government’s consultation on the establishment of a separate Welsh jurisdiction, the memorandum of evidence prepared by David Hughes in response to the Welsh Assembly’s Constitutional and Legislative Affairs Committee’s inquiry into the same subject, and the dissertation of Michael Imperato.

63 Not all the signatories to these earlier submissions to the Welsh Government are members of Justice for Wales.
18 In addition, we are aware of the report on devolution published by the Wales Governance Centre on 24.09.2015, which we commend to the Committee.

Signed by:

Sir Roderick Evans QC
Rhodri Williams QC
Michael Mather-Lees QC
David Hughes
Jonathan Elystan Rees
Andrew Morse
Michael Imperato
Lee Reynolds
Andrew Taylor
Marian Lewis
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Sian Lewis
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2 October 2015
1. The term ‘nation state’ is used in two senses: to refer to the sovereign state; and to one in which the state and sense of nation coincide. Over the years, a lot more attributes have been added, including shared citizenship and social solidarity. At its most expansive, the nation state is a fixed territory within which there is a shared identity, a common culture, a distinct economy, a sense of social solidarity, a set of governing institutions, a system for representation and common citizenship rights and duties. In this sense, it can be seen only as an ideal type, not a description of any actual system.

2. The United Kingdom is not a nation state in the usual sense, but a plurinational state. That is a state in which there are both distinct nations and distinct understandings of what the nation means and what are its political implications. It is better understood as a union, but that in turn needs to be interpreted. Unionism in the United Kingdom was a distinct doctrine, which recognized national diversity within the union but refused to extend this to political autonomy of the component parts. Instead, it insisted on the unitary sovereignty of the Westminster Parliament while allowing flexibility in the application of policy and respecting the autonomy of civil society.

The plurinational nature of the state has deep implications for the form of union and constitutional settlement it might sustain. National constitutions often assume the existence of a shared demos and telos. Demos refers to the definition of the ‘people’, or nation and is the basis for one form of democracy. Some thinkers have argued that such a common identity, indeed, is necessary for democracy to work. Telos refers to the goal of the constitution, a shared understanding of where we are heading. The United Kingdom has neither of these. In the non-English parts, substantial numbers of people do not regard themselves as primarily British (or even British at all), while a significant minority in Northern Ireland and Scotland do not share the goal of keeping the union in being. This does not mean that we cannot have common institutions or a union, but does imply that it should be a particular type of union. The Northern Ireland settlement recognizes this, by allowing citizens to articulate different senses of identity and recognizing different long-term aspirations as equally legitimate.

3. The traditional unionist understanding of the constitution was challenged by devolution at the end of the twentieth century, as it had been by Irish Home Rule proposals in the late nineteenth and early twentieth centuries. Yet initially Westminster declined to acknowledge this, insisting that its sovereignty remained unabridged. The UK, notably, did not convert itself into a federation, although did acquire some federal features. The government of England was not altered, so that the settlement was highly asymmetrical.

4. The settlement is further challenged by a wider process of spatial rescaling, taking place across the world and especially in Europe. This refers to the migration of functional systems, including the economy, welfare and culture, to new spatial levels. Identities are becoming more complex and multiple. Governing institutions and systems for representation and accountability must adapt at the state, the sub-state and the supranational level, but do so with difficulty. There is no obvious, or purely technical, solution to this question.
5. The dilemmas of rescaling are common to advanced democratic states. The issues of plurinational accommodation are also found elsewhere, notably in Canada, Spain and Belgium and, to a lesser extent, France and Italy. Eastern and central Europe raise questions of their own. Plurinational states have sought accommodation through constitutional reform. This has proved difficult and lengthy, with successive rounds rather than a definitive settlement. It has proved particularly difficult to find common normative foundations for sovereignty, given the different historical and other claims for recognition. It has also been difficult to link citizenship and social rights to a sense of common national identity, where the latter is weak. This has led to a lot of time being taken up on what appear to be symbolic matters or historical disputes, but which are in fact claims to original sovereignty. In Spain, there are endless arguments about whether Catalonia can call itself a nation or whether the Basque special status is derived from the Constitution of 1978 or is prior to it. The UK, in recognizing multiple nationalities and not obsessing with doctrine, has avoided some of these deadlocks.

6. There have been many attempts recently to define the Union and ‘Britishness’ by common values, including liberty, democracy, the rule of law or social solidarity and to derive institutional principles from that. Yet these are not peculiarly British principles but universal values. They are, moreover, the same values espoused by non-unionists who want to set up their own states. There has not been a divergence of values across the United Kingdom but, if anything, a convergence. The divergence is about the constitutional and national framework in which these values will be expressed. Moreover, any effort to entrench common values across the United Kingdom would, if it were to mean anything, have to apply to Westminster as much as the devolved administrations. The Westminster parties have not, hitherto, shown much enthusiasm for entrenching social rights constitutionally.

7. The Union is currently in a state of flux and it would be premature to define it at this stage. It would be better to allow linked debates among the component nations, and especially within England and then consider how it all might fit together. Otherwise we might end up with a settlement that is rapidly overtaken by events.

8. The constitutional asymmetry in the UK is the result of an underlying asymmetry in the demands of the component parts and their historical development. It should not be seen as a problem in itself but problems may arise in consequence of it. Rather than seeking to impose the same settlement across the United Kingdom, it is better to ask what the various nations and regions want and seek to accommodate that (recognizing that the nations and regions are not themselves internally united on what they want). If the priority in England is local government or English Votes for English Laws rather than an English Parliament, that should be respected.

9. There is a remarkable degree of agreement on the general idea of economic and social union across the United Kingdom, as long as these are dissociated from the Britishness agenda, which is itself a form of nationalism. The Scottish National Party has argued for retaining a common economic space and a ‘social union’ (however ill-defined). There is a consensus among the main parties about the need for an economic union in Europe (although disagreements about the political dimension). It would be possible to work out some general principles against which to assess proposed changes. The idea of ‘detriment’ could be defined better as a way to control differences in economic and fiscal policies. There
could be an analysis of what types of social risk might appropriately be shared at which level. This kind of analysis could usefully have informed the work of the Smith Commission, had adequate time been made available.

10. It has been suggested that a Citizens’ Convention be held to agree on a new settlement for the United Kingdom. I am very sceptical of this idea. We do not have the shared *demos* and *telos* to underpin such an exercise, which, if it were truly inclusive, would just become a forum for ventilating fundamental differences. It would be better to allow a fuller debate in the various parts of the UK. Scotland has had a referendum but the option of maximum powers within the Union was not put to the vote, with the result that opinion was polarized. The Northern Ireland settlement remains precarious and any effort to tie it more firmly into the Union would be destabilizing. The constitutional debate in Wales is still in progress, while England is divided among competing options.

11. A critical role in the development of the United Kingdom is played by Europe, including the European Union and the European Convention on Human Rights. The EU framework has provided guarantees for economic union, allowing more devolution within the United Kingdom than might otherwise have been possible. The European Convention on Human Rights provides equality of basic rights while detaching these from the need to be or to feel British. This is of critical importance in Northern Ireland but is also relevant in Scotland. Both EU law and the EHCR are directly applicable in the devolved territories. There is an appreciation of these factors within the devolved territories, which exhibit less Euroscepticism than does England. UK withdrawal from the EU or the ECHR would therefore be destabilizing for the internal constitution of the United Kingdom.

12. The main element missing in the UK devolution settlement concerns not the devolved territories but the centre. Devolution was bolted onto an existing unitary constitution. The United Kingdom is not going to become a federation in any normal sense (because of the disproportionate size of England) but we could usefully import federalist ideas, which imply a balance between the centre and the territorial legislatures and administration and a role for the latter at the centre itself. The procedure for determining the allocation of public expenditure leaves a great deal to the discretion of the centre. The boundary between English and UK government is unclear. There is no provision for territorial representation in the second chamber of Parliament. The arguments about the provisions in the Scotland Bill to recognize the Scottish Parliament as permanent or to entrench the Sewel convention show the difficulties in limiting central power within of the present constitution.

1 September 2015
We are very grateful to all three of you for coming to meet us this afternoon, and we have read with great interest the papers from Professor Keating and Professor Walker as background to our discussion. You know the subject matter we are interested in; I will not bother to develop that at the moment. Let us just plunge straight into the questions. The first question I would like to ask you about is the image of the union and how it was projected during the referendum. It received a lot of criticism that it was too negative. I do not want to look backwards and ask you to pass a verdict on that, but, looking forwards, do you have views as to how we could project the union message more clearly in the future, against the background of what is happening in legislation?

Professor Michael Keating: I have a general comment about the nature of the union, which is that it is what we call in social sciences a “family resemblance concept”. It is like a family in which somebody has the same nose as somebody else and the same eyes as somebody else, but there is not one thing you can reduce it to that they all have in common. The union is very different in different parts of the union. It is different in Scotland from Ireland; it is different in England. The success of the union is that it is able to adopt this multiform, changing form. You do not have to buy into a very strict package; you do not have to sign on the dotted line. Unionism, traditionally, has recognised this. It has recognised that it itself is a multiple and rather diverse concept, and, if unionism is going to be sold in Scotland, it is going to be a particularly Scottish version of the union.

Even before the no campaign, even under the last Labour Government, when they felt the union was under threat and were trying to defend it, there was an attempt to over-define it, over-nail it down to a particular set of things, rather than a general principle. If you try to do that with the union, if you try to pin it down precisely, you risk destroying it. It is a delicate, complex creature that can easily be killed off. Traditionally, unionists realised that. Nowadays, we have unionists who do not seem to realise that—hence my comment that the union was in danger from a kind of
dogmatic unionism, thinking that the union was one single thing and trying to impose it in a very strict way upon people.

The Chairman: We have a question that might flow from that later on, so I will not go into that now. We will stay with this.

Professor James Mitchell: I very much agree with Michael on that. Even to talk of “the union” is probably a mistake. There are unions, plural. I have come to the conclusion that the UK is a state of unions, each very different: different legacies, different histories and, in all likelihood, different trajectories into the future. That diversity has been one of its strengths, and is likely to be one of its strengths into the future. One of the dangers is the demand for symmetry. Those who wish to have symmetry are probably doing the various unions a disservice. Having the diverse unions is terribly important.

To go back to the referendum, one of the great problems was that there were very different understandings of the merits of the union, and equally there were many different understandings of the merits of independence on the other side. On the other side, there was some greater degree of agreement, but it was very difficult for politicians from different parts of the left-right spectrum to agree, other than a very general positive case for the union. It was much easier to make the case against independence.

Also, I would stress that, while a great deal has been said about the negative campaigning, negative campaigning can work. It is often asserted that this is some kind of a major problem, but negative campaigning is very successful. Maybe the form it took was undermined, to some extent, and allowed for that shift in opinion, but ultimately, it is difficult to see how a no campaign could be anything other than, at least in part, negative.

The Chairman: There was a lot to be negative about, was there not, as events have shown?

Professor Neil Walker: One point I would make, to distinguish myself from the other two, is that in some part this is not necessarily about the union; it is about defending anything that has been around for a long time. As James says, there is a temptation to start off by making the claim, “Well, just be careful what you wish for. Think about what the alternatives are”. I do not see that as necessarily a wrong or unreasonable strategy.

I do not want to draw too close an analogy with the EU referendum, but at least some of the issues about the presentation of a campaign are very similar. How do you defend something where many of the benefits are implicit, submerged, taken for granted, et cetera? That was part of the problem with the union. Let us cast our minds back to 2007, when you had the 300th anniversary. Never was a 300th anniversary less celebrated than the 300th anniversary of the union, not because there were not people who thought it worth celebrating, but because they did not know how to celebrate it. It was a very difficult thing to do.

One thing I would say, and one thing we should maybe think of, is that one of the people who was most eloquent in defence of the union during the referendum was Alex Salmond, because he knew how to defend the union as a cultural union. He went around the north of England and said there is a very strong cultural identity of Britishness, which he then wanted to distinguish very clearly from what he saw as a political identity.

There is a sense in which, in an odd way, this demonstrates that it is a complex union. It is made up of social, political and economic dimensions, and, in some ways, we found in the debate that some people who did not want to defend it as a political union were better able to talk about the concept
of Britishness and the concept of union than those who wanted to defend it in political terms. That is something that should be looked at more carefully.

The Chairman: We thought it was going to be difficult to find a way forward in this area, and you have made it more difficult.

Q150 Lord Hunt of Wirral: I have just returned from Ghent, where I watched every ball of the Davis Cup, surrounded by people in kilts. Nobody waved the Scottish flag; everyone was waving the Union Jack; and the greatest cheer of all was when Andy Murray said, “We put the great back into GB”. Everyone screamed and shouted, and Belgian flags were decimated and shredded. Is it only in the area of sport that we can have a positive vision, or image?

Professor Neil Walker: Is this the same Andy Murray who tweeted for independence on the morning of the referendum?

The Chairman: And then said sorry very quickly afterwards.

Lord Hunt of Wirral: Perhaps he was making up for it.

Professor Neil Walker: There was also a composite identity that day: you have the flag, but you also have the kilt. I know Michael has written about this: to some extent, how the political challenge to some of the major British institutions—the BBC, the NHS—has affected Britishness over the decades. Deeper than that, there are other aspects of Britishness, such as the monarchy. Look at how carefully the SNP has to treat the monarchy, much more carefully than it did 15 years ago. There is a deeper cultural element of Britishness.

Also, although there are people better able to comment on this than me, in some of the opinion polls over the last three or four years, there are more people who are re-identifying themselves as Scottish and British, rather than exclusively Scottish. But how does one relate that cultural change to the almost diametrically opposite change in terms of specifically political identity? It is very complex.

Q151 Lord MacGregor of Pulham Market: Is the sharing of risks and benefits seen in Scotland as important to maintaining the social union, and how is the social union identified?

Professor Michael Keating: I find that question a little puzzling. It has been asked many times, but I am not sure whether the union is there to support social solidarity, or social solidarity is there to support the union: which is the primary value? They do go together, and my primary concern would be maintaining social cohesion and social solidarity. It is under threat in all kinds of ways, not particularly because of devolution; that is probably the least of the threats, but it is under threat for various reasons. It is important, in a world where there are multiple levels of government, all the way from the European Union down to the local level, to build in social cohesion at all levels. You cannot just say, “Britishness looks after that”. It has to be built in at all levels.

There is a separate question of territorial solidarity: what is the appropriate relationship of sharing among the various component parts of our political system, be this Europe—or be it the United Kingdom, or be it within Scotland itself? That last question has not really been addressed adequately. I do not think devolution is a threat to the social union in the sense of people having similar ideas about the appropriate level of public services, but there is a big question about the distribution of resources. We have been pretending that we had a social union that distributed resources according to need, when we never did. We had the Barnett formula. We have to invent something that never existed.
That is a very practical question. I do not think you need to go into deep-seated senses of identity or whether you feel British or not. It is a more practical question: how are we going to get a proper system for redistributing resources? Governments have persistently dodged that, and the latest Scotland Bill dodges that again. It has simply not been addressed.

**Professor James Mitchell:** I would make two observations. The first is about the social union: it is a term that I am never very clear what it means. It is used very loosely.

**Lord MacGregor of Pulham Market:** Different interpretations.

**Professor James Mitchell:** Different interpretations. The Calman report makes much of the social union, and certainly the message I was getting reading it was “Thus far and no further”, because the union would be disrupted if we went further. Well, we have gone further. What does that mean about the union today? We have to be very flexible, frankly, in our understanding of the unions. The notion of risks and benefits is certainly part of it, but the institutional forms that sharing risks and benefits can take are manifold. Coming back to the European Union debate, we are having a debate on future membership of the EU at the moment, and that is also a union about risks and benefits, but it is manifested in a very different institutional-policy way from the current Scottish union.

That leads me to my key point: some of the language we use is not necessarily very helpful. What we are really talking about is relationships, and, when we conceive of it in terms of relationships, we understand that relationships evolve, change and can go in all sorts of directions over time. One of the great problems is that, as soon as I hear people talking, I can tell instantly where they are coming from, depending on the language they use. We could do with some new language, and talking about relationships might be a better way of doing it. There is a tendency to end up in Manichaean, black and white debates otherwise. Social union was an attempt, at least, to move away from that; I am just not convinced it has succeeded.

**Lord MacGregor of Pulham Market:** But social union, to some people—and, I think, the Scottish Government—means cultural context, family context, history, all those sort of things, not the more practical elements such as pensions, benefits, social welfare and so on. Is that correct?

**Professor James Mitchell:** That is one understanding, but the Calman commission had a very different understanding. What they call “social union” I would refer to as a welfare union, and that welfare union is clearly changing now, as we speak. But the implication in Calman, as I read it, was that what they were proposing was as far as they could go, and that is a dangerous proposition at any time, to think this is as far as it goes.

My point here is that it may be agreed that there should be a sharing of risks and benefits, but how that is made manifest is going to change in each generation. I said to my son, who just missed out on getting a vote, “Do not worry; your generation will have a turn to debate this as well”, because all generations have to debate these issues. It is an ongoing matter, and anyone who tries to pin it down and say, “Here we have the union, and we can define it very clearly”, would be making a mistake.

**Professor Neil Walker:** I take the point that there are two different ways of thinking about social union, but there should be a relationship between them, because there is a sense in which the everyday cultural and social union should be the basis of an idea of solidarity between the parts, which then feeds into the welfare union. I agree with James, except that there has to be a limit somewhere, in the sense that, if social union in that broader welfare sense involves a conception of the redistribution of resources on the basis of needs, then there have to be some common resources to be redistributed. Otherwise, unless there are some common resources—which implies
a common tax base somewhere—then you are moving away from any meaningful question of what, in policy terms, the social union could possibly involve.

For example, if you take the model of full fiscal autonomy, whatever that means, but in the earlier conception, before the oil problems, when full fiscal autonomy seemed to mean: “We deal with everything, and then we make a subvention back to London to pay for defence, et cetera”, it seems to me that you are moving away from a model where it is possible to imagine any serious redistribution between the parts, so at least one part of the definition of a social union seemed to be lost in that model.

But we are a long way from that. Even under the 2012 Act, and under the Bill that is going through, there are various possibilities. There is still a lot of clear water between where we are now and where we might be under the model of full fiscal autonomy. The social union question still has a way to go, in terms of the possible ways in which we can redistribute resources.

Lord MacGregor of Pulham Market: Of course, the latter part of what you are talking about is not in the Bill. That is going to come in the fiscal framework.

Professor Neil Walker: Absolutely, yes. It is implied in the Bill, but it is not there.

Professor Michael Keating: That is a problem, because it might be useful if we had, in legislative form, some principles about the distribution of resources. The actual formula will be determined year to year, but we are lacking any agreed principles.

If I could make another point about this, in the literature about decentralisation, there is an idea that decentralisation might undermine social cohesion and social solidarity, and provoke what they call a “race to the bottom”, because Governments will be trying to cut taxes and cut expenditure to attract investment and jobs. This is tax competition. There is evidence of that. For example, the SNP wanted to cut corporation tax. This would provoke other Governments to cut corporation tax. Northern Ireland wants to do it. The UK Government do exactly the same thing in Europe: they are engaged in a race to the bottom on corporation tax with other European countries.

This is a genuine problem, and it is necessary to have some kind of framework for regulating this competition; otherwise, it becomes quite destructive. It does not even promote economic development, because everybody is doing exactly the same thing, but at a lower level of revenue. So far, the evidence is that devolution has not threatened social solidarity and universal services, but, if it gets to the point of a high degree of fiscal decentralisation, then you could get this dangerous competition. It would be necessary then to put in place some kind of framework to regulate that.

Lord Cullen of Whitekirk: Is the comparative size of Scotland compared with the rest of the United Kingdom, in terms of resources and so on, at all relevant to the question of whether there is a need for a social union, and, if so, what form it should take? In other words, for example, if there were some financial crisis in Scotland, would the fact that it forms part of a union, of the United Kingdom, be of assistance? Is it relevant?

Professor Michael Keating: Yes. This is relevant to the notion of what we call “asymmetrical shocks”; that is, if an economic shock affects Scotland or Wales particularly, then there is a big resource base to fall back on. We do not have to deal with that on our own. That is an argument in favour of having some broader sharing of resources. It is a very practical argument. It is not necessarily to do with sharing in itself; it is just risk-sharing. It is mutual insurance.
Q152 Lord Morgan: We have discussed the social union, and this is, as we have seen, a term that can have many different kinds of definitions. We have heard a good many this morning. Presumably, you would know if it no longer existed, and I would like to explore that. There are two connected things, really. First, is there some kind of limit? One could imagine devolving, devolving, devolving, at which point the social union is no longer in existence. Rather more particularly in connection with Scotland, suppose delivery of services and the provision of services diverged so radically in Scotland from the rest of the United Kingdom. Would that also, perhaps, lead to a possibility of the social union no longer being with us?

Professor Neil Walker: I have very conflicted views about this. On the one hand, I take the point about the social union conceived of in terms of a social welfare union. Unless you have a common fiscal basis, on the basis of which you make that redistribution, then, in policy terms, the talk of a social union becomes effectively redundant, so there are limits there. But, when I read some of the discussion on this, I begin to wonder, because often what you get are two lines of argument about the limits of the coherence of the British state. One is a structural argument about the extent to which you can have policy differentiation, fiscal differentiation, et cetera. The second, which is always assumed to be working in the same direction, is a cultural argument about the extent to which people continue to want to be in the same state, or in the same polity, together. There is usually a sense that the degeneration of one goes hand in hand with alienation in terms of the other: as we begin to disconnect in policy terms, we also disconnect in cultural terms.

I would want to accept that there is an argument like that, but say it is not the only argument out there. There is another argument that says you can imagine a much more loosely coupled state where you do not have social solidarity, necessarily, in policy terms, but the people still continue—at least in some loose sense—to want to be part of the same state. There, if you go back to the cultural dimension, surely the most important thing in that sense is: “What is acceptable to all the peoples of the United Kingdom?” If the people of the United Kingdom that are Scottish decide that they want something that is far more autonomous than the Welsh or the Northern Irish, or even the English, you can find some negotiated settlement on that basis and people say “On that basis, we can still be part of the same state, but on no other basis”, then why should we necessarily discount that possibility? That possibility might leave us looking at the structural level at something that looks like a very diversified set of policies.

What I am saying is that we should be a little more adventurous when we think about what the limits of statehood are, because, unless we are a little more adventurous, we might find ourselves in a situation where the state comes to an end, because we have an unadventurous conception of what its limits are.

Lord Judge: If I may take that very point up, what sort of divergence would ultimately be destructive to the union? That is the basis on which you have just addressed us. In practical terms, where do the three of you see the point of destruction arising? It is not going to be about university fees. Presumably, it is not going to be about education until people get to 18. What sort of areas are we looking at? Do we have to wait for the big ones, like different votes about the EU, which may or may not happen? Can you just give us an inkling of where this is going to happen?

Professor Michael Keating: One would be the EU. The EU would not necessarily be the one, but that is a possibility. You can stretch the union an awful long way—I would agree with Neil on that—and certainly as far as Scottish opinion is concerned, you can stretch it almost indefinitely, apart from defence and some key, core issues. The EU might be a tie-breaker, not in the sense of Scotland voting to stay in and England voting to come out, but in the sense that, if the EU develops and
Scotland clearly wants to do different things in relation to EU issues, then you need a seat on the Council of Ministers, and, for that, you have to become independent.

But, apart from that, Scots could stretch the union almost indefinitely. The difficulty is in England: how far would English opinion be prepared to see Scotland having a different settlement? So far, it has been remarkably tolerant compared with other countries about this, but we can see issues arising in relation to English votes for English laws. That may or not be, in substantive terms, a big issue, but it is very provocative. It is the sort of thing that people can latch on to, and could become an issue.

The other one is to do with financing. Now that the issue about the distribution of finance between the nations and regions of the United Kingdom is politically salient—we have the figures; it is no longer hidden—that could become a point. Those are what I would see as being the key points that might produce a breach, as opposed to just infinitely stretching the union, and those points would come in in England. The English might, at some point, say, “Well, enough is enough. Become independent. We would find it more convenient than stretching the union any further”.

**Lord MacGregor of Pulham Market**: Do you think that that last point means that one of the key issues is the fiscal framework?

**Professor Michael Keating**: Yes.

**Lord MacGregor of Pulham Market**: We do not know when that is going to be resolved. We have been told when it is going to be resolved; we do not know actually when it will be resolved, but the resolution there could create some of the issues you have been talking about.

**Professor Michael Keating**: Yes, and that has just come into the news in Scotland very recently, because everybody was focusing on the Bill, not the fiscal framework, which is arguably more important, because there is more money riding on that and it has been done behind closed doors, in a very untransparent process. The outcome is going to cause all manner of complaints, partly because it is inherently conflictual and partly because people just do not understand how the decision is being taken.

**Lord MacGregor of Pulham Market**: And it could go both ways, too.

**Professor Michael Keating**: Yes.

**Professor James Mitchell**: This gets to the heart of it. It is not necessarily just a policy; it is how the policy is perceived, and it could be something very mundane that is perceived as, or becomes, a hot issue that creates the problem. I could certainly conceive of a situation—which, I think, is what Neil was articulating—in which that sense of belonging to the state continued, despite the fact that there was very little in common in terms of policy. Equally, I could imagine that, even though there may be a desire for common policies, there could be a desire for a break-up.

It is not just the policies themselves; it is about how these are debated, understood and perceived. I suspect that, if this was to happen—and it is a big “if”—then it may arise, not through one single policy, but an accumulation of issues. Defence could be in there; Europe could be in there, but it may be something relatively banal and everyday that becomes a major dividing issue, as can happen in politics. The general tenor of the debate and how we articulate these matters is at least as important.

**Professor Neil Walker**: The question of English tolerance, as you put it, is an interesting one. My sense is that the English are not going to become intolerant of Scottish wishes for autonomy, except to the extent that they impinge quite directly on English interests. That might seem like an
obvious thing to say, but it means that, if the fiscal framework is not resolved in a way that is deemed to be fair, then that could be a major issue. Unless the institutional consequences in terms of turning the House of Commons into, for some purposes, an English Chamber—we will talk about that later—are resolved in a way that gives the English what they see as an effective or fair degree of policy autonomy, that would be a problem.

I do not think it is going to be a problem just because the English begin to understand that the Scots have a different conception of union identity than they do. That is not a problem; it is part of the pluralism of the union. It means that these institutional and fiscal questions become absolutely vital, because, if they are resolved in a way that does not seem unfair to any of the constituent parts, then that probably is enough to maintain the union.

**Professor James Mitchell:** Can I make one small point on that, which illustrates this point? That is the perception of the Barnett formula. Barnett has been with us for so long. It just was not an issue. A tiny number of people knew about the Barnett formula. Barnett himself did not even know it was called the “Barnett formula” until 1985, but, because it is now out there, it is an issue, and people have very strong views on it even if they do not understand it. That is what I mean by the perception being crucial. It is not just the policy.

**The Chairman:** We tried to persuade the Government to reform it in 2009.

**Q153 Lord Morgan:** You have, all three, worked on European national issues and themes. Do your researches suggest that in other countries—I am thinking, for example, of Belgium—there are limits at which the continuance of a nation state is so tenuous and shadowy that, effectively, it ceases to exist? Does that offer any guidance?

**Professor Michael Keating:** What happened in Belgium is that the institutions have been set up in such a way as to increase these centrifugal tendencies. They are highly dysfunctional, and the only resolution is, every time there is an election—except this time, interestingly—to have a state reform, and then you are committed to it. But public opinion is well behind that, because public opinion is strongly pro-Belgian, and increasingly so. The political elites have got themselves detached from public opinion, and part of the reason for that is linguistic. Because of civil society, all the institutions that people interact with are within their community. They can vote only for candidates from the two language groups, and so you get a separation of politics and an appeal to intra-group solidarity, and there is no incentive at all to appeal to the other side. It is a problem of institutional design, not of the willingness of the Belgians to feel Belgian, because they are much more Belgian than the British are British. It is a tremendous frustration in Belgium that this is not reflected in politics.

**Lord Morgan:** When I stayed with the British ambassador in Brussels, he told me he felt himself to be the ambassador to two different countries.

**Professor Michael Keating:** Yes. If I could say something about other cases—because I work on Spain and Canada a lot—they get themselves hung up on symbolic issues that we, thankfully, have managed to avoid, such as whether Catalonia can call itself a nation or not, or what you call Quebec. We are in danger of falling into that trap by trying to define the union. We have always avoided that, so please do not go down that road. Adopt the traditional British, pragmatic, pluralistic spirit, so that we have arrangements that allow us to live together and we do not get obsessed with symbols or the precise meaning of language, which is always debatable anyway.

**Q154 Lord Hunt of Wirral:** Of course, in Ghent, the King of Belgium was there. You would not have thought that there was any division. I am sorry that this is not in the questions we have been
discussing, but tell me about the language in Scotland. Is there ever going to be a Scottish Language Act?

**Professor Neil Walker:** Which Scottish language would that be?

**Professor Michael Keating:** There is legislation on Gaelic already, and there is talk about putting protection of Scots in legislation, but it is not getting a great deal of attention.

**Lord Hunt of Wirral:** How much of an issue is that? Is it in any way related to the debate? Of course, in Wales, it was a huge part of the demand for devolution.

**Professor Neil Walker:** You can imagine circumstances in which it could be a trigger, if Gaelic or the Scots vernacular was treated in a way which was deemed to be particularly disparaging. It is true, of course, that that aspect of Scottish cultural identity has received a significant boost from devolution, so there is a relationship between the two. It did not precede it.

**The Chairman:** My grandson has fiddled around with our television at home, and every time we switch it on we get BBC Alba in Gaelic, and I have to move from there as my starting point, which is very frustrating. Also, a lot of railway stations all over Scotland have the name in English and in Gaelic. It is actually a standing joke with all the local communities, so I think your response is right.

**Q155 Lord Morgan:** It is not a joke in Wales.

We have talked a bit about asymmetry, really, but I will talk briefly about it. It is, of course, a well known phenomenon in what has happened. Does the enormous divergence in treatment broadly endanger what we think of as the union?

**Professor Michael Keating:** No, it is highly stabilising, because it provides the various parts of the United Kingdom with a constitutional arrangement tailored to themselves. The big question is how it should all fit together; what happens at the centre. Again, if I compare it with Spain, you have a situation there where some of the regions want more powers and some of the regions actually want fewer powers; they want to give powers back, but they have all got to have the same framework. That has proved enormously problematic; it is similar in Canada. That has never really been an issue here. It is one of the things we got right here, and other countries are now starting to look at this and asking whether asymmetry is such a bad thing after all.

**Professor James Mitchell:** I would have to agree with Michael, but I would want to add one small point: that does not mean that we should not be conscious of the implications of asymmetry in one part for the rest of the UK. There are clearly spill-overs and effects, but asymmetry has undoubtedly been a good thing; I agree with Michael. That is, I stress, not to say that we should treat everything in isolation and separate it out. That has been part of the problem.

**Professor Neil Walker:** I have very mixed views about this. I agree that asymmetry is both stabilising and inevitable in the UK context. I cannot imagine it ever being otherwise, and, in that sense, it is either a necessary good or a necessary evil. I am not sure which, but it certainly seems to be necessary. Part of the problem with asymmetry concerns its consequences for the central dimension of government, because it is all part of the same thing. The reason why we have such significant problems about the identity of the House of Commons, in terms of English votes for English laws, is precisely because we have such asymmetry that there is no sense of England as being an autonomous, devolved unit in the same way as other parts of the UK are. That, in turn, has consequences both for the central expression of legislative authority and for our sense of the relationship between the Executives at different levels. Asymmetry has all sorts of knock-on effects for our constitutional machinery.
Coming back to Michael’s comparison with Spain, it is interesting, because there are so many parts of the Spanish settlement that I do not like. There is a kind of constitutional chauvinism there, which comes from the centre, and which does not allow nations to call themselves nations; they have to call themselves nationalities, et cetera. There is a kind of inflexibility that can stimulate autonomous movements. But there is also a kind of organisation there: a sense of what the different blocs are; what constitutes the central government as opposed to the regional government; what the relationship is between the regional executives, the regional parliaments and the central parliament, which we do not have in our very strong, uncodified form of asymmetrical arrangements. Asymmetry is important and necessary, but we cannot pretend that it does not cause problems.

Q156 Lord Hunt of Wirral: We have heard from Professor Curtice that Scotland has now left the party-political system. Is that right and what impact does that have on the union?

Professor Michael Keating: We do not really know what is happening to the party system. It is not just the Scottish dimension; British political parties are in crisis. Traditional political parties all over Europe are in crisis, but this now has a territorial dimension, partly because of the electoral system. Half of the electorate votes for the SNP and almost all the MPs at Westminster are from the SNP, so you cannot separate that from our majoritarian system. In some ways, we have a rather perverse combination of a majoritarian electoral system and a territorially differentiated vote that gets totally lopsided territorial majorities, not reflecting public opinion but reflecting the system itself.

The parties in Scotland have always had two roles: one is to represent the main ideological currents, centre-left or centre-right, but they have also played the Scottish card as well. You go down to Scotland; you play Scottish politics there, and Scottish politicians are aware of that. Now, for the moment, we effectively have one party representing Scotland at Westminster, with three seats as an exception to that. It is only natural that they should play both of those roles, so it seemed to me very curious for the unionist parties to say at the last election, “We will not accept the representatives of Scotland as part of any governing coalition if they do not vote for the right party”. Maybe the SNP would not want to play that role, but it seems strange for unionists to say, “Okay, you are not part of the system”.

Whatever parties we have, they have to play politics at two levels. That is the logic of the system. It is going to make government at Westminster more complicated and more difficult, but, unless you accept that, then you are giving up on the union.

Professor James Mitchell: I remember Bill Miller’s book—1981, I think it came out—called The End of British Politics?, which raised the idea that politics were diverging. In fact, you can work further back, and there has always been a distinctive pattern of voting. The Conservative Party was called the Unionist Party, and so on and so forth, so there has always been something distinctive. What we have had, as Michael has pointed out, is a very unusual result. We will have to wait and see whether this will be repeated into the future, but 50% of the vote gave the SNP 95% of the seats. We focus on the 95 rather than the 50, and, if you look at the other three parties, they had very different shares of the vote, but each won only one seat.

There are other factors at play here that give rise to the appearance—again, I want to stress “appearance” and “perception”—that something very dramatic happened. Well, something very dramatic did happen, but it appears to be more dramatic than I would suggest actually happened. That is not to suggest that the result in May was not historic, dramatic and so on and so forth, but we have to be careful here.
Also, in many respects, the SNP benefited from factors that are very common in British politics; it is not something that is necessarily distinctively Scottish. From the research that I and other colleagues have done on the SNP’s success in winning elections to Holyrood, we concluded that it was largely because they were perceived to be competent in government. It was nothing to do with independence; in fact, support for independence had hardly changed over the period from 2007, when the SNP first came to power, to 2011, when their support rose. It was about governing competence. One can overstate that. On the other hand, I would not understate it. John expresses it more boldly than I would, but something significant has happened. We need time to see how this beds down.

Professor Neil Walker: It is interesting: someone made the point that, after the last election, it was the first time ever that you had different parties in charge in the different parts of the UK. To some extent, you can take Northern Ireland into account as well, which has a quite different party system. One thing that concerns me—and I get this from James’s work, so he will correct me if I am wrong—is that, if you looked at the number of Labour supporters who saw themselves as nationalists or crypto-nationalists, there were quite significant numbers 20 years ago. That surprised me, in a way. Equally, quite a few SNP people were not so keen, necessarily, on independence. That has begun to change. Ironically, just as there has been a substantive alignment somewhere on the centre-left between Labour and the SNP, there has been a much more radical distinction in terms of their identity politics. That strikes me as something that people who want the union to survive have to be acutely aware of. If two major parties are clearly distinguishing themselves only on the basis of identity politics, and not on the basis of their social agenda or their substantive political agenda, then that speaks to a degree of conflict that is difficult to reconcile or overcome.

Lord Hunt of Wirral: I remember, in 1979, marching through the lobbies in support of Margaret Thatcher’s vote alongside Scottish nationalists, when they brought down the Labour Government with us. If you compare today with then, what has changed?

Professor James Mitchell: Can I just say that there was a bit more to bringing down the Labour Government? I am about to publish something on this, which looks at the archives and what was going on inside the Labour cabinet. Bluntly—this is the headline of the article—Jim Callaghan was more concerned with Labour unity than anything else. A deal could have been done, and Michael Foot was one of those advocating for a deal to be done, so it was quite interesting. A lot more politics went on in the period between the referendum, that vote and the general election, which hopefully I will get around to getting out there soon.

The key point I would make is that the SNP blundered at that point in time. The perception within that party is that they tried to call the UK Government’s bluff, but there was a kind of gamesmanship going on there. In the end, both lost out: Labour lost out, and so did the SNP. One of the lessons that the SNP have learned, or that they believe is important, is that they must never do that again, and so they are much more conscious of the dangers of being perceived to be taking a position contrary to majority opinion.

Lord Hunt of Wirral: If we fast-forward to 1994-95, when I was doing deals with the Scottish nationalists to sustain the Conservative Government, how do you reconcile what you have just said with that?

Professor James Mitchell: Again, it is about perception. That was not how it was perceived in Scotland at all. The SNP, at that point in time, by 1994, had placed themselves very much as a party
of the left. Now, regardless of whether they were or not, my argument is that the SNP policies hardly changed between 1979 and 1994, or at least not as significantly as the public perception. The perception here was, to some extent, that it was a left-of-centre party. Having said that, there was one deal I recall, which I think you were involved in, with the SNP, which became very public, on Maastricht. That damaged the SNP for a period. I am trying to remember the details of it.

The Chairman: So am I.

Professor James Mitchell: There was a deal. It was a committee of the regions, as Michael has reminded me.

Lord Judge: May I just interrupt? The transcript will not show who you were pointing at.

The Chairman: But the reply will. Let us move on.

Q157 Lord MacGregor of Pulham Market: I wanted to come back on my question. We will very much look forward to reading your book. Earlier, you were talking about the impact—in 2011, I think you said—of the perceived competence of the then Scottish Government. To what extent did the role of the media, the very substantial and usually favourable coverage of the SNP, as I understand it, and, to some extent, the hostility that there has been to the UK Government in the media play into that? Could you say something about the role of the media?

Professor James Mitchell: The media, in terms of the press in Scotland, has become a lot less significant in politics, as elsewhere. The number of people who read newspapers has declined; their impact, even among those who do read newspapers, has declined. It is fair to say that the SNP were given pretty favourable coverage in the media, particularly after 2007 and for much of that Parliament. That changed after 2011, it has to be said, but overall the press has become a lot less important.

Lord MacGregor of Pulham Market: Including television?

Professor James Mitchell: Television was broadly fair. I do not think it could be seen as either pro or anti-SNP. Of course, the SNP, after devolution, has a large number of elected Members and all that goes with it, and so it has a platform. Devolution gave the SNP a platform. It became a credible alternative Government for the first time, as it was never going to be credible as an alternative Government at Westminster, and that played into the perception that here was a serious party. Devolution, I argue, was a crucial stage in helping the SNP.

Q158 Lord Judge: We have heard from you that the way to save the union is to allow each of the constituent members to have its own version and view of the union, but we have also heard from you that it would be very sensible to have a series of agreed principles about what the union is and represents and should be about. My question is: should we have a statute or charter of the union, which sets out the principles, or should we leave it in its present unclear, uncodified state?

Professor Michael Keating: I would strongly advise you to leave it undefined, for the reasons I was suggesting earlier on. The union has multiple meanings that all overlap. They are not radically different; they overlap in complex ways. This is reflected in citizens’ perceptions of the union in Scotland, and the same in Wales. Almost everybody in Scotland feels a degree of Britishness. Some people feel more or less, and that is fine; that makes it work. At the social level—the level of ideas and symbols—I do not think there is a problem, but there is a danger in saying, “In order to be British, you have to sign up to this, that and the other thing”. Now, imagine, in Northern Ireland, if in order to sign up to certain values you had to be British. That is something they have deliberately avoided. It is not so bad in Scotland; things are not so polarised here, but the same thing is there.
I am also very suspicious of all this talk about universal rights being called British values. Universal values are universal values. They are British, but they are also French, they are Scottish, and there is not a lot of dispute about them in the United Kingdom. We know what they are and we respect them, but if you say, “Well, those are British”, then you are inviting people who do not feel British to say, “Somehow, I am out of this”. That is very dangerous indeed. Other countries have gone down that road. The French have got hung up on that, with very unfortunate consequences. I would leave that alone.

When I talk about principles, I am talking about institutions. We can have people whose fundamental long-term aim is really very different, but, in the meantime, we have to live together. People realise that. We have had a vote about independence; we voted against it. People have to respect that, but, in the meantime, they are free to continue to say, “In the long term, I want independence, and you want union”, or vice versa, whatever it might be. I would focus on principles to do with things that really matter and—I mentioned this idea of territorial solidarity and how we distribute the resources—how we can agree on a formula for it that we can all live with. Then I would focus on practical arrangements, and, if English votes for English laws is the problem, because people think it is a problem, let us find some way of addressing that.

Finally, I would say that the ideal solution for the UK problem would be federalism, which would solve all kinds of problems, but we are not going to get it. Politically, we are not going to get federalism, so everything is going to be second best. Everything is going to be a way of getting around the fact that there is a federal logic here in Scotland that is not shared by people in England. If that sounds like muddling through, it is muddling through at the institutional level, but I do not think there is a crisis. I do not think there is a real problem here, despite the near-death experience in the referendum. Even most people who voted yes in the referendum still have this sense that “We are part of the British tradition and we share things with other people on this island”.

The Chairman: You all stick with your answer to the first question, which was more or less what Professor Keating has summarised: the danger of spelling out the details of the union?

Professor Neil Walker: There is a double bind here, which we cannot overcome. The principles could be so abstract that we then have to flesh them out in a very particular way. If you are talking about transparency, democracy or the rule of law, there is nothing necessarily British about these. No one is necessarily going to take objection to that, but, if you make them more British-sounding values, then there will be an objection. It is either so abstract as to be almost meaningless, or so particular as to be controversial.

Also, at the institutional level, if you move towards something like a charter or a statute of rights, then it cries out constitutionalism-lite. What you are saying is, “We cannot have a written constitution, and this is what we are having instead”. You either simply fail very publicly to have the written constitution—which, presumably, is not the point of the exercise—or you end up with something that looks like a light variation of it. If you do that, then immediately people will say, “Were we properly represented? Was this a joined-up constitutional process?”.

Lord Morgan: There is a risk that, if you went down that route, you would be creating the very level of dissonance that would ultimately lead to break-up.

Professor Neil Walker: Yes, whereas if you concentrate, like Michael says, on these more specific things like the fiscal agreement, et cetera, you might actually get somewhere.

Q159 Lord MacGregor of Pulham Market: When we were talking earlier about the question of the social union and the impact of the fiscal framework, you included English votes for English laws in
your answers, so can I ask a specific question about that? What impact could English votes for English laws have on the union here in Scotland, and is there a better answer to the English question than English votes for English laws?

Professor James Mitchell: There is a prior question, with due respect, and that is how we should discuss the English question. We are rushing ahead and trying to find a solution, rather than discussing, deliberating and negotiating. That is part of the problem. There have been wonderful, elaborate solutions and so on and so forth, but they have never carried public opinion. We have not engaged with the public on all these things, and that is a danger. That is a real problem.

Lord MacGregor of Pulham Market: “All these things” being not the fiscal framework; you mean the English laws.

Professor James Mitchell: Just the English laws. One of the things we could do with is some kind of forum in which we discuss how we should reach agreement, and it has to be agreement across the political parties—because there is a party-political divide on this—and across central and Scottish government and Welsh and Northern Irish assembly government. We need to find a way in which there is proper communication. We are getting proposals on the table, to which people have to respond, and we are responding to them in this very adversarial manner, rather than finding a way of saying, “We have a problem here. Let us look at what you would like to do, and let us discuss it properly”. We are rushing ahead too quickly, and that is one of the reasons why the various schemes have failed to reach a resolution or an agreement. We need to find a way of gaining agreement before we decide on what that should be.

Professor Neil Walker: There is a lot of contrived taking of offence in this debate. It did not help that David Cameron came out so quickly after the referendum. Someone should have anticipated what the reaction to that would be, but that is old news. When I hear the discussion on English votes for English laws, I sometimes get frustrated at the contrived taking of offence about it: the idea that, somehow, the mother of all Parliaments is suddenly becoming an English Parliament for certain purposes, where all you are saying is that for some limited purposes there should be a kind of double veto between the English MPs and the other MPs.

The second argument is a more substantive argument, based on the fact that there will be knock-on fiscal consequences for Scots law of any English legislation. That takes us right back to the heart of the matter, which is that, if you can resolve the fiscal question, then some of the institutional questions around English votes for English laws disappear.

Lord MacGregor of Pulham Market: Some.

Professor Neil Walker: A lot of the outrage associated with it would disappear, as well. I agree with what James is saying: there are prior questions, and, until we can resolve the fiscal questions, then you are going to continue to get the somewhat manufactured outrage about the English votes for English laws question.

Lord MacGregor of Pulham Market: A finding in January 2015 was drawn to our attention by Professor Curtice: both Ipsos MORI and Panelbase found that just over 50% of people in Scotland accepted that Scottish MPs should not be voting on issues that do not affect Scotland.

Professor Michael Keating: That has been true for a very long time, if you asked them that question, but most people do not think about it most of the time. Similarly, in England, most people do not think about it, because it very rarely happens that Scottish MPs are decisive. It may happen more in this Parliament, because it is not just Scottish MPs but nationalist MPs, and the Government have a small majority. But it is symbolically important. You can understand why people...
in England find this very provocative, when Scottish MPs vote on Sunday trading, fox hunting and so on. Because it is politically sensitive, an answer has to be found for it, and I am not convinced that the present answer is the right one.

Lord MacGregor of Pulham Market: Have you a better one?

Professor Michael Keating: No. The principles of the McKay commission were rather clearer than what we finally got. That would have been a better one, at least. But there is no answer to the West Lothian question. You just have to find some way of working around it, some kind of compromise.

The Chairman: On that positive note, we will draw things to a conclusion. We are most grateful to the three of you. You are all extremely busy, and, given your distinguished backgrounds and your knowledge of these matters, we are very grateful. Thank you very much indeed.
Owen Kelly, Chief Executive, Scottish Financial Enterprise, and Garry Clark, Head of Policy and Research, Scottish Chambers of Commerce

Q168 The Chairman: We are very grateful to you for being here early. As you can see, we had a slight hiatus because our last witness answered our questions so briskly. We are very grateful to you for being available, in particular in your case, Mr Kelly. I know you are no longer in the position of chief executive of SFE.

Owen Kelly: This is my last outing, so it is very appropriate.

The Chairman: You are ending on a high note. We appreciate it. We were very keen to get the views of the business community on where things were. We are talking to trade unions as well, and to the voluntary sector and so on, but we felt we really must cover the whole area if we could. I will dive straight into the questions that we have. The first one that we want to ask is: how much is business affected by the devolutionary process in Scotland and between Scotland and England?

Garry Clark: It is fair to say that it has been very high on our agenda for some time. It has been a constant source of conversation between us and our membership in various chambers of commerce across Scotland, particularly over the last three or four years and during the referendum process, but prior to that as well, and through the process that eventually culminated in the Scotland Act 2012.

The Chairman: Can you give us some examples, some background?

Garry Clark: As the debate has moved towards the change in the nature of the Scottish Parliament, from being a Parliament that was largely about spending money to being a Parliament that is increasingly about revenue-raising as well as spending those revenues, that has made a lot of our members take much closer notice of what is happening, both in the Scottish Parliament and in terms of the wider debate around the powers of the Parliament. Clearly, they are looking at potential impacts. The work of this Committee is extremely important in trying to identify some of the impacts. There is some concern out there about the unintended consequences of further
devolution and perhaps a general feeling that with greater levels of power would come greater levels of accountability. At the same time, there are real concerns about what that could mean in practice in terms of a growing differential, particularly in tax terms, between the Scottish position and the UK position.

**The Chairman:** Do you have an accumulated record of points of complaint or concern from your members that you can brigade under certain headings, or is it more general?

**Garry Clark:** A lot of the feedback we had been getting over a concentrated period of time, particularly between 2011 and 2014, was probably encapsulated in the response that Scottish Chambers of Commerce put into the Smith Commission in October 2014 and the correspondence we have had with politicians both at Holyrood and Westminster since then. We would be more than happy to share that. It is fair to say that there are conflicting views, as you would expect, among the business community, but certainly a degree of interest and some concern.

**The Chairman:** We would be very grateful if you would send us a copy, because I do not think we have seen it. I have not personally seen it.

**Garry Clark:** I am happy to do that.

**The Chairman:** Mr Kelly, from the point of view of Scottish Financial Enterprise, how do you see the situation?

**Owen Kelly:** The Committee is well aware that how financial services operate is shaped by financial regulation, of course, and by taxation primarily. The impact of devolution in general terms, in the round, on our industry has, to some extent, been mitigated by the fact that the big-ticket items are still part of the UK and are organised out of London by the Bank of England, the Treasury and so on. I will not say we have less interest, but, in a certain sense, we have less direct interest in what has in the past gone on at Holyrood, because the big things that affect international competitiveness are still determined at UK level. Having said all that, the responsibilities of the Scottish Parliament are very, very material for our industry in terms of skills, infrastructure, a whole load of things. Therefore, there is a recognition of the importance of the Scottish Parliament and an eagerness to engage and work with the devolved authorities.

In terms of the sorts of things Garry was touching on about where the shoe rubs, where we see awkwardness, with the new powers coming to the Scottish Parliament, people in our industry probably feel we are entering a bit of a new phase. The capacity for the Scottish Parliament to shape our operating environment is growing by quite a jump. We are all familiar with the process we are going through, but having the capacity to shape a different income tax system in terms of bands and all the rest of it creates real possibilities for significant differences of approach. In a way, that has upped the ante in terms of the task of engagement with the Scottish Parliament and devolved Scottish politicians. As you kindly said, I am moving on from this role, but that is something my successor will have to take very seriously. Perhaps because of the distribution of responsibilities, it is something we have not always prioritised in the past.

**The Chairman:** Yes. We will come on to taxation. At the moment, I am trying to ascertain the degree of uncertainty, of concern, that may be affecting business and the degree of confidence or lack of confidence that there is on the way the wind is blowing. For example, in your sector, in the financial sector, has employment been expanding? Has investment been expanding in the last year or two? What has been happening?

**Owen Kelly:** It would be astonishing if the sort of uncertainty we have just lived through, having a referendum on independence, had not affected business. That would be really astonishing. Political
uncertainty always affects business decisions, and Scotland has not been any different. In the course of the particular moment of uncertainty around the referendum, I think that did have a material impact. Some of that was public; much of it was not, in my own industry, for obvious reasons.

Perhaps it is worth acknowledging that, from the point of view of a company of the kind that I work with, there is not really anything to be gained by being public about your risk management. That is just in the nature of private business on the whole. It is different if you have listing responsibilities and, as we saw with some of our members who are public companies, they did have to talk a bit more about the sort of contingency planning they were making.

But that was the referendum. Obviously that is past. Is it still having an effect? I think it is, yes. As I say, it would be astonishing if it was not having any effect. Does that mean that people are wanting to move offices? No, but does it mean that perhaps people are taking a bit longer to make decisions? I know there is stuff being written into contracts of people who are moving here, to try to offset the uncertainty from an individual perspective. It would be amazing if these things were not happening, because it is just part and parcel of how business deals with uncertainty.

Q169 Lord MacGregor of Pulham Market: Given the position of a lot of your members, how much does the outcome of the fiscal framework concern them?

Owen Kelly: It concerns them quite a lot. I would not say that they are mobilising their internal resources to get involved in the debate. There is a recognition that making the Smith proposals workable is a real challenge. People in our industry are, in a sense, watching and waiting, rather than seeking to get involved and try to shape it, because it is very much a political process. There are clearly still some quite big questions about how the accountabilities that flow from this new framework will operate. If I had to characterise it in very general terms for what is a very diverse industry, I would say people are watching and waiting to see what happens.

Lord Cullen of Whitekirk: When you were asked about uncertainty, were you thinking almost entirely in temporal terms—in other words, once it is clear how the Scotland Act, if it becomes an Act, works out, everything will settle down—or is there a longer-term concern as to that perhaps not being the end of the story, and possibly some further changes after that might affect confidence in investment?

Owen Kelly: As in we might have another referendum on independence?

Lord Cullen of Whitekirk: Yes.

Owen Kelly: Yes, that has not gone away. The political environment means that it has not gone away. There is still lots of talk by very prominent political leaders about the possibility of having a further referendum. We have an election next year. We will see what the outcome of that is. Depending on whom you go up to in any pub near any financial company, you will probably hear different views of people’s expectations, but I do not get the feeling that most people think we are fully settled yet. That does not mean it cannot come about, but at the moment, as long as people who have the political goal of independence are in many ways in the ascendant and talking about it, seen from a distance that looks very much like it is still on the agenda.

Q170 Lord Judge: In relation to both your different areas of commercial and business enterprise, is there a different impact between the ways government regulation and delivery operate in Scotland and in the rest of the United Kingdom? If there is, when is it going to stop? Perhaps not when is it going to stop, but how are you going to make it stop, if you wish it to?
Garry Clark: That is a very interesting question, because that probably goes more to the heart of devolution per se, rather than necessarily the changes that we are in the beginnings of experiencing.

To take up some of the points that Owen has just made about the process of change, to some extent it is, particularly for smaller businesses, quite a bewildering pace of change. We have a situation where there is a Scotland Bill going through Parliament still, which is going to introduce a whole raft of new changes in terms of taxation in Scotland. We have not even seen all the implementation of the 2012 Act yet, because income tax does not come on stream until next year. Small businesses in Scotland, and even some medium and large-sized businesses in Scotland and elsewhere in the UK, it has to be said, where they have Scottish domiciled employees, are struggling to come to terms with something that is happening next year, which is the result of an Act that happened three years ago. In the meantime, your Lordships are dealing with another Bill, which is going to change things again in two to three years’ time. From that point of view, there is a very bewildering pace of change.

In terms of the regulatory environment, that is something that has differentiated between Scotland and the rest of the UK, for better or for worse, over the last 16 years of devolution. We have seen the Scottish Government, and Scottish local authorities for that matter, implement regulation, sometimes in a more complicated, sometimes in a less complicated way than is happening in the rest of the United Kingdom. That is a challenge for many businesses.

Advances that have happened in the rest of the UK, such as the single authority principle, have taken longer to apply in Scotland, so businesses have been faced with a complexity in Scotland. Within Scotland, there are 32 different local authorities, all with regulatory functions, and some businesses have to interact with a range or all of them, in addition to the Scottish Government and UK Government. It is a bewildering array of authorities and regulatory bodies that we are subject to, so there are definitely challenges in that. Despite the fact that the Scottish Government have talked a lot about how government could be done better in Scotland, there are probably not many great examples of that being put into practice, in terms of a fundamental change for the better in the way that business can interact with government at a local or a national level.

Owen Kelly: I would agree with that and, as I said a moment ago, the fact is that financial regulation, which is the big thing for shaping our environment, is absolutely at UK level. There is no devolution there, and I do not think under EU frameworks there could be. None the less, for all the waves of financial regulation that have come at the industry, all for understandable reasons, it is very clear who is responsible and who is doing it. Just to add to what Garry was saying, there is certainly a sense among the Scottish authorities—it is probably a statement of the obvious—that the dominant political party or movement has a single, very strong political goal, which it is absolutely clear about. That seems to perhaps encourage the idea of being different and doing different things.

The Chairman asked for examples, and an example is that there is a proposal to have a Scottish Business Bank. The idea is to have an entity that could be like a public sector investment bank. There is already the British Business Bank, which does all the same things. Do we need one at Scottish level? I do not know. The jury is probably out on that, but it is an example of the sense of wanting to do something that is Scottish, even though from a completely technocratic, business perspective that is really a political choice, rather than one based on the detail of policy effectiveness and so on. The political climate is one where we expect there will be a continued interest in doing things either to emphasise the unworkability of the current constitutional
settlement, which is obviously going to be part and parcel of things, or to continue to create the sense of Scotland being sustainable and self-standing in its own right.

Lord Judge: Again, from both your different perspectives, do you see anything in what either of you have described as undermining the union, longer term or short term?

Garry Clark: As to the regulatory functions, I am not sure that there is necessarily anything game-changing there, in terms of differentials between Scotland and the rest of the UK. I cannot think of any examples where there would be something that materially changed that relationship. Possibly the risk there would be more in terms of taxation rather than the regulatory environment, because we have, over the past 16 years, grown used to differentials. There are differentials whenever you have local authorities doing one thing over here, environmental agencies doing another thing over here, the planning authorities doing something over here, licensing doing something. There is always a diversity and different ways of addressing and reaching a solution to a problem, even within Scotland, or within England, Wales or Northern Ireland, never mind across the UK. It is taxation that creates the biggest potential fault line.

Owen Kelly: It depends what you mean by the union. From our relatively narrow perspective, the single market that currently exists for financial services throughout the UK is seen very much as what makes the UK the market for financial services that it is. We are already seeing some impacts on that. For example, the powers that are in train for personal income tax have led to a lot of work over the last few years around the treatment of personal pensions tax relief. That is a fairly narrow thing, but there are implications there for how pensions are sold throughout the single market that is the UK.

If in a few years’ time, following the powers recommended by Lord Smith, we start to see a different type of personal tax structure and framework, then I guess different products will be needed from the financial services industry, perhaps in relation to investments and other things. There comes a point at which you start to lose the single market. If we see that as underpinning the union, then one could say that, while it is not necessarily undermining the union—that might be a bit dramatic—there are things that start to chip away at the UK-wide frameworks that support an entirely free and untrammelled market for providers from any part of the UK.

Q171 Lord Morgan: We have heard in a number of connections about how individual citizens can often find it rather difficult to see at what level of government responsibility decisions are taken. That is both in terms of, as it were, Edinburgh and Whitehall or Westminster, but also taking account of the asymmetry between the different nations of the United Kingdom. That is a problem that I know in Wales is particularly sensitive. Is this an issue for business at all?

Owen Kelly: You probably have a better answer than I have. Very quickly, I would say that it is not necessarily a problem, but it requires quite a lot of careful attention. Many people in business do not really spend their lives following this stuff, because they are making a success of their business. There is sometimes, for reasons I completely understand, a tendency to assume or suppose that one Government has responsibilities that it does not necessarily have. One of the things we have been trying to do—and I hope Garry would agree—is to look for ways in which we can bring around the same table the Scottish Government and the UK Government to talk about the things that affect our industry. That is not always easy to achieve, which is, again, understandable: there are different political parties in Government. But I think people have now come to accept the task of having to take our own steps to ensure co-ordination that suits our interests. I suspect that is true of other sectors of the economy and other areas as well.
**Garry Clark:** That is right. I would agree with that. We tend to think about Governments in plural, in terms of the Scottish Government and their role and the UK Government and their role. Sometimes there are areas where you need to deal with both in order to get any kind of workable solution. That is where a lot of the issues round about the fiscal framework are important. Again, as Owen has said, it is on our minds, but we will probably allow it to come to a conclusion before having to work out how we deal with the consequences of it.

In a practical sense, looking at the range of powers that exist in the Scottish Parliament and UK Parliament and the differential there, during the course of the independence referendum in 2013 and 2014 we carried out two pieces of research among our membership. We asked them what they thought the main issues were in terms of the referendum debate. In terms of tax, the one that usually came out on top was business rates, which has been devolved since 1999. Businesses are not necessarily aware of that. There are good reasons for that, in terms of the Scottish Government’s decision to shadow in large measure the headline rates of the uniform business rate, as was, I suppose, in the rest of the UK. There will be necessary changes coming to that, and maybe more of a distinction will emerge as a result of that. But that is one example of businesses lumping in the same basket a number of taxes, whether it be income tax, which the Scottish Government has theoretical partial control of at the moment, and will increasingly have greater control of; business rates, which it has entire control of; and issues like corporation tax, where it has no control.

Of course, as business representatives, it is our job to speak to the relevant politicians no matter where they might be, and that we do. But I am not too sure many businesses will be able to put different things in the boxes of reserved and devolved powers, and I think the same is true of most individuals up and down the country.

**Lord Morgan:** Yes, that is very true.

**Lord MacGregor of Pulham Market:** Following on from that, what impact might the devolution of income tax rates, and potential divergence in rates and bands, as you just referred to, between Scotland, England and Wales, have on business?

**Garry Clark:** We are beginning to see some emerging thoughts on that from the business community in Scotland. As I suggested earlier, many businesses are probably still getting their heads around the tax changes in terms of the Scottish rate of income tax coming in next year. That is a tax we would expect the Government to maintain at a relatively neutral level, in terms of the current overall rates of income tax that we are subject to. There are powers contained within the Scotland Bill at the moment that would allow the Scottish Parliament greater leeway in terms of moulding the bands and the rates of those bands. We are beginning to see some of the potential political use of that power, in that we have had the land and buildings transaction tax coming in this year, 2015-16, and replacing stamp duty land tax. The current Scottish Government have been very open in suggesting that it be used in a redistributive way, by imposing higher rates at the top end and having a greater level of exemption at the bottom end than exists in the rest of the UK.

A lot of businesses are looking at that and they are looking at the same Parliament acquiring powers over income tax. I think the Scottish Government have said in the past that, under the Scottish rate of income tax coming in next year and the way that will operate, they do not see particular merit in changing the rates of tax, because, if you raise the top end, you would also be raising the bottom end. That is a disincentive and it does not provide that redistributive quality that the Scottish Government sought to achieve with the land and buildings transaction tax.
Given freer rein, we are beginning to see politicians of various parties coming forward and suggesting perhaps a return to the 50p top rate of income tax in Scotland. That is something that we are looking closely at. Very many of our members would suggest that we want to try to bring investment into Scotland, to bring talent and people into Scotland, to acquire or build and develop more headquartered business functions in Scotland. A higher rate of tax in Scotland than the rest of the UK at the top end may not be the best way of doing that. That is something we are beginning to look at.

We would want to see any divergence in terms of rates of tax providing a more competitive place in Scotland to do business and attracting and retaining more high-quality, talented people in Scotland, not providing more reasons for them to go elsewhere.

**The Chairman:** You say it would fail to attract people in if it went up to 50p. Would it act as a disincentive to people who are here, remaining here, or might some individuals or even businesses move out?

**Garry Clark:** Businesses will look at the terms and conditions and the environment in which their staff are operating. They will look for the most competitive way of operating. If that means that some people might be diverted out of Scotland as a result, I am sure businesses would consider options. If they were trying to attract staff to come to Scotland, they would want to make sure that that was at least as competitive as offices in the rest of the United Kingdom or elsewhere in the world.

There is potentially some benefit from the ability to raise or lower taxes, but there is also a risk attached to that. I suppose politicians in a Scottish sense, in the Scottish Parliament, are used to spending a chunk of money, and, by and large, that chunk of money coming to them in the form of a block grant from the UK Government. Having a limited basket of taxes and the ability to manipulate some of those taxes may not always result in what they assume the result will be. If they think increasing the top rate from 45p to 50p will raise £X, they may be mistaken in that assumption. Scottish politicians, with the best will in the world, have not had to make those kinds of decisions within the Scottish Parliament before. As to where they have made decisions, business rates is one example: we have seen that go up by 40% in terms of revenues over the last five years, so we will all be looking with great interest to see what the various parties are putting forward in terms of the manifestos for the elections next year.

**Owen Kelly:** To echo Garry, the working expectation is that taxes would go up rather than down, which people are looking to be indemnified against in contracts and so on. I suppose the overall impact of this, to come back to the single market, could be an effect on labour mobility. Seen from the UK overall economic efficiency perspective, then that may not be a good thing. Having said that, we already live in a world where some of our members will say that they can operate in Glasgow with people at least as good as the people they have in London but at 40% cheaper, because of office rents and all sorts of other things. There are a number of factors in play.

Having said that, I think everyone’s expectation, as Garry has said, is that there will not be any early moves to introduce difference. But, when the powers are there for something more redistributive and to pursue particular policy goals through the tax framework rather than just have the rates, then that is probably when people will be expecting more difference to emerge.

**Q172 Lord MacGregor of Pulham Market:** I know we are not there yet, but would divergent corporation tax rates across the UK be problematical for Scottish business?
Garry Clark: I suspect Owen will probably have more to say on this than I, but our organisation represents members of all shapes and sizes. Not all of them, clearly, pay corporation tax. Some of them may pay other forms of tax, whether that is income tax, capital gains tax, et cetera. We looked at this as a network in some detail probably about 2011, when the Scottish Government were coming forward with some proposals in advance of the Scotland Act 2012 about the devolution of corporation tax. There were mixed views among our membership. At that time, the Scottish Government were proposing a potential 3p cut in the rate of corporation tax over and above whatever the UK rate happened to be. At that time it was about 26%. It is now 20% and falling, so that is perhaps less relevant now than it was, and that offer does not seem to be on the table at the moment.

Some businesses were attracted by that, but I think probably more businesses said, “Yes, it could set Scotland apart in providing a lower tax regime”. Whether 3p would have been enough to do that I do not know, but I think Scotland has to market itself on the basis of a number of factors. As Owen has alluded to, our skills base, our excellent universities, our quality of life, all those things would come in alongside rates of corporation tax as an attraction for Scotland as a place to do business.

Speaking to a lot of businesses, certainly ones that operate throughout the United Kingdom, there is a concern about devolution of corporation tax. Many of those businesses believe it would create an additional internal administrative hurdle for them to overcome. The benefits, if there are any—and of course we do not know what the rate of any devolved corporation tax would be—may not be worth the hassle of what they would have to put up with in order to pay that separate rate of tax in Scotland. That said, a lower rate is and may be attractive to a lot of businesses in Scotland, but that is not a given.

Owen Kelly: We approach these issues trying to make as few assumptions as possible about whether rates will go up or down. Clearly, expectations at the moment, because of the Scottish Government’s rhetoric, are in one direction. Most of our members operate throughout the UK. They employ people doing operations throughout the UK. Corporation tax is a tax on activity, so from their point of view it introduces that internal cost and complexity of having to account separately to two different tax authorities, presumably, about what you are doing. That is complex. In other economies where this happens, there is lots of stuff—we already have it in the UK—to prevent transfer pricing and so on.

It also raises a question: if one imagines that, then the accountability for the impacts of a decision on corporation tax need to be as clearly transmitted as possible to those making the decision. There seem to be some things that still make that a little difficult. One, for example, is that, if you want to move your registered office from the jurisdiction of Scotland to the jurisdiction of England and Wales, or the jurisdiction of Northern Ireland, or in any direction, it is a more costly and complicated process than it is to move from Cornwall to London within the one jurisdiction. In a way, that is a market distortion. Should companies, in theory, not be free to respond to the different decisions that have been taken, the tax competition, I suppose?

It is an archaism, as I understand it. There is no policy reason for this. It is just to do with the historical difference of having three legal jurisdictions within the UK. Some of those kinds of things need to be ironed out so that, if you did contemplate corporation tax, the consequences of the choices made would be clear.

Q173 Lord Hunt of Wirral: Staying with tax for a moment, on decentralisation, the majority of taxation is raised nationally, whether it is at UK level or now to be devolved to Scotland. Should tax
and regulation powers be devolved to a lower level than the UK and devolved national Governments? We have been hearing some evidence to that effect. Lord Smith of Kelvin challenged the Scottish Government, the Parliament, civic Scotland and local authorities to consider ways in which local areas could benefit more, but seemed to miss out business and commerce. Are you involved in any way? Is this something that you would like to see devolved?

_Garry Clark:_ One of the obvious local examples of a tax would be business rates that are paid locally and, notionally at least, are redistributed, as the Scottish Government would tell us, in full to the local authorities where they are raised. Of course, the revenue support grant applied to those local authorities means that we are, in effect, where we were before, in terms of essentially a needs-based redistribution of business rates income across Scotland. Of course, that reduces the incentive on local government to do anything locally that will create wealth and jobs in that local area, because it is not necessarily going to benefit from the results of that.

_Lord Hunt of Wirral:_ That is as it is now. What would you like to see, and are you being consulted?

_Garry Clark:_ We have been consulted quite a lot over the past five years in general, specifically on the issue of business rates, but we have not seen an awful lot happen in response to that. The Scottish Government have created some minor powers. I cannot remember the name of the Act, but an Act has come into power this year that provides local authorities with the power to reduce business rates in their local area. But it is such a minor power and there is not really much in the way of an incentive provided to that local authority, for the increased business rates that are generated as a result of changes or a reduction in business rates locally, to be worth that local authority’s while changing it.

We are beginning to see some changes at a UK Government level, where the Chancellor has indicated that local authorities may be able to reduce business rates downwards, and only upwards in the case of specific infrastructure investments in large cities or city regions. That is the beginning of the kind of thinking that we would like to see within Scotland, thinking more creatively about how we use a local tax like business rates to incentivise economic growth across Scotland.

_Owen Kelly:_ From a financial services perspective, it is relatively simple in a sense. As an industry, we do best in open markets that are as barrier-free as possible. As I say, I think under EU law this is possibly not permissible anyway, but if one were even to theorise about devolving aspects of financial regulation below member state level, perhaps even to city region level or whatever, one would run into the same problem of undermining the single market, because how individual financial services provision is supported by capital requirements and all those kinds of things would then have to fragment. It would probably be impractical to contemplate it specifically for the financial services industry.

**Q174 Lord MacGregor of Pulham Market:** Can I ask you one last question? Are there any points that we have not raised with you that you would like to put to the Committee?

_Lord Morgan:_ Can I suggest one? Is that possible?

_The Chairman:_ Yes, unless they are about to, unprovoked, offer one.

_Lord Morgan:_ I was wondering about Europe. The Scottish Government appears particularly sympathetic towards Europe. Business is generally thought to be so, and business was also very sympathetic to maintaining the union. Is that a possible bond that you might have?

_Owen Kelly:_ We have the EU referendum coming up and I think the organisation I represent will follow the same broad approach as we had in the referendum on independence: that is not to
speculate about what decisions might be taken in some notional future but to focus on what we can know. I think the Scottish Government’s support for Europe partly stems from the fairly long history of the SNP favouring the idea of Scotland being an independent country but a member of the EU at the same time, so it certainly fits with that.

We are finding in our conversations with some campaign groups that the conversation starts to move quite quickly to the “what if” question. If the UK votes to leave, what if Scotland somehow expresses a slightly different view, maybe 55% in favour or whatever? What will people do? These are such hypothetical questions as to be almost impossible, but, as with the Scottish referendum, it will depend on the customer base and on how important it is to be in the EU for any company and where all their customers are. Some 90% of our members are in England. There is not a one-size-fits-all answer to that question that comes up, but in broad terms I would say that our industry does think the UK financial services industry benefits from the UK being part of the EU. On that issue, we are absolutely at one with the Scottish Government.

Garry Clark: We have been doing a bit of research with our members in Scotland, and across the United Kingdom through colleagues at the British Chambers of Commerce as well, measuring business sentiment and tracking how that changes over the period. We have only really had one snapshot of opinion so far, which was taken in August and September of this year. We found that, if a referendum had been held at that point, about 74% of our members would have voted to remain within the EU, according to what they told us in that poll, and 14% would have voted to leave. That said, we had a big chunk, probably about 40% overall of those businesses, who said that their vote would be influenced by whatever came out of the Prime Minister’s negotiations. Of course, we await the results of that with great interest. We are going back to our members again in January and getting their views. As an organisation we remain, as we did with the independence referendum, strictly impartial, but we are perfectly happy to share the views of those members who wish to share them with us.

Lord MacGregor of Pulham Market: Can I take it, for the sake of the record and the transcript, that the answer to my last question after you consulted your notes was no?

Owen Kelly: Actually, I was going to respond. People sometimes look to business organisations and companies to have opinions and express views on political questions, whether that is about devolution or anything else. As I may have said earlier, for most companies there is almost never anything to be gained from that. I would say that the companies I work with will really just fit in with whatever political settlement is reached. That is not the same thing, of course, as saying that nothing matters and that everything is just going to carry on, whatever decisions are taken. If we are trying to understand the consequences for business of how the issues that I know this Committee is looking at are resolved, in a strange way, businesses will not shout about them, in my opinion. It is part of the responsibility of legislators and Governments to make sure that they are thinking them through.

Some would say, “Well, that is your job. You should shout, should you not, if things are not going well or things are going to affect your industry?” Actually, it is a premium for most companies, in my experience, to keep their own counsel. As I say, it is rare that a company will gain from becoming embroiled in a political controversy. In a way, I am, probably unhelpfully, saying how important it is that we try to get these things right. It is not that business is neutral; it is simply that it will respond to the decisions that are made rather than trying to shape them.

The Chairman: That is not unhelpful. I do not think there is any need to shout, but I do think that, if business feeds into Government its views and anxieties—and I hope it does, however quietly—then
there is a better chance of heading off the problem that might cause the row. I am not going to, through you, urge business what to do. They know what to do, but I just make the point in passing. You have been extremely helpful to us and thank you very much indeed for coming. We have filled the time very profitably and we are most grateful to you.
Lord Kerslake, former Head of the Civil Service—Oral evidence (QQ 226-241)

Transcript to be found under Lord O’Donnell, former Head of the Civil Service
The Union and Devolution

1. The significance of the Union is not static. Its meaning and its associations have changed over time, at some points very rapidly. Indeed, the Union has for much of its history enjoyed such overwhelming acceptance in Scotland that there was no need to foster an articulate programme of Unionism. The Union was simply part of the furniture of British life. At certain points Britishness has enjoyed such near-universal acceptance in Great Britain (excluding Northern Ireland) that politics – as between 1945 and the early 1970s – revolved exclusively around class differences within a unified British nation. More recently, of course, that ‘British nation’ has unravelled, and the expression already carries a whiff of anachronism.

2. However, the United Kingdom bears the characteristics of both a unified nation state and a multinational compound. The reasons for this seeming paradox lie deep within the history of the four nations of these islands, and in the fact that the British state absorbed other ‘nations’ before the rise of articulate, well-defined democratic nationalisms in the Europe of the nineteenth century. In certain respects, the Union of 1707 was an early modern arrangement which has persisted, with certain modifications, into the present. At the time the Union was negotiated, ‘nationalism’ (in our modern sense) was not a major determinant of international relations. It is worth remembering that within a decade of the Union the Peace of Utrecht (1713) at the end of the War of the Spanish Succession - regardless of the wishes of the inhabitants, which were then of no consequence in international affairs - confirmed English (by 1713 British) possession of Gibraltar (taken in 1704), and authorised the transfer of the Spanish Netherlands (Belgium) from Spain to Austria.

3. The Union of 1707 is of this vintage. Moreover, there are further complications. The Union was a product of political short-termism, an ad hoc measure to resolve a succession crisis and in so doing avoid a Jacobite restoration in Scotland. After the death of Princess (later Queen) Anne’s last surviving child in 1700, the English Parliament entailed the crown of England on the Protestant Hanoverian line in the Act of Settlement (1701). The independent Parliament of Scotland was reluctant to follow suit, largely because of Scottish anger at the way English interests had frustrated Scotland’s colonial venture at Darien (Panama) in the second half of the 1690s. In the end Union was devised as an alternative method of ensuring the Hanoverian succession. The second Article of Union guaranteed the Hanoverian succession, and only the third united the English and Scottish parliaments into one (though the arrangement as a whole is referred to as the Union of the Parliaments). Union was introduced primarily as an anti-Jacobite measure, and the nature of this new united legislature and other questions related to the Union’s constitutional design were secondary to the achievement of the Hanoverian succession. It is important to bear in mind that the Union of 1707 was not planned as a constitutional blueprint for a united British state.

4. Notionally, the Union of 1707 was a union of two equal sovereign independent states, which happened to share the same monarch, Queen Anne of England who was also Queen Anne of Scotland. However, the fact that this Treaty of sovereign equals was constitutive of the new British state was not – and arguably has never been - reflected in its actual constitutional arrangements. Indeed, the fundamental constitutional problem with the Union is the absence of any clear
recognition that the United Kingdom is a multi-national state, apart from some provisions respecting the status of the Scots legal system and the Presbyterian Church of Scotland.

5. There was no mechanism built into the Union to allow for the expression of Scottish discontent with the will of an English-dominated Parliament, or for the redress of such grievances through formal institutional channels. Instead, from the start, 45 Scottish MPs sat alongside 513 MPs from England and Wales in the House of Commons, with 16 Scottish representative peers in the House of Lords. The equality of the two sovereign kingdoms of Scotland and England that formed the Union was not acknowledged in the procedures of the new united Parliament. Indeed, that Parliament operated as if it were the English Parliament of old, supplemented by the addition of Scottish members. Parliamentary procedures followed pre-1707 English norms, and the Treaty of Union was referred to as the Act of Union.

6. Until recently, the British polity followed the principles of what came to be known as Diceyanism, after the jurist Albert Venn Dicey (1835-1922). Parliament was sovereign, and was the ultimate source of authority in the state, untramelled in the exercise of its will. There are advantages to a Diceyan system of government. When it works properly it ensures democratic clarity, unconstrained by constitutional restrictions or by the interference of judges in the political realm. Straightforward parliamentary sovereignty worked well when there was a two party system of electoral competition across most of the UK. However, when, as recently, the appeal of the main parties has dwindled significantly in regions beyond their electoral heartlands, so much so that no party is competitive across the whole of Britain, then Diceyan principles lose some of their legitimacy. If parties do not enjoy widespread support across the whole of Britain, then the case for a constitutional system which rests on democratic clarity is undermined. Currently, the UK occupies a half-way house between the system described by Dicey and a written constitution.

7. A major cause of Scotland’s estrangement from the UK government has been the so-called ‘democratic deficit’ of the late 1980s. The 1987 election was a crucial turning point in Scottish politics. It placed firmly on the political agenda the question of Scotland’s ‘democratic deficit’. Did the Thatcher government – with only ten Conservative seats out of seventy-two Scottish constituencies – possess a mandate to govern Scotland? Notwithstanding the lack of a mandate in Scotland, the community charge, or poll tax, was imposed on an unwilling Scotland in 1989, a year earlier than in England. Notwithstanding the complexities of the politics behind this decision, including the issue of Scottish rates revaluation, when looked at in strict constitutional terms - in the light of the Union of 1707 - there were no constitutional protections within Britain’s unitary state to halt the imposition of the poll tax on Scotland. Today, devolution notwithstanding, the issue of the UK Government’s mandate in Scotland still continues in certain areas of policy. Indeed, one of the principal factors driving demands for independence - or indeed for ‘devo-max’ - is the desire for home rule within Scotland on domestic issues, particularly taxation and welfare. The SNP’s pre-Referendum white paper Scotland’s Future (2013) promised to abolish the ‘bedroom tax’ in the event of independence. Indeed, the bedroom tax grievance was a recurring leitmotif of a text notionally concerned with independence. The high Yes vote in the Referendum of 2014 was as much a complaint about social policy – the bedroom tax especially – as it was a demand for independence.

8. A suitably reconfigured House of Lords suggests a potential solution to this problem. Lords reform has been an issue in British politics - intermittently - for over a century. It is clear that the House of Lords, while performing a useful function as a revising chamber, does not enjoy universal
legitimacy with the British public. On the other hand, a wholly elected second chamber presents problems for the House of Commons. The House of Lords might, however, provide a shell for a new second chamber reflecting the multi-national composition of the UK.

9. The House of Lords might become the House of Nations, or the House of Nations and Regions, or the British Senate. However, it is worth asking whether this revamped second chamber should represent the electorates of the different parts of the country, as in the U.S. Senate, or the governments of the different components of the country, as in the German Bundesrat. There is a case for following the German model, a constitutional body which reflects the views of the governments of the Länder, as a way of ironing out wrinkles in the operation of devolution.

10. In order to remedy the ‘democratic deficit’ felt in Scotland the House of Nations would need to be given powers to act as a check on the will of the Commons. This would require repeal of the Parliament Acts of 1911 and 1949. In addition, the House of Nations would need to have a very high super-majority threshold (or arrangements allocating veto powers to one of the constituent nations of the UK) in order to satisfy Scottish demands that England – containing about eighty-five per cent of UK population – would not be able to impose its will on social and fiscal policy against the wishes of the other component parts of the UK. In practice, England might not be an undifferentiated whole in the House of Nations/Regions, and one imagines, that the interests of regions in the North of England might align with those of Scotland on many issues. Obviously, the Smith Commission reforms would in themselves go a long way to alleviating Scottish concerns, though already there is some disquiet about matters that will continue to be reserved. A grand gesture, such as the creation of a House of Nations, would go further than the Smith Commission reforms in clarifying and symbolizing the nature of the new Union and a new constitutional settlement. Moreover, it would avoid the problems associated with federation of the UK. In general, political scientists fear that the UK – with more than eighty per cent of the population in one component of the federation and in whose own constituent regions there is no demand for federal autonomy – is effectively incapable of being federalized. A revamped second chamber sidesteps the toils – and potential futility – of a programme of British federation.

11. However, new institutional arrangements will not in themselves be sufficient to hold the Union together. The maintenance of the Union will also require a concerted PR campaign which marries message and policy. The case for the Union has still to be made. The Referendum campaign was largely a missed opportunity in this respect. More attention needs to be given to the way in which the Union is presented.

12. In particular, the term ‘Unionism’ is toxic for many Scots. Jim Murphy, the leader of Scottish Labour in early 2015, denied that he was a Unionist (Herald, 14 January 2015). Similarly, Jeremy Corbyn, campaigning in Scotland, has recently described himself as ‘a Socialist not a Unionist.’ (Herald, 18 August 2015). The problem here is that Unionism has multiple meanings and associations. Unionism describes both the principle behind the Union-state and the ideology of a particular party, namely the Conservative and Unionist Party, which was between 1912 and 1965 known in Scotland simply as the Unionist Party. In addition, the term has strong associations with Ulster Unionism, and by extension with Protestantism. Indeed, when Murphy denied being a Unionist he was emphasising to Catholic voters that he was not a Protestant, despite being a firm supporter of the Union. There is no point in introducing institutional measures which will strengthen the Union, if large parts of the electorate are allergic to the idea of Unionism. There needs to be some reformulation of the language used to describe the UK. Focussing on Britishness
to the exclusion of the *Union* might, perhaps, be a way forward. Britishness and Unionism are not quite synonymous, and the future defence of the Union might well require more discussion of the former and less of the latter.

13. Anglo-Scottish Unionism lacks a central spine. While it is clear that nationalists stand for autonomy and independence, the message of those who wish to maintain the Union has become muddied. Devolution has, indeed, turned out to be a process rather than a single event, but one which proceeds in unplanned fits and starts. A strategy of appeasing nationalism with further concessions of Scottish autonomy and enhanced devolution compromises the notion that there is a corresponding case for cohesion, indeed any Union worth defending. Pro-Union politicians need to establish the point beyond which appeasement of nationalism is futile and self-defeating. At what point does the Union cease to be a proper Union? It might be helpful were politicians to focus on the differences between the economic stabilizers built into the British Union and the difficulties of arranging internal cross-subsidies within the so-called European Union. Social solidarity only operates in one of these Unions; but at what point in a process of enhanced devolution would a frayed and disintegrating British Union become like the European ‘Union’, a union in name only?

14. The electoral system is also dysfunctional. At the Independence Referendum in September 2014, the Scottish electorate divided 55:45 against independence. However, the alignment into Yes and No camps persisted at the general election, with most of the votes of pro-independence voters accruing to a single party, the SNP, while votes of anti-independence voters were spread across the three main parties of the Union, the Conservatives, Labour and the Liberal Democrats. Although there are some correctives built into the Additional Member system used for Scottish Parliamentary elections, this anomalous situation will be replicated in the Scottish elections due in 2016, certainly in the constituency ballots. The problem here is a serious mismatch relating to electoral arrangements, inter-party competition and a further fundamental division over the constitutional question. The current party political divide within Scotland does a major disservice to the No-voting majority. Constructive reform of the constitution will be worthless without the parties themselves rectifying the current party political anomaly.

15. Unionism is dead as an articulate set of principles, if it ever existed. Unionism as an articulate brand of politics was – even in Scotland – primarily focussed on the contested issue of the British-Irish Union of 1800. The Unionism of the Unionist Party in Scotland referred to the Union with Ireland. The Anglo-Scottish Union was so widely accepted for so long that it did not need articulation, and did not therefore give rise to any coherent ideology of Scottish unionism. Things have changed drastically in the last fifty years. Now the Anglo-Scottish Union itself is hanging by a thread; but it still lacks a coherent and widely-accepted rationale, beyond, that is, fear of independence. There is still a majority in Scotland for Union, but the realities of demography will over time whittle away the narrow, if decisive, lead of pro-Union voters. Piecemeal tinkering will be insufficient to maintain the Union. What is required is a dramatic coup de théâtre, something which will transform the popular understanding of British government and the place of Scotland within the British state. This question of popular allegiance needs to be addressed and accommodated, alongside technical issues concerning the operations of government. Symbols matter. What is required is both visible constitutional change, which makes clear the multi-national character of the UK state, and the statement of a coherent case for Britishness.

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13. Are there common principles underlying the distribution and exercise of power in countries with multi-level governance systems?

The assumption of multi-level governance is that power is increasingly dispersed and polycentric. It follows that the principles that underpin multi-level governance are not always formally codified. When describing polycentric governance to students I like to use the metaphor of a ‘marble cake’ compared with a ‘layer cake’.

However, the EU Committee of the Regions has drafted a Charter for Multi-Level Governance\(^\text{64}\). All sub-national authorities are invited to sign up, as well as their associations, and individual politicians. Implicitly, the principles of multi-level governance are of the task-based dispersal of power based on the principle of subsidiarity, with the various levels or centres respecting each other’s competencies, though often with shared responsibilities, and with a premium placed on co-operation and co-ordination, along vertical and horizontal dimensions.

Multi-level governance is a technocratic and de-politicised model. In game theoretical terms, it is premised on the assumption that participants approach it as a positive sum game. In terms of practical politics, the problem with this model of governance is that it is (excessively) rules based, blurs accountability, and limits democratic input and control.

The template for this approach is the European Union (EU), especially after the Treaty of Lisbon (2007), with just under 100,000 sub-national tiers of government implementing over 2/3 of all EU legislation, with high levels of regional/trans-boundary co-operation, and with the presence of non-state players at all levels. Elsewhere we can find similar but less developed processes in Latin America, Asia, and North America, but not on the same scale and not with the same penetration or displacement of what we

\(^{64}\) https://portal.cor.europa.eu/mlgcharter/Pages/default.aspx
traditionally assume to be nation state competences. So, for example, the growing formalisation of Trans-Tasman co-operation has been compared with the early years of the European integration process. But, where policy makers have created supra-national agencies (for example: Joint Accreditation System Australia—New Zealand (JASANZ), Food Safety Australia and New Zealand (FSANZ); Trans-Tasman Therapeutic Products Administration (TTTPA or, simply, TPA)) or pool sovereign decision-making in a COAG ministerial council, trans-Tasman institutions limit the competence of actors to specific issue areas. While the European Commission, Court and Parliament have broad powers over ‘single market’ issues, the planned TPA’s powers are limited to control of pharmaceuticals and medical devices. Elsewhere, the scope of the ASEAN-Australia-New Zealand FTA (AANZFTA) and planned Trans-Pacific Partnership (TPP) is very narrowly defined.

14. Is the principle of ‘comity’ and mutual trust useful in federal or other multi-level constitutions? How is it enforced?

- Do you have any views how a principle of comity might be enforced in dealings between governments in the UK?

The principle of comity is well recognised in theory but difficult to establish and maintain in practice. Comity is best applied in ‘low politics’ sectors such as the mutual recognition of professional qualifications. Around the world we can see the following.

The principle is formally codified in Article 4 of the US Constitution, otherwise known as the privileges and immunities clause (‘The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States’).

In Australia, the principle of comity was sharpened up by a number of High Court rulings on conflicting interpretations of what used to be British Commonwealth Common Law (during the period when the Privy Council was the arbiter of last resort by right, which ended with the passing of the Australia Act in 1986) or Australian Commonwealth Law in intermediate appellate courts in individual
states. Nevertheless tensions remain, especially between residual common law and newer statute law in the various states (on defamation, for instance).

In the European Union, comity is important to the functioning of the Single Market and EU Competition Law has a relatively elaborate enforcement structure, primarily through the Commission and buttressed by the ECJ. EC articles 81 and 82 (renumbered 101 and 102 in the Treaty of Lisbon) are key to this, with a number of ECJ rulings having established the ‘economic entity’ and ‘implementation’ doctrines. A third and more wide ranging principle, the so-called ‘effects doctrine’ remains to be sharpened up by ECJ rulings. Inside the EU, however, the Commission is influential through its links to National Competition Authorities and the network of authorities, the European Competition Network. The Commission has also agreed a number of anti-trust agreements with the US, Japan, and Canada but the practice of extraterritorial comity remains weak.

In Germany the idea of comity (‘Bundestreue’ or ‘bundesfreundliches Verhalten’ in German) is one of the founding principles of the Federal Republic. In a similar process to the one that took place in Australia, the operation of comity in Germany was sharpened up by Federal Constitutional Court Rulings in the late 1950s and early 1960s such as (1) the Concordat ruling on the state of Lower Saxony’s approach to faith schools); (2) rulings on individual states’ right to hold referendums on the possibility of the Bundeswehr possessing atomic weapons; and (3) the ruling on the so-called ‘Television case’, ostensibly about setting up of a second national TV channel but resulting in a comprehensive critique by the Court of the ad hoc and highly partisan manner in which the CDU/CSU government had dealt with the individual German states since the foundation of the Republic in 1949. Difficulties remain in areas of policy were states have sole competence, such as in the recognition of educational qualifications across states for the purpose of entry into Higher Education.

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The *politics* of comity are fraught. What look like elegant working solutions to many in the policy community can be interpreted by citizens as injustices imposed by technocrats with a tin ear (or at least presented to them as such by politicians). In all of the countries I have touched upon, Supreme Courts or Constitutional Courts have had to rule on contentious issues to sharpen up the working of comity. By-and-large these rulings took place in an environment where all of the major actors wanted the process of codification and clarification to succeed.

**Asymmetry and England**

15. Do any other devolved/federal states have significant sub-state regions or nations without devolved powers? Are there are any comparable examples to England?

- **Can administrative devolution to regions or nations substitute effectively for legislative devolution?**

These questions reflect an empirical debate about the extent to which states can find the right mix of ‘self rule’, ‘shared rule’, and ‘symbolic recognition’.

Federal states are often characterised by asymmetrical divisions of power to territories with special circumstances. How that maps out depends on whether the organisation of state powers is based on the so-called ‘residual model’ - in which states retain any powers not formally ascribed to the federal level (the USA in theory) - or on a model in which the Federal level enjoys all powers not explicitly reserved to the states (Canada, in theory). In addition, there are exceptional circumstances that create anomalies in which (normally relatively minor) sub-national units have limited powers, such as in (1) the District of Columbia in the USA; (2) the Australian ACT and Northern Territory; (3) West Berlin’s special status in the Federal Republic from 1949 to 1990. For various reasons, all of these arrangements worked or continue to work.

Devolved unitary states also distribute powers unevenly. Spain, for instance, gives considerable autonomy to Catalonia and Basque region. However I can’t recall an example of where the largest
constituent nation in a devolved system enjoys no substantive devolution beyond the capital. The current arrangements for England fail to find an appropriate mix of ‘self rule’, ‘shared rule’, and ‘symbolic recognition’ and are in my opinion unsustainable.

16. Are there other countries that have a significant asymmetry of powers between regions? Does this cause problems in other countries?

There are many examples of asymmetrical Federalism. For instance, in Canada, Quebec enjoys a number of reserved powers and other privileges, including having three Supreme Court Justices reserved for the province, operating separate health and pension plans to the other nine provinces, and exercising some Federal competences over immigration and employment law within its territory.

Elsewhere, India is a patchwork of 29 States and seven Union Territories and there are special provisions for Jammu and Kashmir (Art. 370 of the Constitution), and also Andhra Pradesh, Arunachal Pradesh, Assam, Goa, Mizoram, Manipur, Nagaland, and Sikkim. Article 4 of the Iraqi Constitution makes special provisions for Iraqi Kurdistan. When Malaysia was founded in 1963 Singapore, Sabah and Sarawak were given autonomous powers (Sabah and Sarawak continue to enjoy more autonomy). In Russia there are 83 Federal subjects but with different specifications and powers from ‘republic’ through to Okrugs (with a significant ethnic minority) and Oblasts.

We also see Asymmetric devolved unitary states such as Spain (Basque Region, Catalonia) and China (Hong Kong SAR).

In terms of the whether these arrangements cause problems, it comes down to the question of whether the particular mix of ‘self rule’, ‘shared rule’, and ‘symbolic recognition’ is working? It appears to be working in Canada and Russia. It might be working in Spain, although the current confrontation with Catalonia is one to watch. But Singapore was expelled from Malaysia in 1965 and constitutional arrangements have clearly not worked in Iraq.
17. What do overseas examples tell us about how new sub-state regions for devolution or federalism are created? What lessons might the UK learn?

There are three points to make here. First, specific arrangements are often introduced as a solution to the dissatisfactions that arise when one or two constituent units feel significantly different needs from the others, as the result of an ethnic, linguistic or cultural difference (Malaysia, Canada, Spain). There is no hard and fast pattern to how successful these arrangements have been. What we can say is (1) too much ‘self rule’ and the ties that bind to the centre become irrelevant over time; (2) too much ‘shared rule’ and the conflicts between the sub-national units and the centre become institutionalised; (3) too much ‘symbolic recognition’ makes latent disputes become more salient not less so (contrary to George Robertson’s 1995 assertion that Scottish devolution would kill Scottish nationalism ‘stone dead’) BUT not enough recognition also stores up problems for the future (England after 1997). The problem for us as analysts is that the causal chain is complex and judgments about the effectiveness of any particular national settlement are often necessarily made with the benefit of hindsight.

Second, as already touched upon, the operating principles that underpin decentralized systems are often established in the abstract and then sharpened up through judicial activism. This is (1) much easier to do when all involved have an interest in making this process work and also (2) works better in political cultures that already accept the idea of judicial activism. One could speculate that in the UK this process would be more difficult than it might be in polities where these two points apply.

Third, and again as already touched upon elsewhere, any solution has to be intuitively fair and not just functionally elegant or pragmatic.

Reservation and devolution of power

18. How is the idea of ‘social union’ reflected in the distribution of powers and resources in other countries?
• How far can welfare/social provision vary between sub-state regions and nations without undermining social solidarity or the overall integrity of a state?

There is a great deal of variance across the states used as examples in this document. In the USA there are limited number of Federal programs, plus state, local, and private providers. It is a model of so-called competitive federalism, where individual states enjoy a great deal of autonomy in establishing their own models (see Scott Walker’s so-called Wisconsin model, for instance).

In Canada there is more of a European-style welfare state, with many programs run by the provinces. Quebec has particular autonomy on social policy but Federal government also runs targeted programs to promote cohesion – including for ‘Indian and Northern Affairs’, ‘Provincial Quebec’, and ‘Northern Ontario’. Thus, the notion of social union is stronger in Canada than it is in the USA.

Australia spends less on welfare as a percentage of GDP than most advanced democracies but paradoxically has also not experienced the cuts to existing programs seen elsewhere. This is partly due to Australia’s recent economic success but also because of the ‘ratchet effect’ that is imposed by its Federal structure. By-and-large, the Commonwealth takes the lead in social provision but the states have a role as well.

In the EU social provision is part of the ‘European Communities’ Pillar of the EU and therefore within the Social Chapter of the Treaty of Amsterdam. The EU enjoys ‘shared competence’ with a role to ‘support and complement the policies of the member states’. In practice this has meant introducing piecemeal legislation to put a floor under social conditions across the EU’s territory (e.g. the 1994 Works Council Directive; the 1996 Parental Leave Directive; the 2003 Working Time Directive).

In Germany the Basic Law empowers the Federal government to use shared competences to maintain a uniform standard of living (Article 72). This commitment is at the core of Germany’s ‘social market economy’ with a network of work-based social insurance schemes, that are cross-subsidised, informed by Catholic social theory, and corporatist in their operation. The Federal Republic’s role is based
on a model of co-operative federalism, with horizontal transfers between states and vertical transfers between the individual states and the Federal level. Unemployment benefit (Arbeitslosengeld) is a Federal responsibility whereas Social Security payments (Sozialhilfe) are administered by the states. Direction comes from the Federal level but this includes input from the states through the Bundesrat.

In terms of the subsidiary question on how far a state can go in paring down its social commitments, a modern welfare state demands some uniformity of provision, an adequate resource base to meet its commitments, and a capacity for central direction. But the degree to which this can be paired back also depends on the political traditions of the State. Thus, liberal democracies such as the UK can probably trim further and faster than more corporatist or ‘etatist’ societies without threatening the integrity of the State, as it is understood by its citizens. Balancing this, however, one could also argue that the UK is constrained in some aspects of reform in that public opinion in unitary states is more attuned to uniform standards of provision than in many Federal states.

19. Which powers need to be reserved to maintain an effective state/union?

- Do these go beyond defence, security and macro-economic policy, to include welfare or taxation?

Defence, security and macro-economic policy are essential reserved powers. Welfare and taxation are not essential but some degree of equalisation or steering capacity is desirable to maintain cohesion (see my previous observation that that public opinion in unitary states is more attuned to uniform standards of provision than in many Federal states).

20. Is there a successful precedent for setting out powers that may be devolved and allowing sub-state nations or regions to apply for those powers when they are wanted?

In preparing this document I could find no precise instance of this happening but - after consultation with colleagues - there are some (more or less) analogous examples that the Committee might want to consider.
The first two are very close to home. In England, it might be argued that the Cities and Devolution Bill offers this 'opt-in' for the major Northern cities (subject to certain conditions). In addition, the Government of Wales Act 2007 contained a set of powers within it that required 'unlocking' by a referendum - so the powers were on the book, but it was in 2011 that they chose to unlock them via referendum.

Further afield, France gives its five Overseas Departments (Martinique, Guadeloupe, Reunion, French Guiana, Mayotte) leeway to interpret laws and 'adapt' them to local conditions as they see fit. Recently the French Constitutional Court has gone further and developed options for autonomy (and even the development of a departmental-level 'foreign policy'), including the possibility of integrating the departmental and regional councils into one. This is clearly a step away from the 'one and indivisible' Republic. In Canada, the so-called ‘notwithstanding clause’ allows Canadian provinces to ‘opt out’ of federal decisions (even involving the Charter of Rights and Freedoms), and Quebec makes regular use of this.

Accommodating devolution at the centre

How do the institutions of the central state accommodate the sharing of powers between the state and sub-state nations or regions?

- Do central governments have senior ministers responsible for the maintenance of the relations between sub-state governments, and the wider health of the union?

As already touched upon, states find their own mix of ‘self rule’, ‘shared rule’, and ‘symbolic recognition’. Some Federal states maintain a strong and active ‘field role’ that often over-rules the local tier (for example Federal Agencies in the United States) whilst other Federal states have very little field presence but rather operate through the individual states (as is the case with most functions in Germany). In addition, Supreme or Constitutional Courts are often the means by which disputes between tiers can be adjudicated. The degree to which this is practical in a given polity depends on the extent to which judicial
activism is compatible with political traditions. Federal states are used to the Supreme/Constitutional Court ruling on disputes between the tiers of government. Can British political culture accommodate this to the same extent?

There are various means by which the territorial dimension can be accommodated at the centre. This could take the form of a:

- ‘Bundesrat’ model of second chamber or upper house, with members nominated from the sub-national tiers of government
- US/Australian ‘Senate’ model of second chamber or upper house, with members elected from within sub-national demois, often using an alternative electoral system to the one used for the lower house
- Additional co-ordinating body, supplementing the second chamber or upper house, such as COAG in Australia (formalised meetings between the Prime Minister, the premiers of the States, the Chief Ministers of the two self-governing Territories and the president of the Australian Local Government Association) or the Council of the Federation in Canada.

In terms of the supplementary question on appointing a senior minister to oversee the territorial dimension, examples might be:

- A single dedicated minister (see the Canadian Minister of Inter-governmental Affairs)
- A set of sectoral ministerial responsibilities distributed across the Cabinet (in Sweden the relevant minister co-ordinates with the Swedish Association of Local Authorities and Regions),
- To bring the secretariat of the co-ordinating body into the Head of Government’s office (in Australia the COAG Secretariat is located within the PM’s office).

21. How important is it for states to foster a sense of national, rather than regional, identity? Which other countries offer successful and unsuccessful examples of this?
National identity remains intuitive with most citizens. English identity has quite a strong regional dimension to it as well but this cannot make up for the failure to symbolically recognise ‘Englishness’. Leaving EVEL to one side, devolution to the English regions would create a more even distribution of sub-national tiers but would not address the need to recognise Englishness. In addition, the decentralisation of England would be in obvious contrast to the process of centralisation that is taking place in Scotland (creating a unified police force, for instance) and would undoubtedly shore up problems for the future as political styles – adapted to and conditioned by structures in which they are forged and deployed - diverge over time.

On the other hand, devolution to an English parliament would create a degree of asymmetry with the other nations of the Union that is also unsustainable. In my opinion the problem appears intractable.

22. Do citizens of other states understand their constitutional structures and the sharing of powers among different state institutions?

- To what extent do you believe it is useful for states to have a documents clearly setting out their constitutional structures?

The evidence from around the world is that citizens’ understanding is patchy at best.

In the USA a national survey of 1,230 adults in 2011 by the Annenberg Public Policy Center of the University of Pennsylvania found that only 38 per cent of those polled could name all three branches of the U.S. government and 33 per cent were unable to correctly name any of the branches66.

In Australia, surveys show a similar lack of knowledge about the constitution and the structure and functions of the Australian Commonwealth and its government. For example a 1987 survey for the Constitutional Commission found that almost half the population did not realise Australia had a written

Constitution and nearly 70 per cent of Australians aged between 18 and 24 did not know this\textsuperscript{67}.

In Germany, because of the very active state role in Civic Education, particularly in order to combat (Far Right and Islamic) radicalisation, citizens seem a little better informed.

For comparative data on patterns of public attitudes and knowledge around the world, see the IEA Civic Education Study (CIVED) \textsuperscript{68}. However the data are now at least 16 years old and need to be interpreted with this limitation in mind.

In answer to the subsidiary question, I believe it would be desirable to have a set of consolidated documents that set out the broad principles of the constitution and help citizens understand some of the arrangements that underpin it (for instance, the ‘Barnett Formula’ is particularly badly understood by citizens and misrepresented in political discourse).

\textbf{Next steps}

23. \textit{How did Canada get past the period of constitutional crisis and referendums on Quebec’s secession?}

I am not a Canadian specialist but I understand that the 1999 Clarity Act was very important in that it allowed the Federal government to tighten up the conditions under which the Parti Québécois could hold another referendum. This Act was challenged by the Parti Québécois but upheld by the Supreme Court of Canada. I use a concept from political sociology, the Clarity Act reconfigured the ‘political opportunity structure’\textsuperscript{69} in Canada to produce a less benign environment for separatism.

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\textsuperscript{67} see \url{http://www.austlii.edu.au/au/journals/UWSSLRev/2013/3.pdf}

\textsuperscript{68} \url{http://www.iea.nl/cived.htm}


November 2015
The Chairman: I welcome both our guests to this session. Both are distinguished in different areas of expertise. Sir Richard is heavily involved with Core Cities and Lord Porter is the LGA chairman, elected at the general assembly this year, and a newly appointed Conservative Peer. We are very grateful to you for coming to us, because we are pursuing, under the heading, “The Union and Devolution”, a wide range of disciplines and areas of interest. What we have to ask you and what you have to say to us will be very interesting. I will start with the first, rather general, question. It is of particular interest in your case, Sir Richard, because of your Core Cities involvement with Glasgow and Cardiff. What impact has devolution in Scotland, Wales and Northern Ireland had on local government?

Sir Richard Leese: The answer, from my point of view, is that it has had no direct impact whatever on local government in England, other than driving the case for devolution within England. As regards Scotland and Wales, one of the reasons why Glasgow and Cardiff applied to join Core Cities was that the Core Cities arguments about devolution were just as pertinent to Scotland and Wales—Glasgow in particular made that case. Indeed, as a result of devolution, Scotland and Wales have become even more centralised than England. If anything, the devolution case was even more pertinent to Scottish and Welsh cities. What is interesting in that context is that Glasgow was the first city to do a city deal in any of the devolved Administrations. That city deal was initially done with the Westminster Government, with the Scottish Government only rowing in behind. They were almost shamed into having to do something on the back of the deal done with Westminster.

The Chairman: You have hit on a very interesting point and one with a certain sensitivity in Scotland.
**Lord Porter of Spalding:** I am of the same view as Richard. My predecessor, David Sparks, was quite heavily involved, and had close working relationships with our counterparts in Scotland, Wales and Northern Ireland. I am coming to that party slightly late, but the kind of thing I inherited was that, if English devolution looks anything like Scottish devolution, it is probably no good for localism. COSLA, our equivalent in Scotland, always bemoans the level of extra centralisation that devolution to Scotland has created.

**Q191 Baroness Taylor of Bolton:** We have always been aware that local authorities co-operated and worked together at the LGA and, as you have just mentioned, COSLA. Sir Richard has just mentioned the Core Cities groups and that recent development. With the push on devolution, and now the new legislation, how are local authorities working together now? Has it impacted on their level of co-operation or has it increased the rivalry? There is always the feeling that there can be leapfrogging: “They have these powers and we want a bit more, and we are going to be competitive rather than working on a co-operative basis”.

**Lord Porter of Spalding:** One of the things we hoped was that people would leapfrog beyond each deal that was done. Unfortunately that is probably not the case. It is something the LGA will have to work harder at doing. The LGA took a very brave decision a couple of years ago when Richard’s group of people wanted to go off and do a deal. The LGA’s normal position is, “You cannot go and we cannot support you until everybody is capable of doing it”. That was the first time I can remember when we said, “No, the fastest can run as fast as they can and it is for everybody else to catch up”. The fastest have run really fast and those who are catching up have still got nowhere near catching up. We hoped that each successive deal would be an improvement on the previous one. It has not been like that. Richard’s deal is still the flagship deal. Doing it in the way we did has not hindered our working closer together, but more of my colleagues need to get a bit more ambition built into their bids.

**Sir Richard Leese:** It is frightening that we will probably agree with each other all the way through. I am in favour of leapfrogging, but it is not happening. The local government family took a bold decision a couple of years ago, first, to reject one size fits all, and then to reject one speed, on the basis that one size fits all is always the lowest common denominator and one speed is the speed of the slowest. Local government has taken the view that we need to be at the speed of the fastest, dragging other people along. If we believe in localism, different places have different needs and that implies that you do different things in those places. One size fits all does not relate to those different needs.

On cross-border work, I cite an example of significant devolution that tends to get missed. Two new northern rail franchises were announced last week. Those franchises were previously managed by the Department for Transport from London. The new franchises will be jointly managed by Rail North—northern transport authorities with DfT—from an office in Leeds, with a presumption that by 2019-20 they will be wholly managed by northern local authorities. That is a very significant piece of devolution. To do it required every local authority in the north of England to work together. I think that is unprecedented, but they are doing it. Coupled with the work that Transport for the North is doing, it caused the North Wales Economic Ambition Board to approach Transport for the North through me, with the support of the Finance Minister in the Welsh Assembly, to discuss how they can contribute to, and benefit from, what is happening with Transport for the North and the northern powerhouse. We are beginning to see, arising from devolution, new and collaborative arrangements between local authorities at different spatial levels.
Baroness Taylor of Bolton: As someone who has an interest in both Lancashire and Yorkshire, I think that is really good news. I want to go back to the speed issue—the fastest. By definition, if some areas are moving more quickly than others, some significant areas will be left behind. Given that participation rates in local government elections are very low, there is not necessarily pressure building up to make local authorities move faster. It could mean that some areas are going to be seriously disadvantaged, both in economic terms and in terms of the services that can be provided.

Lord Porter of Spalding: They will be disadvantaged only if their politicians do not take advantage of the opportunities that are in front of them. This should increase local participation in a positive way. If you have people playing nicely and the combined authority achieving more devolved powers, there will be more at stake for local people in making sure that the politicians who go to that combined authority are the right people. In areas where they are not in a combined authority, we would expect the electorate, who can see other people getting the benefits from a combined authority, starting to question their politicians: “Why am I voting for you, if you are not prepared to take full advantage of what is on offer for us as a community?”. The fact that people are going at several different speeds will be the thing that generates interest among the electorate. People will start to realise there is a point in voting or not voting at local level because more powers and freedoms are available. They will say, “Either my people can do it and take advantage of it, so I will vote for them to keep them in; or my people are not doing it, so perhaps I will change them for some that might”.

Baroness Taylor of Bolton: You think there might be increased participation.

Lord Porter of Spalding: Definitely.

Sir Richard Leese: It is also what is happening in practice. Greater Manchester created the first combined authority in 2011 and that was very much bottom up. Greater Manchester approached the Government in 2006 with a request for a new statutory body. When that combined authority was created, four more came into being three years after, and we now have a flood of proposals for combined authorities. It has demonstrated that local authorities coming together with shared objectives allows them to do things that they could not do apart. Once that has been demonstrated, local authorities up and down the country, and not just in metropolitan areas, are seeking to replicate it to suit their own circumstances.

Q192 Lord Maclean of Rogart: Can you say whether you would support a principle of fiscal responsibility, with local authorities responsible for raising much of the funds which they spend? If so, how would fiscal redistribution within the United Kingdom take place?

Lord Porter of Spalding: Fiscal devolution is the utopian aim. When we get that, devolution will be truly bedded in. There are steps being taken. We have seen the retention of business rates. By the end of this Parliament, councils across the country will be able to retain all their business rates. That is going to require councils to have a solution put on them from government, so that some of the people who cannot necessarily generate enough to look after their communities will get some out of the pot; or hopefully it will be for the sector to work through that distribution conversation. We are doing it at the moment with DCLG on the better care fund and the 2% uplift in domestic rate for better care services. At the moment the four group leaders at the LGA are working through what might be a proposal. They are speaking to Richard today to make sure it works from a met angle. They will be speaking to Paul Carter who leads for the counties to make sure it works from a county angle. If that is possible, the LGA will be able to put something into the redistribution conversation for the first time. This afternoon, I hope we will be able to put forward a proposition to DCLG: “This is how the sector would support this pot being redistributed around the country”. If
Sir Richard Leese, Core Cities—Oral evidence (QQ 190-201)

that happens today or tomorrow morning, hopefully, it should give everybody confidence that it is possible to do it at a much greater level. There has to be fiscal devolution; you cannot really have freedom without control of the purse strings as well.

Sir Richard Leese: Could I refer back to Baroness Taylor’s question and the issue of accountability? I do not think we have proper accountability, and certainly not proper democratic accountability, if the raising and spending of money are not put together. There is a very strong political argument why fiscal devolution has to go alongside the devolution of spending powers. It was addressed by your colleagues at the other end of the corridor last year in a report on fiscal devolution from the CLG Select Committee. I do not want to misquote, but it said that the economy of London is greater than the economies of Scotland, Wales and Northern Ireland put together, and the economy of Greater Manchester is greater than that of Wales. That we should have any less control over our own destiny than Scotland, Wales and Northern Ireland becomes completely unacceptable when you put it in those terms. It also said, by the way, that although fiscal devolution is right it is also very difficult. It is difficult, but the fact that it is difficult does not mean that we should not do it. It means that over time we have to redesign large parts of the UK’s tax system.

Q193 Lord Norton of Louth: I want to go back to the point about the asymmetry that there is at the moment, with pushing power down. It differs at the moment, with some going very quickly while others are not. We have heard evidence to the effect that this is of value, but we have also heard counterevidence. In Robert Hazell’s evidence to us, for example, he argued that we would end up with a rather fragmented, patchwork system of devolution. He argued that in the long term it was not sustainable. I take it from what you were saying that you would regard it as sustainable and that the asymmetry will become less as more and more combined authorities are created; therefore, it will reach a natural level rather than requiring government involvement to create symmetry.

Sir Richard Leese: If we take the arguments about fiscal devolution to the next stage, and local areas are responsible for raising more of the money and spending more of the money, that there are differences between areas becomes less important. There will always be an issue for central government, particularly elected on manifestos, about how its deliver its manifesto commitments. To impose outcomes on local areas is entirely reasonable around those manifestos. What is not reasonable is to impose the mechanism by which those outcomes will be delivered, when local places are far better suited to determine those methodologies.

Ultimately, we will reach a point in some current aspects of central government delivery where so much is devolved that it no longer becomes possible to maintain any central function. I think that is easily managed. Where there is not the capacity or capability locally to deliver programmes, or whatever they are, another local authority area can deliver them on their behalf. That already happens now. In the north-west, the Manchester Growth Company delivers business finance services across the whole of north-west England, and increasingly in other parts of England as well. There are ways of managing what happens as the centre declines to make sure that you do not have gaps left anywhere in the country.

Lord Porter of Spalding: If the argument is that because a big chunk has been devolved it makes a central government department smaller and probably less viable, perhaps that is not a bad thing either. Central government departments can merge, share services and do all the wonderful things that local government has been doing for the last few years. It should not be seen as a threat to anybody other than some career civil servants. It will be unfortunate for a few people, but I am sure
that if we are reducing employment in some areas that is one area where most people in the outside world would not think it was a bad thing.

**Lord Norton of Louth:** You see it as good that power is devolved, but you are still going to get some degree of asymmetry.

**Sir Richard Leese:** You are, but this is edging towards the question often asked about the postcode lottery. Part of the response is that if we accept that different places are different and if you do the same thing everywhere, as national programmes tend to do, you end up with different outcomes. If you want universality in outcomes, you have to do different things in different places to achieve it. Devolution and decentralisation are a route to do that.

**Lord Norton of Louth:** The real problem at the moment is just getting from here to there. Some are moving fairly quickly but others have problems. We heard earlier that, where there is a mix of urban and rural, there is more of a problem reaching solutions, but your point is that we will get there.

**Sir Richard Leese:** I think we will get there. There was a recommendation in Michael Heseltine’s *No Stone Unturned* report, which if implemented would have made life a lot easier. It was that local enterprise partnership geographies ought to be reviewed so that they properly reflected economies on the ground. If that had been done, it would have given a very clear spatial framework for future devolution and would have avoided some of the local tensions that we currently have.

**Q194 Lord Lester of Herne Hill:** What happens if something goes wrong? Who is to decide? Is it civil servants in Whitehall, elected politicians in Parliament, judges or none of those?

**Lord Porter of Spalding:** Surely it should be the people who are responsible at the appropriate level for the thing that has gone wrong. If it is in a truly devolved service that Richard is delivering in Manchester, and Richard gets it wrong, that is where the blame should lie. It is one of the things we are going to have to change as a country. We cannot expect government Ministers to be responsible for everything they have devolved—if services are truly devolved. I also lead South Holland District Council. If I was to be responsible for doing more, I would be responsible for doing more and if something went wrong in my patch I would be the one that people called for to be dragged through the streets and castigated for whatever had gone wrong. That is how it should be. We, as local politicians, should not try to hide behind national government of whatever colour it happens to be. It goes with the turf. If we have the freedom and the power to do the right things and we end up doing the wrong things, we should take the blame.

**Lord Lester of Herne Hill:** What I really had in mind was the problem with the elective dictatorship. With full devolution you may have a local elected body which misuses its powers—for example, by discriminating in an unfair way. Who is to call it to account?

**Sir Richard Leese:** I have precisely the same problem with the Houses of Parliament. Ultimately, who calls them to account? The electorate and the courts tend to be the two tests. In a devolved and decentralised system it would depend on precisely what it is. There will be some mixed accountabilities. For example, in the devolution of health in the Greater Manchester area, the Secretary of State for Health will still retain ultimate responsibility for the NHS as it operates in Greater Manchester. You are going to get some mixed accountabilities, but all of us in local government are looking forward to the day when a Minister in Parliament is asked a question and the answer is, “You will have to go and speak to the Mayor of Greater Manchester or the leader of Manchester City Council about that; it is not within my remit”.

**The Chairman:** I do not think that would get him off the hook somehow.
Baroness Taylor of Bolton: I want to follow up on what was just said, particularly by Lord Porter. Is it your dream that Governments set outcomes or minimums and those are all delegated and devolved to local level? If that is your perception of the future, what is the role of central inspection of the level of services in any particular region?

Lord Porter of Spalding: Yes, it is to a certain extent. I am not sure that local government is best placed to be trusted on determining whether it is time to go to war or not, but on the things that should naturally come down to the lowest common denominator, in an ideal world we will have complete freedom. If government is still setting the minimum outcomes that are necessary to be achieved in any particular service area, there will still be some central regulation. We have seen over the last five years that there has been consistently less central interference, as regards inspections afterwards, in what we are doing locally. We called for the abolition of the Audit Commission and the last Government got rid of the Audit Commission. The sector now largely regulates most of its services, with the exception of the things that have been pulled away from us. There should be some central inspection to make sure that we deliver the broad outcomes.

Baroness Taylor of Bolton: You just used the word “interference”. Do you see inspection or regulation as interference or as protecting the overall quality of service nationally?

Lord Porter of Spalding: Some is good, useful and reasonable, and some is completely pointless and costs the taxpayer money for no apparent benefit. We saw that under the previous inspection regime. We were expected to account for all sorts of bizarre figures that we used to pay somebody to collect. Then we would send them off to Whitehall and somebody would be paid to analyse them. Then they would sit in a file and gather dust. They never had any impact on anybody’s life beyond that, other than keeping a few people employed doing pretty useless jobs.

Sir Richard Leese: We have started using devolution as a catch-all phrase for a number of things. It now covers devolution, decentralisation and delegation. That is reflected in what is in devolution deals. To distinguish two of the ambitions of Greater Manchester, on skills, our view would be that the skills offer in Greater Manchester should be totally determined locally; on employment programmes, currently the Work Programme, our view is that they should be jointly commissioned with central government. It is not complete autonomy at local level and there will be different solutions and a different relationship between local and national, depending on what we wish to do.

Baroness Taylor of Bolton: There is a slight difference of emphasis between the two of you.

Sir Richard Leese: Yes.

Lord Lester of Herne Hill: Following Baroness Taylor’s question, what I am really getting at in my question is whether there needs to be some kind of binding code of minimum standards that can deal with abuses of power at local level.

Sir Richard Leese: I would say yes. One of the things that was done in the last Government was a weakening of the ability of local authorities to impose standards on their members. We used to have sanctions against members who misbehaved. We have no sanctions any more and I would rather be back in a position where we had some sanctions. There has to be a very clear code and it needs to be enforceable.

Lord Porter of Spalding: I take the counter position. The code we have is sufficient to deal with people who are likely to be doing things wrong in the first place. There has been less infringement of the rules. There are fewer bullying allegation-type complaints, which is what the code used to deal with; there were overly strong leaders compared with some of their staff. We have seen fewer
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criminal prosecutions against politicians locally than in previous years. Most importantly, the public’s respect for local politicians has gone up consistently over the last five years. Moving away from the old standards regime to the new one was certainly the right move, and anything going backwards would probably be a retrograde step.

Q195 Lord Hunt of Wirral: If we agree with the Local Government Association that now is the time for bold solutions, am I right to be a little disappointed that all we have is the current model of bespoke deals? Would it not be better to have a clear route to a defined final model of devolution?

Lord Porter of Spalding: No. Centralised localism flies in the face of what we are trying to achieve. As Richard has already said, different parts of the country have different problems, and even if they have the same problems, we will have a different route to tackle them. If we had a centrally prescribed set of services that could be devolved and delivered in a particular way, you would not devolve anything; you would just create little subsets of a central system. It has to be the way it is. My frustration is that there are not enough non-metropolitan areas taking advantage of it. That is something the LGA needs to work on, to make sure that we help and assist wherever we can in getting every part of the country to take advantage of the offer. Just saying, “Here is a blanket model and you have all got to sign up to it by next Friday” would be a disaster. The relationship is not mature enough to be able to take on those services just yet. In places where you have a mature relationship, you would probably hamper it by giving access only to a few things. The problem is a variable problem, so the solution needs to be a variable solution.

Lord Hunt of Wirral: Sir Richard, my problem is that in all my ministerial life I could never find local authorities agreeing with each other. They tended to disagree. Just to give one small example, everyone agreed in Wales, when I was responsible, that we should have unitary local government. But every one of the local authorities I saw had a different view of the size, shape and number. In the end we had an imposed system, whereas in England, whether or not there was insufficient courage, there was no clear outcome on unitary government. It tends to be disparate. Therefore, Sir Richard, although I am a great admirer of your civic leadership, the trouble with bespoke deals is that you tend to rely on really good local leadership that can take things forward, and you will not find that in every part of the country. As you look elsewhere in England, would it not be better just to give people a more defined target as to where they should be moving to take advantage of devolution? I am sorry about that; I had to get it off my chest.

Sir Richard Leese: You can have a defined offer if you like, but if you do not have the quality of leadership you still will not deliver it. Local authorities have increasingly shown quite a large capacity both to agree with each other and to look for innovative solutions to structural problems. In my own area, Greater Manchester, where the combined authority changes have been driven consistently on a three-party basis—it is not just geography but across parties—although we have constitutional arrangements for the combined authority that protect minorities, both political and geographical, they are a bit irrelevant because we have not had a vote since 2011. Rather more creative is what the Sheffield city region is seeking to do: as well as bringing together four unitary local authorities, it is looking to bring together a number of shire district authorities from Nottinghamshire and Derbyshire, obviously with their consent, in a new arrangement. The important thing about that is that it comes from the bottom up to meet local needs. To go back to the Greater Manchester devolution deal, with one exception—the proposal about Sunday trading—every single element came from an ask from Greater Manchester based on evidence collection, business planning and financial modelling that was done in Greater Manchester.

The Chairman: Lord Hunt, do you want to ask your question on London as well?
Q196 Lord Hunt of Wirral: Yes, I was just thinking—as a Liverpudlian—but do not let us go there. Do you think the London model of an elected assembly holding a city or regional mayor to account is something that could or should be emulated elsewhere?

Sir Richard Leese: No.

Lord Hunt of Wirral: I thought you might say that.

Sir Richard Leese: There are two things. You could go to another part of the country and ask people, “Would you like 25 full-time politicians who have no power?”, which is what you have with the Greater London Assembly, in effect, because it is a scrutiny body and cannot make the mayor do anything at all; in fact, I do not think they can even make the mayor turn up for their meetings. I do not think there is any mileage in that.

There is a more significant problem with London. Although lots of areas have sought to emulate the combined authority model, nowhere has sought to emulate the London model. It is a two-tier model, where the mayor has a fairly limited range of functions, largely around economic development and transport. Everything else is with the boroughs. It means that the innovative work in a lot of places on how we deliver public services differently—public service reform—is very difficult to do in London. The fundamental difference is that the Greater Manchester combined authority model is a one-tier model, whereas London is a two-tier model. I would argue very strongly as we go forward for one-tier models rather than two-tier models.

Q197 Lord Morgan: Core Cities commissioned a report that called for devolving primary legislative powers in England on the same basis as devolution in Wales. Is that the established view of your members or of both of you? If so, at what level would it operate? Regional assemblies in England do not appear to have found great favour. The idea of an English Parliament is very controversial. How should it be expressed?

Sir Richard Leese: You are right that the idea of an English Parliament is controversial and, from a local perspective, it would not resolve the issue of what is perceived as a very distant and out-of-touch Westminster. For England, because of the scale of England, an English Parliament would still largely be perceived as remote and out of touch.

In some of the points I made earlier there is a balance to be struck between things that are national, where a national Government can rightly make demands because they have been elected on a manifesto and so on, and things that are local. In relation to the basic building blocks for devolution, the core cities have been arguing for devolution based on functional economic areas from the late 1990s. That is effectively a subregional model rather than a regional model and it is the model evolving at the moment. As regards the balance between national and local, that is work in progress. It is not quite experimentation, but as different places do different things we find out what works, what does not work, what is right to be at that level and what is not right to be at that level. You cannot do it in any other way than doing it and finding out what works. It is a new approach to how we, including Governments, do things: the ability to try out new things, innovate and see what works.

Lord Morgan: You talked about functional economic areas. That is a very variable concept. It can vary a good deal even within one particular locality depending on the nature of the function you are looking at.

Sir Richard Leese: That is absolutely true. Indeed the research paper that Core Cities commissioned back in 1999 looked in particular at the functional economic areas for Liverpool, Sheffield, Manchester and Leeds. Functional economic areas have fuzzy boundaries; they are not well defined
and they overlap. All of those functional economic areas overlap. For administrative purposes there always has to be an element of arbitrariness around boundaries, and you want to try to minimise that. The current Greater Manchester boundary does not exactly replicate the functional economic area; it is a close enough approximation to make it work.

**Lord Porter of Spalding:** The porous part of the boundary argument is the one that sits right through whatever line you draw on a map; it is going to be the wrong line for some reason, which is why it is really important to get the people part right. Richard has clearly shown in Manchester that it does not matter what political party you are from; you can work together for a common aim. That becomes important when combined authority areas are working with each other on some of those porous boundary issues. There is a stronger argument for realigning the LEP boundaries more closely with combined authorities. Once the country has more combined authorities, the emphasis on realigning LEP boundaries will become irresistible at some point. How adjacent combined authorities operate with each other is going to be as important as the relationships inside the combined authority areas.

**Q198 Lord Lester of Herne Hill:** I was asking questions earlier about protecting individual minorities against the misuse of power by devolved institutions. What about protecting the devolved institutions against the misuse of power by Parliament? In a federal system it is elementary that you protect the states or provinces and central government from each other. You lay down certain principles and you have a court that polices them. We do not have any of that. Do you think that you need some kind of protection against Westminster encroaching on you through parliamentary sovereignty?

**Sir Richard Leese:** I do. Most of the devolution that has happened over the past five or six years—which is very welcome; in my view we have taken enormous steps in the right direction—has effectively been at the discretion of Ministers. Even the current legislation coming to the end of its run through Parliament is enabling legislation, so it gives Ministers powers to devolve; it gives no guarantee of devolution. Of course, what Ministers can give, they can at the same time take away. That is not a basis for long-term devolution. Ultimately, we need a new constitutional settlement for English local government to mirror the devolution settlements for Scotland, Wales and Northern Ireland. Clearly, ultimately, a national Government, through Parliament, could choose to withdraw delegations, but it needs to be a lot more difficult for a national parliament to do that than is currently the case. At the very least, it ought to require primary legislation to withdraw a delegation, and the requirements of that primary legislation ought to be onerous rather than simple.

**Lord Porter of Spalding:** From an LGA perspective, Richard’s position is our position. It is all well and good while we have a current Government who are prepared to push powers downwards, but there is nothing to say that a future Secretary of State might think that was a bad idea and start sucking them back upwards again. That would be relatively easy to do. It needs to be as difficult as possible. It should not be impossible, but it should be as difficult as possible for central government to take things back once they have been devolved. There should be some catastrophic failure on our part that warrants it. Going forward, there should be an onus on somebody to make the case why any new legislation should not be a devolved piece of work as opposed to a centralised piece of work.

**Q199 Lord Hunt of Wirral:** Is it not easier to justify protecting in that way when you have had legislative devolution rather than just administrative devolution? Sir Richard, you have been on Manchester council for almost as long as I can remember. Was it 1984? You have seen political
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swings one way and another. Indeed, 10 years earlier there was a massive shake-up of local government. Would it not be easier to protect any devolution settlement within England if there was proper legislative devolution? Is that not the history we learn from the other main, motor regions of Europe, expressed through the regional structure of administration across the rest of Europe? How could we protect administrative devolution if it does not have legislative devolution as well?

Sir Richard Leese: That is the point I was trying to make. Ultimately there needs to be a constitutional settlement backed by legislation that, effectively, underpins devolution as of right. As Gary said, the presumption should be that powers are devolved unless there is a very good reason why not. At the moment, we are working in the opposite direction; we always have to demonstrate why devolving is better. We need to turn that equation around, and that will require a legislative settlement, which is not what we have at the moment.

Q200 Lord Judge: If the general public shared your, if I may say so, obvious enthusiasm for decentralisation, why is there such a low turnout at election time?

Lord Porter of Spalding: Purely because there are so few things we can do that are locally determined. Lots of people say, “Well, it doesn’t matter because whoever we vote for, we will only end up getting the agents of central government”. The more power you devolve downwards, the more you encourage people to come out and exercise their power as the electorate.

Lord Judge: As your powers have increased, has the turnout at elections gone up?

Lord Porter of Spalding: Our powers have not increased. Some of our powers are starting to increase.

Sir Richard Leese: We will find out in 2017 when we have our mayoral election in Greater Manchester what the impact is on the electorate. There are other things in play. Turnout generally has gone down for national elections over a long period. In my view, that is because, as a country, we have moved to a rather consumer-oriented view of public services rather than a citizen-oriented view of public services. You will increasingly find that local authorities are at the forefront of trying to turn that process around. We will increasingly be talking about citizen responsibilities as well as citizens’ rights, the need for active communities and all the things that will over time, I hope, recreate an active citizenry who are more interested in who they are voting for and more interested in voting.

Lord Porter of Spalding: When you ask people important questions, they take part. We saw that in Scotland. The turnout in the Scottish referendum was huge, because it was a subject where everybody thought they had an opinion one way or another. People came out and exercised their vote.

Q201 Lord Judge: Independence for Scotland is rather different from independence for Manchester. Nobody is suggesting independence for Manchester. Are you?

Sir Richard Leese: I took part in a conference in Scotland a couple of years ago. A member of the House of Lords speaking there—a Glasgow businessman—said that he thought Manchester had declared UDI a long time ago but just had not told anybody. We are not after independence, no. It is a different issue, but Gary is right that people will vote when they think that voting is important to them. In national elections, turnout is higher where seats are fiercely contested. Certainly in the City of Manchester there can be a factor of 20% difference in turnout, simply because there is a strongly contested seat rather than a non-contested seat.
Lord Judge: In that case I must ask you if you would deal with the information we have been given. It is directed to Manchester, but whether it is Manchester or universal in this question we do not know. I quote: “What has happened in the case of Manchester is exactly the opposite of what should happen from a point of view of getting people along and participating ... If you want to do anything, or want people to come on board and develop lasting support, people need to engage in the process”. I understand the answer: “Well, there is not enough power and therefore people are not interested”, but what is being done to engage the public in developing both your enthusiasms for what we are talking about?

Sir Richard Leese: I do not think Greater Manchester combined authority has been particularly good either in its communications or its engagement strategy, which is something we are now putting right. I do not think our track record has been that wonderful, but I do not think you will engage lots of citizens by saying, “Let us have a chat about devolution”. The terminology is a bit of a turn-off, for a start.

Lord Judge: Decentralisation would not be any better, would it?

Sir Richard Leese: That would not be any better, but if you have a discussion with people and ask, “Do you think your hospitals should be run from Greater Manchester and how shall we do that?” — and people keep telling us that we ought to have more control over our bus services—in a sense what we are doing is responding to what people are telling us in the first place. People are engaged about public transport. They do not think it is very good and they think we ought to be able to do something about it. Engagement works both ways, and part of the engagement is us responding to what citizens say, and in that case we are. The conversation has to be about the real things that make a difference to people's lives, not structural or fairly abstract concepts.

Lord Porter of Spalding: I would say exactly the same as Richard. The conversation needs to be about things people care about, and that is the service at the other end, not the process that delivers the service. To expect anybody to go out on positive engagement over creating a combined authority probably has no chance at all, Richard. No disrespect, but no matter how hard you tried in Manchester you would struggle to engage the imagination of the public when trying to convince them that this has suddenly become a sexy subject. It is going to be about services: “Do I trust politicians locally to have control over services, or do I trust this other bunch of politicians?”.

Lord Judge: May I suggest, and put to you so you can consider it, further information that we have been given? “The problem is that there is cynicism on the part of both central government and local authority leaders in the present situation to strike relatively secretive deals in order to transact power from one to the other”. Is that something that either of you recognise?

Sir Richard Leese: Relatively secret deals? In the first significant agreement, which was the one signed between Greater Manchester and the Chancellor of the Exchequer just over a year ago, a lot of the negotiation took place in the background, as negotiation always does, but those deals had to be ratified in a very public way individually by each of the local authorities in the area through their democratic process. It is like the signing of a treaty. As we know from our colleagues across the Atlantic, signing a treaty does not necessarily mean it is going to be ratified. The agreements had to be ratified in an open, transparent and democratic way.

Baroness Taylor of Bolton: But that did not involve people living in the area, except for the councillors. There is a feeling that your particular deal would not have got off the ground had you not had committed leaders in each of the authorities, and they then had to sell it to their councillors, and presumably their officials, rather than selling it to their electorates.
Sir Richard Leese: The first part of that is absolutely right. If we did not have committed leaders we would not have come to an agreement. It had to get buy-in from elected members across Greater Manchester and across parties as well. Since the Greater Manchester agreement was first signed—most of the potentially controversial detail was in that—each of those local authorities has had to go back to their electorate. The result of each of those local authorities going back to the electorate is that in every case the ruling party was returned for another term, so there is an endorsement through the ballot box for each of the local authorities.

Baroness Taylor of Bolton: It could be interpreted that way, but I doubt it featured much in the local election campaigns, and the turnouts were not great. I am not knocking the process, but on the basis of what has been said there is a long way to go before you can engage local government electors in a positive way, which is what you are trying to do. It is much easier to get them to vote against something like fracking or whatever. It really is quite a difficult job. Anti-Westminster or anti-London is a good theme, but I still think it is an uphill struggle.

Sir Richard Leese: I go back to what I said earlier. If you go out with a manifesto that says, “Vote for us because we are good at devolution”, you are absolutely right that you will not attract a lot of attention. However, “Vote for us because we are going to return the bus services back to local control”, is something that is very attractive to an electorate.

Lord Porter of Spalding: There is not a level of dissatisfaction with the agenda. I have seen the quotes you used—I cannot remember where they originated—but show us where in the local press local communities are kicking back against the authorities that are doing that. In most council areas, there are some people who are quickly able to write something to the local newspaper about anything we do. There is not that local kick-back against this agenda. It is not there. We have not gone to a referendum on whether we should do it or not, but if the public did not want us to do it, we would all know that the public did not want us to do it. MPs’ mailbags would be full of complaints. Council leaders’ mailbags would be full of complaints. The local papers would be full of people railing against it, but that is not the case. That is pretty much an endorsement by the public: “You are the politicians. We elect you to do stuff. If you keep doing the stuff we like we will re-elect you, but if you do stuff we do not like, then we will not elect you”.

Baroness Taylor of Bolton: I think most people in the north-west, even in Greater Manchester, are almost unaware of this happening. If a problem arises, they will be.

Lord Porter of Spalding: But it is not because they have been doing it in secret: “Oh, you are doing deals behind closed doors”. It is the weirdest set of open closed doors I have ever seen. It is all over the national press. I am sick of seeing him on national telly, with the Chancellor going up to shake his hand and bringing somebody from China and whatever else. It is not a secret thing. The public must be fully aware of it, and if they are bothered by it they would react to the fact that it is annoying them. They are not, so we can easily take that as support.

The Chairman: From the number and range of follow-up questions that you have heard from Members of the Committee, you have certainly engaged the interest of the Committee. We are enormously grateful to you for bringing to bear on these issues your direct personal experience, which is something we do not often get at these Committees. It has been very helpful to us and we are very grateful. We much appreciate you coming and we thank you very much.
Rt Hon. Oliver Letwin MP, Chancellor of the Duchy of Lancaster—Oral evidence (QQ 312-327)

Evidence Session No. 24   Heard in Public   Questions 312 - 327

WEDNESDAY 10 FEBRUARY 2016

Members present

Lord Lang of Monkton (Chairman)
Lord Brennan
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord Lester of Herne Hill
Lord MacGregor of Pulham Market
Lord Macleod of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witness

Rt Hon Oliver Letwin MP, Chancellor of the Duchy of Lancaster

Q312 The Chairman: Chancellor, we are most grateful to you for coming to see the Committee again so soon after your last visit; we much appreciate it. We have a lot of ground to cover and a fair number of questions for you. When you come to answer the first question, could you give us a sentence or so on where the situation lies with the intergovernmental relations report that we produced and your consideration of the reform of the memorandum of understanding? That would be appreciated. On the subject of devolution and the union, my first question is a rather general one about the territorial constitution and how it develops over the next few years. Last time you gave evidence to us, you referred to the settled views of the various parts of the union that should be a preface to further changes if they came. Do you feel that a settlement has been achieved by previous changes in the devolution process? Do you feel that we are in a settled situation now in which devolution, as it is now proposed in the Scotland Bill and with the Wales Bill coming along, might take root? How do you see things developing over the next few years?

Rt Hon Oliver Letwin MP: First of all, on the point you asked me to say something about, we have been in discussion with colleagues in the devolved Administrations since I last spoke to you about the memorandum of understanding. We have had some very sensible and constructive discussions and are down to discussing the very particular wording in that document. As with all these things, I do not want to tie myself to a precise date, but in the near future we will be in a position to issue a memorandum of understanding that will have been agreed.
The Chairman: Thank you very much.

Rt Hon Oliver Letwin MP: On the much wider and deeper question you raise, the way I would characterise it is, as the whole Committee will be aware, quite a lot of the processes that were set in train as a result of the various events—the referendum in Scotland, the Smith commission, Silk and the Stormont House agreement—are still in various stages of completion and, obviously, until they are complete, one cannot represent the situation as fully settled. For example—and I am sure we will come back to this later on in the proceedings—we are still having discussions with the Scottish Government about the fiscal framework, which is obviously a very important part of all this—and, as you rightly point out, Parliament is about to consider the Wales Bill. I think it will be some months yet before we arrive at a new position. Once that has been arrived at, all those pieces of the jigsaw are in place, so far as the relationships between the component nations of the UK are concerned, we will be able to say that we have reached a new settlement.

Of course, that does not encompass the further question of devolution inside England, and there are many other constitutional matters of great importance which are not about the devolution settlements that remain under debate and discussion at various stages. Incidentally, I do not find any of that surprising because our constitution has been evolving since—pick a date—well, for a very long time, and I suppose that that will continue. But it will be an important moment when the relationships between the various component parts of the UK have been settled.

The Chairman: That implies that you see the Scotland Bill and Wales Bill forming part of a final settlement as regards Scotland and Wales. Is that correct or not?

Rt Hon Oliver Letwin MP: It is very dangerous for anybody, particularly a Minister, to speculate about for ever, but at least for the foreseeable future I hope that we will have reached a settlement, yes.

The Chairman: We will probe into some of the other issues that flow from this. Lord Maclennan.

Q313 Lord Maclennan of Rogart: This Committee is focused on how to hold the union together, and we have heard evidence from a number of witnesses to suggest that powers should be retained beyond the obvious ones—foreign policy, defence, currency and macroeconomic policy. Would you be able to give us an idea of what should be retained by the United Kingdom Parliament and the Executive?

Rt Hon Oliver Letwin MP: The first thing I should say is that I share the ambition of the Committee to keep the union together. There are huge mutual advantages in that. I know that there has been a very considerable amount of thought and discussion, and there will continue to be, about trying to achieve some theoretical delineation of what lies which side of the reserved devolved line for ever—if I can use that phrase again. I quite understand why it is that people, including learned and intelligent people who have reflected on this for a very long time and certainly deserve our respect, seek this theoretical underpinning. But, as I may have mentioned before to the Committee, I do not share that yearning. The genius of the British constitution is that it has worked in practice, not in theory. In general, trying to theorise about these things and to lay down a set of general principles that is meant to be absolute, and at the same time are meant to apply in the same way to each of the different component parts, is an exercise which sounds like some sort of Cartesian cleaning of the Augean stables and the most wonderful intellectual housekeeping, but actually it precipitates a whole series of further debates and discussions which are probably unproductive, and maybe even counterproductive. So I would prefer to rest where we come to rest, with settlements that I think will be broadly acceptable in the various parts of the kingdom, and then to move forward on that
basis and acquire practical experience of whether those relationships work out smoothly in practice.

May I add one point? There is one thing I want to say now which I hope will apply to everything else I answer. It is my very, very strong impression that, notwithstanding all the megaphone diplomacy that inevitably goes on when you are engaged in one kind of discussion/negotiation or another, and to which we are all party in politics, once you pick up the phone or have a meeting with your colleagues in the devolved Administrations, including some who have been involved in activities in the past which were fairly vigorous, you can have a very reasonable, sensible conversation. We can get along and work these things out. I do not think there is this issue that some people allege of imperfections in the system that cause terrible practical problems. On the contrary, in a grown-up way, we can negotiate our way from practical action to practical action.

**Lord Maclennan of Rogart**: We have had suggestions from the Bingham Trust about a charter for the UK. Would the Government support that? Do you have a view that devolution should be asymmetric?

**Rt Hon Oliver Letwin MP**: I do not think that it should as a matter of principle be asymmetric. As a matter of fact, it has turned out to be somewhat asymmetric, and may very well continue to be so for a very, very long period. It does not worry me one way or the other. I do not object to symmetry or to asymmetry; I just search for something that everybody finds acceptable and workable. I have of course seen the Bingham Trust suggestions and, incidentally, as I am sure the Committee is aware that they are by no means the only people who are currently working on similar sorts of ideas. They are certainly interesting and will no doubt be discussed in many forums for a long time to come, but, no, I do not personally share any enthusiasm for a new charter.

**The Chairman**: A number of colleagues are keen to come in. Lord Lester.

**Q314 Lord Lester of Herne Hill**: I am trying to phrase this as an open question and not a closed question. As I read your evidence last time and from what you have just said, some might say you are a bit complacent, because nothing seems to worry you. Should you not be worried? Should the Government not be worried that at the moment our system is fragile. We risk exiting from the European Union; we risk Scotland exiting from us; in Northern Ireland there is a state of near-paralysis of the political system; and the Government need the ability to produce a framework which is stable and enduring and based on principles? I do not mean the principles of Descartes. God forbid that I should ever be regarded as a “filthy Cartesian”—but surely, as the Minister in charge, you should be a bit worried and thinking a bit more adventurously about a stable and enduring framework. I think that that is an open question, but perhaps it is closed.

**Rt Hon Oliver Letwin MP**: It is a work of genius. First of all, of course I accept that there are many issues under discussion, and we are probably not very far away from having a referendum nationally across the UK about the relationship between this country and the EU. It is a very fundamental constitutional issue. I do not want to pretend to you that my colleagues and I are somehow unaware of the very deep significance of this issue. Obviously, we are very aware of it, and we are very concerned to try to get the best possible outcome for our country. But I do not think that the constitution of the UK is in some terrible state of crisis. It is in a continuous mode over many, many decades, and indeed centuries, of change. I think it is the genius of it that it does change and that it accommodates, progressively, the various demands that are placed upon it. The test of these things is not whether in some common room or lecture room it looks as if it is a neat and clearly defined system, but, rather, whether it guarantees what, to my mind, constitutions are there to guarantee: namely, the liberties and rights of individuals to live in a liberal democracy.
under the rule of law. That is a very great achievement of this country which we have had for as long as any other country on earth. As long as our constitution goes on delivering that, that is the proof of the pudding. Having something that looks wonderful based on theory and principle but does not do that would be a disaster. I know of nothing that is currently happening to the constitution that threatens that stability of liberal democracy under the rule of law.

We are faced with many turmoils which preoccupy enormously the Government, and would any Government in office today, to do with the economic circumstances of the world and the various very serious security threats we face. Those are real and present dangers for our population and we have to address them. We are trying to address them in the best way we can. But I do not regard our constitution in that light. I think that it provides a very stable basis for the things that matter to our citizens.

Lord MacGregor of Pulham Market: I do not think you quite answered Lord Maclennan’s question, which was specifically about what powers should be retained at the UK Parliament and Government level. There are some obvious ones which Lord Maclennan mentioned, such as defence, foreign affairs, macroeconomic policy, et cetera, but would you add to that things such as international aid, trade, international organisations and large infrastructure projects? Would you want them retained at the UK level? Would you include in that some aspects of welfare and welfare benefits? We have heard a lot of evidence on both sides on this particular matter. Some argued, as the Scottish Government do, that welfare benefits and raising the fiscal means to pay for them should be at the Scottish Government level, while the Welsh Government take an entirely different view. Where would you be placed in that area?

Rt Hon Oliver Letwin MP: Certainly there are various fields of activity in which either at national or international level it makes sense that the powers should reside there. Clearly, in many, if not most, aspects of our trade negotiations, for as long as we remain a member of the European Union, the powers are at European Union level. Clearly one of the major decisions this country will make in a referendum is whether to repatriate that or not.

Lord MacGregor of Pulham Market: Do you mean the UK Government?

Rt Hon Oliver Letwin MP: Yes. It is natural that either the UK Government directly, in a situation in which we were not part of the EU or, for as long as we remain part of the EU, at EU level, will negotiate these things, because other countries that are negotiating trade deals would expect that to be the case. I treat trade as very closely connected with international relations. For the same sort of reason, it makes very good sense that in all the settlements to date, nobody is questioning the control of overseas aid and development at UK Government level. It is obviously done in close cooperation not only with our European partners, who control, as you are very well aware as a former Chief Secretary, part of our aid budget, but with a range of other enormously important aid partners around the world, including, obviously, the UN agencies. For all those purposes, it makes sense for the UK Government to be the entity in the UK that deals with those things.

When you come to the question of welfare, it is much more nuanced. You included in your list macroeconomic policy and that, obviously and canonically, is about fiscal aggregates and monetary policy, but, as you are very conscious, and everybody on the Committee will be conscious, these days, at a time when something like a third of our total public expenditure is transfer payments through pensions and welfare, fiscal aggregates are pretty difficult to disentangle from decisions about welfare. So there is a strong presumption that while macroeconomic policy resides with the UK Government and the Bank of England, there should be at least a core of welfare arrangements, the rules for which are established at UK level.
However, if you look carefully at the settlements that have been arrived at over the past several years—many years in some cases—there are all sorts of caveats to add. At the moment, Northern Ireland has what is, in theory, an independently determined welfare system, and indeed quite recently we all saw that being played out. As we also saw being played out, it has been until now—and in fact as a result of the negotiations which Theresa Villiers very brilliantly carried through—and remains the case now, that the welfare system, which is independent, is nevertheless the same, and that maintains a degree of manageability.

The discussions about the fiscal framework envisage the possibility of the Scottish Government being able to supplement, at its own expense, welfare provisions provided in the UK as a whole but not to undo them. That is another way to achieve a manageable relationship. So I would say on welfare that there is a quite nuanced arrangement.

Finally on that, we are taking steps, and previous Governments have taken some steps, to allow local authorities within England to manage some parts of the welfare system and that, too, is manageable as long as it is within a framework that makes it manageable.

Q315 Lord MacGregor of Pulham Market: One of the concerns of the Welsh Government is that they would not have the resources necessarily to reach the level of welfare benefits on their own and, therefore, they would still seem to want welfare benefits as part of the UK system, to a large extent—with some degree of difference, as you have outlined, for Northern Ireland. Do you see that as a way forward?

Rt Hon Oliver Letwin MP: Yes. Whether you are looking at the Scottish, Welsh or Northern Irish situations, each in their own way maintains a pooling of risk, which is one of the great arguments we made in the Government’s contributions to the referendum discussions in Scotland. I am not speaking here of one campaign or another, but the Treasury and DWP, and so on, produced papers during that referendum about welfare, and one of the arguments we made, I think pretty convincingly and dispassionately, was that there was a clear advantage to the pooling of risk for welfare. Obviously, there are actuarial risks and risks of differential prosperity: all sorts of issues. One advantage of the union is that it enables us to pool those risks, and you only gain that advantage if either, as in Northern Ireland, a parallel system, funded as to its annually managed expenditure by the Treasury, can operate, or you have the same rules, set in the same way centrally, as is the case in both Scotland and Wales, but with the potential ability for the devolved Administrations to make adjustments at the edges. That element of the pooling of risk is very significant. Broadly, the same argument applies in general to the question of macroeconomic union.

Q316 Lord Cullen of Whitekirk: You met with us in July last year and gave evidence to the effect that, to the greatest possible extent, if people in any part of the union “express the desire and clearly have the capacity to take a greater share of power over their own affairs, we should seek means of answering that positively and give them that power”. Does that mean that you are committed to demand-led devolution? If so, what efforts have the Government made so far to understand the views of people in England and its regions over what powers should be exercised by different levels of government?

Rt Hon Oliver Letwin MP: If you inspect the record of the last five or six years, you can indeed see a pattern within England where two successive Governments have been very responsive to bottom-up demands for reallocated powers from central government to local areas at various levels. There is the whole process of city deals, transferring very considerable amounts of real power over important things such as the spending of money, from the centre to local areas, and, much finer-grained, the establishment of what is beginning to be an enormously significant phenomenon in
neighbourhood planning where neighbourhoods have started taking power over something which also matters a great deal to them, which is how their built environments will look and feel over the years to come.

We have been very responsive to those sorts of demands and have tried to structure these things in a way that is, as you put it, demand-led, in the sense we do not say, “You must have this kind of city deal. You must have this kind of arrangement of your powers and your structures and one size fits all”. On the contrary, we have said, “We are open to bids, come along and tell us what you would like to do in your area, and, provided we can assure ourselves that you have really thought this through and that you have a plan that will stand a decent chance of working successfully, if that is where you would like to go, we will help you to do it”. Similarly, we have not said to every neighbourhood that they have to have a neighbourhood plan. On the contrary, we have said that anybody can. A couple of thousand areas are already moving in that direction. I hope that many more will, but we are not going to force the pace.

It is also a feature of these things that in each of the various ways in which we have tried to transfer power we have tried to find means for democratic expression. It has been a feature of the most important city deals that they have included the establishment of an elected mayor, where there is a very perspicuous relationship between that mayor and the electorate. At the opposite end of the spectrum, a very important feature with neighbourhood plans is that it is not a cabal that is able to plan neighbourhoods, but, rather, it has to pass through a referendum of all the local inhabitants. So we have tried in each case to formulate ways of doing these things which mean that as they move forward there is a clear, democratic legitimation of the decisions that are made.

The Chairman: There are a couple of supplementaries. Lord Judge.

Q317 Lord Judge: This is a question that is perhaps going to arise later, but this is a logical time to ask it. Has EVEL sorted out the West Lothian question?

Rt Hon Oliver Letwin MP: Especially talking to a distinguished jurist, I am very reluctant to engage in trying to define a given question, because I have seen so many different and conflicting accounts of what Tam Dalyell did or did not mean by what he said. Let me say exactly what I think EVEL does and, more to the point, or at least as much to the point, what it does not do.

Lord Judge: Please do.

Rt Hon Oliver Letwin MP: EVEL creates a power of veto for those Members representing English seats over legislation which affects England, as opposed to the UK as a whole—or, in the less usual case, for those Members representing English and Welsh seats over legislation affecting England and Wales as opposed to the UK. It is a power of veto. Perhaps it would have been better to call it “English vetoes for English laws” than “English votes for English laws”. So that is what it does. What it does not do is to deprive all or any of the Members of the House of Commons of the ability to vote on the Second Reading or Third Reading of legislation. So it also gives a veto to the House of Commons as a whole, or a majority of the Members of the House of Commons, over any legislation proposed for England, or England and Wales, just as we have always had for any legislation governing the UK. In other words, the effect of it is that legislation that affects England, to take that case, must always have had the support of a majority of the membership of the House of Commons as a whole and the support of Members representing English constituencies. I think that that is a very good way of trying to make sure that people in England do not feel that a House of Commons based on Members from other parts of the country can impose legislation over the heads of the Members representing English constituencies that those Members would not wish to vote for.
Lord Judge: That is how I understood the answer, but we have had evidence that has criticised the entire structure of EVEL, on the basis that it is Westminster-centric and does not address a much wider problem of accountability. When you were answering Lord Cullen you told us about possible different democratically led structures. Are we going to end up in England and Wales with a series of different structures and different forms of devolution, or, at the end of it all, are we going to end up with specific arrangements in the larger areas and larger cities? What I am not clear about in my mind is whether we will end up with a whole series of different ways of running regions, because that would strike me as being extraordinary.

Rt Hon Oliver Letwin MP: Let me start by responding to the point you were attributing to others and then move on to your specific question.

Lord Judge: Yes, please.

Rt Hon Oliver Letwin MP: On the point attributed to others, there is quite a large number of people—serious people who think about these things deeply—who are, as far as the UK is concerned, federalists, who believe the right answer for England is to have an English Government and hence presumably an English Parliament, or at least the House of Commons sitting as if it were an English Parliament for various purposes, and then a UK Government and a UK Parliament, or a Parliament sitting as a UK Parliament for that purpose, in a federal structure. It is a perfectly recognisable, understandable and historically possible configuration. It is not one that I favour. It is not what this Government are setting out to achieve. It is not what EVEL does. Our view is that there is no need for an English Government. It is quite sufficient to ensure that MPs representing English seats can make sure that no legislation is passed over their heads.

I profoundly doubt whether a federal solution, which obviously can be made to work under many circumstances in many countries perfectly sensibly and efficiently, can really be made to work in a country that is as asymmetrical as ours. England is so much the greater part of the whole that I think we have to be particularly responsive to the concerns of other parts of the country if we want—to go back to the point made by Lord Lester—to bind the union together. I do not think that we should expect, so to speak, equal treatment. The very powerful bloc of England has to recognise that other parts of the country will have very particular concerns, but we need to make sure that there is not a system that enables Members from other parts of the country to ride roughshod over the democratically expressed views of the English. I think EVEL, as constructed, answers that.

We then come to the separate, very interesting question you asked about the pattern of governance within England, in the relationship particularly between central government and the various constituent local governments, which are themselves in the process of changing in many cases, and beginning to think of amalgamating in one way or another. The answer is that it is an evolving pattern. I do not share your view that it is odd or in any way concerning if there are different arrangements in different parts of the country. On the contrary, I would be very concerned if we tried to have the same arrangements in all parts of the country, for the very same reasons that there have been differences all the way along.

Lord Judge: So a man who has a business in, say, Birmingham, which has structure A, who then goes to Manchester, which has structure B, and then goes to Leeds, which has structure C—that is all perfectly sensible, is it?

Rt Hon Oliver Letwin MP: Yes, I think so. For some years, since the Blair Governments, London has had a system of government which is fundamentally different from that of any other British city. I should admit to the Committee that, along with my colleagues, I was initially sceptical about this. I see you are sitting next to somebody who was one of those who proposed it. You were right and I
was wrong. In London, I do not know who is going to be the next elected mayor. It may be someone of whom I approve or not, but it will be somebody Londoners have chosen, and it is a system that has worked well. I think London is a greater city now than it was then.

Lord Judge: Forgive me, but the question is not about London. That water has gone under the bridge, which is fine; we live with it. We are now looking to the future where there may be different structures in different cities or areas. My question is directed to how you run a business and what arrangements you have to make when you have interests in different parts of the country which are governed in different ways. How do you do it as an individual citizen when you are moving house, because your job has changed? That is what I am driving at.

Rt Hon Oliver Letwin MP: I see entirely what you are driving at, but that has been the case as between Manchester and London until now. I do not have the exact figures with me but there are very many businesses in Britain that operate in both Manchester and London, and have been operating perfectly well against a background of difference. As a matter of fact, the changes now envisaged in Manchester will make Manchester’s governance, although different from London’s, somewhat more like London’s than it has been. What is going on in many of the other big cities at the moment will bring those into being rather more like London’s governance than at the moment. I do not think that it will be a problem, any more than it has been in these last years, for people to get used to those differences.

I am sure that there will be a different system emerging in many of the rural areas and, representing a rural area myself, I am glad of that. I think our best chance of prosperity in the rural areas of Britain in many cases does not arise from having exactly the same pattern as will apply in the cities. Rural areas are very different places. My experience of business, when I was in business and from dealing with businesses since, is that what business seeks is the best possible way of being able to conduct business in any given place, not uniformity. In fact, most of our British businesses are increasingly international in their outlook now, so they deal with very many different jurisdictions, and that is not a problem for them, either. You need to be sure that local government or national government, or whatever it is you are dealing with, has the right attitude to business, and that, of course, depends on who is elected and what their policies are, and not on the particular structure of government.

The Chairman: Baroness Taylor and then we must move on.

Baroness Taylor of Bolton: I will be brief, so I will not suggest we go back to the met counties proposals, which certain Governments introduced and other people were against, and which might have been very productive. I wanted to pick up on what Lord Cullen was talking about on demand-led devolution and what you said about not imposing from the centre any structures that should be there. You acknowledged that you are insisting on elected mayors, and many areas have made it clear in the past that they do not want elected mayors. Are you not imposing from the centre a particular structure in that respect?

Rt Hon Oliver Letwin MP: No, because to impose would be to say that from a certain date everyone shall have an elected mayor.

Baroness Taylor of Bolton: But you are saying you cannot have the new powers, in Sheffield for example, unless you have an elected mayor.

Rt Hon Oliver Letwin MP: There are various other aspects of our deals, yes. These are deals. We are saying, “We are open to bids. We are willing to transfer powers from the centre to the localities, but only under certain conditions. You have to choose. If you do not like our conditions you do not
have to take the powers”. The reason for doing that is that we want to ensure that there is perspicuous democratic accountability where we have transferred significant powers.

Q318 Baroness Dean of Thornton-le-Fylde: I will pick up on your theme of devolved areas and possibly regions being able to choose, if they have the desire and the capacity. We have had quite a lot of evidence given to us by organisations that say that a better way of doing this would be to have what they have termed a draw-down policy, whereby certain fundamental areas of national interest are retained at the centre, but other areas could be drawn down if there is a desire and suitability and capacity in the area—and the regions could be included in that. You would know exactly what was reserved. They would have the opportunity to draw down if they could fulfil all the criteria, which may not be the same everywhere. This would mean a new Act of Union and the devolved nations coming together and agreeing. I gather it is similar to what happened in Spain with the demise of Franco. They say this would be a better way than having what you appear to have at the moment, which is almost open season in the sense there are no clear criteria of defined reserved powers, and it is not clearly defined what can be devolved if people choose to. What is your view on that?

Rt Hon Oliver Letwin MP: I think that takes us back to the discussion we were having a little earlier about the Bingham commission. This is a desire for neatness that I do not share. Over the past many years, in practice, different parts of the kingdom have expressed various desires in different ways for various powers and Governments and Parliaments have been responsive to that. That is excellent, but, for the reasons I was illustrating earlier, I do not think that it would be advantageous to try to codify that in some kind of new charter that strictly delineates what will and will not ever be transferred. That is partly because, whatever one says about what will or will not ever be done, if it means for ever, that is probably the wrong thing to do because constitutions should be able to change over time, and if it does not mean for ever, why bother to codify it? Why not let it adapt gradually as our constitution has done for hundreds of years?

So there is a fundamental fork in the road here. As I say, there is a group of serious, well-intentioned, intelligent commentators who believe in neatness and codes and are worried about the fact that there is no basic law or written constitution which sits here to guarantee something or other; and then there is British history, which operates in the opposite way. One has to choose which way one thinks is the better route. I am on the British history side and, more importantly, so are the Government.

Baroness Dean of Thornton-le-Fylde: Can I put it to you that it is not as clearly defined as that? At the moment in Wales, for instance, people say, “We do not know what retained powers are”. We have a Scotland Act and legislation has been passed there. Scotland had a referendum. The Manchester powerhouse has had no referendum. A couple of weeks ago we were in Wales, and they made it clear to us that they want to have more control over what is happening in their nation, but there are areas that perhaps are being devolved elsewhere where they could not afford to meet the bill because of their individual circumstances. So I would suggest, Chancellor, that it is not as clearly defined as some people wanting it rigid and some people wanting it completely open. It is about understanding where we are in our national devolution.

Rt Hon Oliver Letwin MP: I think the process that we are going through in Wales answers that set of concerns very properly, without the need for general codification. We are progressing towards legislation, one part of which is precisely to reformulate the relationship by establishing reserved powers. Of course, there are discussions and remaining points of disagreement, but, broadly, we are heading in a direction where the Welsh Assembly and the UK Government and Parliament will
come to an agreement about the new shape of the relationship between the UK and Wales in that legislation. There are discussions going on about very important issues, such as the necessity test and so on, which need to be brought to a conclusion, but, broadly, we are heading in a direction where, as I say, there will be an agreement. It seems a very workmanlike way to settle that question in Wales. It does not need to be the same settlement as elsewhere and I do not think we need a code to codify what can be in the Wales Bill. We just get on and reach a consensus and settle the Wales Bill.

**Q319 Lord Morgan**: Could we consider the process by which further consideration of devolution of the different nations could take place? This Committee—I may say before I was a member of it—was very critical of the process adopted in relation to Scotland: the vow at the end of the referendum campaign, the very rapid timetable for the Smith commission and then draft legislation in January. In Wales there was a more measured reflection, particularly in relation to the Silk commission. Could you indicate what broad principles might apply to a future development of this kind?

**Rt Hon Oliver Letwin MP**: I am sorry that I sound as if I am so completely anti-Cartesian, but I think it is one of the advantages of the way we operate in this country that there is no set of rules about how you do this. If you are trying to hold the union together and you have a referendum, which we did in Scotland, it may be that coming out of that very vigorous and fertile expression of highly conflicting democratic sentiment, a new view emerges of what is necessary to hold the union together. It did emerge, and emerged on something close to a consensual basis—but not quite—and that became encoded in the Smith commission. That has led to legislation and now to this negotiation about the fiscal framework. I think the proof of the pudding will be whether it achieves a settlement that everyone continues to be happy with, that holds the union together and that continues to provide all parts of the union with a stable government and the rule of law and so on. If it does, I do not share the view that there is something wrong with the process. Just as it is wrong to think that one should look at whether something works in theory rather than practice, it is wrong to look at whether the conclusion was right, the substance of it, and what happened. If it was, it does not matter too much how we got there. You are right that the process has been somewhat different in all the constituent parts of the kingdom.

I draw the Committee’s attention to the circumstances in Northern Ireland in this connection. If you tried to have a process which was going to work in the case of Scotland, Wales and England, which was imposed also on Northern Ireland, you simply would not have anything like the flexibility required to deal with the internationally and historically extraordinary, and different, set of concerns in the Province. This way—touch wood—we seem to be arriving at a perfectly reasonable settlement, which is preserving something fantastically valuable to us all: the peace and prosperity of Northern Ireland.

I resist the temptation to seek a uniform process. On the contrary, differences of process and approach are appropriate to different places, and the question in each case is not whether you arrive at the same destination or a theoretically perfect destination; it is whether it works.

**Q320 Baroness Taylor of Bolton**: Last time you were here you told us that there is a Cabinet constitutional reform committee, which I think you chair. It had only had one meeting when you were here before, so we would like to have an update on that. One of the things there is concern about, and you may have picked it up from the questions so far, is that you are responsible for constitutional reform and change, and I think there is concern that too many of the suggestions for
that change are piecemeal and not co-ordinated and could have unintended consequences, whether we are talking about Evel or some of the other issues that have arisen. How is that committee working and who is taking a long-term view of what kinds of problems we may be hitting further down the road, because we have so many piecemeal constitutional changes happening in a totally unco-ordinated way?

Rt Hon Oliver Letwin MP: I do not think they are unco-ordinated in the least, in the sense they are all things which are going on, and which are being discussed endlessly among a whole series of different people at differing levels: officials across many departments, Ministers in departments, and in various different settings. We are all extremely conscious of the fact that there are interactions. One of the reasons we have created a rather large constitution unit, headed by a second Permanent Secretary in the Cabinet Office who was one of the main participants in the Government’s conduct of the referendum in Scotland, is to ensure that we are all alerted constantly to those connections and interactions. This is not the first, and it probably will not be the last, British Government who have engaged in a series of different constitutional reforms. If I take you back to the early Blair years, there was a lot of constitutional reform going on then. I do not think it was unco-ordinated but there was no elaborate process of co-ordination, other than the useful and necessary co-ordination among Whitehall departments, which I think Whitehall is quite good at this in this context. As I say, I think it is useful to have this group of officials in the Cabinet Office and the wider UK Governance Group who are experienced in this and who spend their time making sure, on a week-by-week basis, that if there are issues which arise from interdependency they are brought to the fore. They also try to make sure that in our conduct vis-à-vis the devolved Administrations there is consistency, so the Secretary of State for Scotland is aware of what the Secretary of State for Northern Ireland is doing, and vice versa.

What we have discovered so far as formal decision-making is concerned is that, by and large, these decisions are so wide-ranging in their consequences across departments that they really need to be handled through the clearance processes of the home affairs committee. To go back to an earlier point raised by Lord MacGregor, the Department for Work and Pensions is not part of the constitutional affairs committee, but definitely needs to be consulted and involved in the various aspects of what is going on, for all the reasons we were just discussing. I use that just as one example; in fact, there are many. As it has turned out, we have used the home affairs committee as the means of going through the clearance procedures and making sure that all departments can see what is happening and alert us to any inconsistencies or dependencies that have not been taken account of. As it happens, I chair the home affairs committee, but it is a pure coincidence. It is not part of my role involving the constitution; it is just something I happen to do. When it reaches really important decisions, of course, as in any Administration, it will involve the Prime Minister as well. He does not sit on the home affairs committee, but, inevitably, when we come to any very major decision, it needs to involve him, and therefore some of these discussions have also gone on in Cabinet—and I think rightly.

What is important here is this engine room that has been created in the UK Governance Group so that we make sure that in all these discussions there is a group of people who are not focused on just one aspect or another of the scene but on the connections between them all, and that they alert us all to those things as we go forward. That is proving to be the best way of making sure that there is not an unintended consequence in one area from action in another.

Baroness Taylor of Bolton: I would remind you that when the Blair Government was introducing constitutional change, the ultimate responsibility lay with the Lord Chancellor, who had an overview and a committee that worked through that—and I think it is that overview function that
we would be rather concerned about. Can you give us more details of what you call the engine room, the Constitution Unit, because I think it would be interesting to know what civil servants are working on and how many? One thing you did not mention was how often the constitutional reform committee has actually met.

Rt Hon Oliver Letwin MP: It has only met on the one occasion I have described so far. I do not envisage it as being very likely that it will meet at all often because, as I say, we have used the home affairs committee for clearance processes rather than the constitutional affairs committee because it is better to involve all these other ministries in general.

Baroness Taylor of Bolton: Sometimes it is better to step back from the detail and take the overview.

Rt Hon Oliver Letwin MP: It is often necessary to do both, but I think it needs to involve broadly the whole array of domestic departments. It is too complicated a scene to be conducted simply by those departments that happen to have territorial jurisdiction or be involved, like the MoJ or the Home Office, in legal affairs. I would be very happy to write to the Committee and give you details.

Lord Judge: Arising from the answer you have just given, does it follow that the constitutional reform committee never gave a moment’s attention to the views of this House about the way EVEL was being dealt with as a procedural matter in the House of Commons?

Rt Hon Oliver Letwin MP: EVEL is a very good case in point where we did indeed pay attention.

Lord Judge: Did the constitutional reform committee do so?

Rt Hon Oliver Letwin MP: Sorry, I thought you were asking the question, “Did the Government’s constitutional reform committee attend to it?”

Lord Judge: Yes, of which you are the chair.

Rt Hon Oliver Letwin MP: Yes. My answer is that the EVEL proposition is a very good example of what I was describing to Lady Taylor: namely, that we came to the conclusion that it was better to consider all the representations which had been made to us and all the many complexities that arose, mainly in the home affairs committee and in discussion between Ministers outside committees. As a matter of fact, the one meeting of the constitutional reform committee was about the EVEL proposition—but, having had that meeting, we decided that we needed to involve many more ministries in those discussions than were available at the committee meeting, hence the movement over to the home affairs committee as the scene of the discussion.

Q321 Lord Brennan: The 2015 Conservative Party manifesto referred to the Smith commission on Scotland and the St David’s Day declaration in Wales. It said that this Government would implement equivalent change for England and, implicitly, Northern Ireland. We have heard a lot about asymmetry, and I do not want to challenge your concept of asymmetrical equivalence, but I would like you to tell us, for the next four years, what is left of that manifesto pledge in terms of a specific programme to implement if not equivalent then comparable change for England and Northern Ireland.

Rt Hon Oliver Letwin MP: It is very much under way. The transfer of powers, which has been agreed for a small number of cities so far, we hope to see expanded very widely—and not just cities, but, in differing ways no doubt, the counties, too. I hope that, by the time we get to the end of this Parliament, there will have been a very substantial transfer of power from central government to the constituent parts of England, just as there will have been by then a substantial
transfer of power from central government to the devolved Administrations. As I say, that is by no means the limit of our ambitions in the sense that we are also progressing in trying to enhance the powers of much smaller units, neighbourhoods and parishes included, in order to try to get more of the power over how things go in a particular locality in the hands of the people in that locality.

**Lord Brennan:** That will include fiscal power?

**Rt Hon Oliver Letwin MP:** The city deals struck so far include very considerable transfers of control over money, yes—but, beyond that, the local government finance settlement, recently announced, augurs in a huge shift whereby, by the end of the Parliament, all parts of England will be raising their own money from their own business rates and will be hugely less dependent on central government for their revenue. That, of course, is at the end of a long process that began five years ago. It started with giving each of the local governments in Britain the universal powers of competence, which they are only beginning to explore the importance of, and a series of other changes that are turning them progressively from being, if I can put it this way, dependants and claimants into being much more independent, much more able to make their own decisions and much more accountable, therefore, to their own electorates for the decisions they make. The city deals are just an expansion of that idea, allied, as I mentioned, to this much more perspicuous relationship between the electorate and the single figure elected as the mayor. So we are seeing exactly what the manifesto set out: an equivalent set of changes in England which will mean that central government will be interfering less in the everyday lives of many of our citizens, who will have a much greater degree of control over their own affairs. We hope that one of the effects of that will be that people will take a much greater interest in elections locally, as they have in London for the mayor.

**Q322 Lord Lester of Herne Hill:** You have made it very clear, and I am grateful, that you do not like neatness, you do not like a charter, you do not really think that what we have now is in any way unsatisfactory. I am just a common lawyer. I want to test what you have been saying in the context of Northern Ireland, which you singled out in particular. We are the only country in the common-law world of Europe that uses the European Convention on Human Rights; everybody else uses constitutional instruments instead. As you know, the European Convention on Human Rights is not meant to be a substitute for a national constitution; it leaves massive discretion to the states to decide how to govern themselves. If you take Northern Ireland, the only limits on the powers of the Northern Ireland Assembly and Executive in the devolution settlement are either under EU law or under the convention, and the convention is largely a waste of time because it leaves so much discretion to the authorities in Northern Ireland. The practical consequences of what we now have are, first of all, that free speech does not operate in Northern Ireland in the way it does in England and Wales. As you know—had this last time—in Northern Ireland they will not accept the Devolution Act, so publishers have to face that. It has the consequence that women in Northern Ireland who need access to safe abortions cannot have them in Northern Ireland at the moment. You know that there was a constitutional challenge which is now being challenged by the Attorney-General. It means that there is no equal treatment and equal protection under the law without discrimination. You mentioned at the beginning your concern about the great tradition of the protection of rights. Surely what I have just said indicates that there is a serious problem with the system which will not be solved by a British Bill of Rights but needs addressing by the Government.

**Rt Hon Oliver Letwin MP:** I think we did more or less discuss exactly this last time and I am very conscious of your views about it. I have more faith than you do in the combination of the common law, the convention and the coming Bill of Rights. Beyond that, I do not believe that creating a
written constitution is likely to resolve the issues that you are describing in a way that the combination of the things I have referred to does not already do. In the end, much depends on something else which I think you and I would agree about, which is the judges and the judgments they make under those textures of law. It would be foolhardy ever to claim that any system was perfect, but they do a pretty good job actually of protecting civil liberties in all parts of the country. I do not suppose that we will ever wholly agree about this.

Lord Lester of Herne Hill: Can you accept, at least, that the kinds of problems I have mentioned for publishers and for women in Northern Ireland and England are real, practical problems? They are not theoretical problems. I am not talking about Bentham versus Descartes, I am talking about practical problems. Are these not serious practical problems that need to be addressed?

Rt Hon Oliver Letwin MP: It is certainly true that there is always a set of issues that arise for any given set of people that need to be taken very seriously, and that is what happens in our courts. That process will need to continue. I do not in any way diminish the importance of those sorts of issues. I just do not think that writing down a new set of principles in a constitution, which I think, at best, would look awfully like, in this respect, the ECHR or the Bill of Rights, would solve those problems.

Lord Lester of Herne Hill: Sorry to press you, but no court, however skilled and competent, could solve the problem where the Northern Ireland authorities’ veto needed change. It cannot suddenly say, “Oh well, you’ve got to have a Defamation Act, the same as England and Wales”. It is not the function of the courts to do that; it is a function of the Executive and the legislature to create a framework which works, gives equality without discrimination and guarantees fundamental rights. That is not the situation at the moment.

Rt Hon Oliver Letwin MP: As I say, I think we disagree about the extent to which the combination of the European Convention on Human Rights and the common law does that.

Lord Lester of Herne Hill: Thank you.

Q323 Lord MacGregor of Pulham Market: You have been talking about the extension of fiscal responsibility and policy responsibility to not just the city regions and the devolved nations but more rural areas and counties. Do you have any concerns that increasing that fiscal responsibility risks entrenching inequality by reducing the scope for the UK-wide redistribution of resources? We had this argument put to us particularly in Wales.

Rt Hon Oliver Letwin MP: No, I do not think that because in each case, whether we are talking in relation to the devolved Administrations or local administrations, by one means or another a very considerable amount of redistribution is being built in between the haves and have-nots. For example, when we are transferring control over business rates to the local authorities, an equalisation mechanism will be included in that so those that have greater revenues than their needs entail will have to pay money to those that have fewer resources than their needs entail. That is the starting position and then, after that, the decisions they make will lead to the consequences they themselves will have brought about—but at least equalisation will have been the base. There is already built into the local government finance system a series of adjustments under exceptional circumstances to reflect that occurring.

Similarly, in the discussions about the fiscal framework with Scotland, at the devolved administration level, although they have not yet been settled, the whole discussion has been about—from our point of view at least—how to achieve a fair settlement to both parties, the Scots on the one side and the rest of the UK on the other. The starting position at the time of fiscal
autonomy being granted is one that is the same as it was the day before, and there is no transfer detriment to either party. That is a very important principle. Of course, if we were not doing that, then, for example, the fact that the oil price has fallen dramatically since the referendum would have entailed some massive detriment to Scotland, but that is exactly what we are not going to see here as we are trying to achieve a fair settlement with no detriment to either side. So I am very convinced that it is possible, as long as we are all sensible about it, to ally to very considerable measures of autonomy degrees of equalisation that prevent the problem you are raising.

Lord MacGregor of Pulham Market: One of our witnesses said that reliance on locally raised funds would risk mainstreaming deprivation in poorer areas. You are obviously very much aware of that risk.

Rt Hon Oliver Letwin MP: Yes.

Lord MacGregor of Pulham Market: You are saying that in every one of these areas, whether it is to individual nations, big cities and so on, there is going to be built into the mechanism some way of dealing with that problem of redistribution of resources?

Rt Hon Oliver Letwin MP: Yes, which is, after all, as you will be well aware, a very long tradition. It has never been easy to arrange equalisation, and is not easy now, but at the same time I do not think greater degrees of autonomy make it more difficult.

Lord MacGregor of Pulham Market: Yes. But they put quite an emphasis on it because, with greater degrees of autonomy and not having redistribution done at the centre of government, it becomes more obvious and more difficult, in some senses, to achieve.

Rt Hon Oliver Letwin MP: I think in part some people are inclined to want to have their cake and eat it, to make their own decisions and be protected from the effects of those decisions, and they cannot do that. But if it is a question of achieving fairness at the starting position so there is equalisation, we are committed to that and are doing it.

Lord MacGregor of Pulham Market: I do not know whether it is possible at this stage, but it would be very interesting to have a note on how exactly the problem that you were describing, about the effect in Scotland of the much lower oil prices, could be tackled in any settlement.

Rt Hon Oliver Letwin MP: I do not think I can offer you that at the moment because that is absolutely a central part of the fiscal framework discussions which are going on—but, once they have reached a conclusion, you will see it plain as day.

Lord MacGregor of Pulham Market: Which will be very soon, I hope.

The Chairman: Staying on the same theme, can I bring in Lady Taylor.

Q324 Baroness Taylor of Bolton: I have a variation of the same question. I do share everybody else’s concern about the fiscal framework, because we are going to have to pass the legislation possibly before we see the final outcome, and that ought to be a problem that concerns us all. In terms of fairness and redistribution, the same issues and questions can apply to income tax. How do you see the devolution of income tax developing in the future and what might be some of the consequences, as Lord MacGregor was talking about in another context?

Rt Hon Oliver Letwin MP: I do not think it matters very much which tax you are talking about; the principles remain the same. We are fulfilling the commitments of the Smith commission and elsewhere to the devolved Administrations, and I share your hope that they will get the fiscal framework agreed soon. We are carrying forward this substantial programme of transfer of resource and power to the English localities. In all cases, as we do so, we are conscious of the need
for equalisation. Whichever taxes you are talking about in any given case at any given time, you want to start with that principle of tax that the fact that there has been a transfer of power does not imply that the people to whom the power is being transferred are either richer or poorer as a result; they are in the same position, and everyone else is in the same position. After that, once you have taken the power, the decisions you make will, among other things, affect your relative prosperity. That is in the nature of the case and then—and this is why perspicuous democratic accountability matters so much—it is up to the people of the place to elect governments that look after them better rather than worse.

The Chairman: We are now getting into territory that we have touched on sometimes quite extensively already, but I think it is still worth asking the questions.

Q325 Lord Norton of Louth: I have two questions focused on England and perhaps I could combine them because, clearly, there is a lot going on which you have outlined over English votes for English laws, English vetoes for English laws, and we have got the city deals, so the shape of the governance in England is changing. I am wondering if you can try and make some sense of that and what we are working towards. How do you see the shape of governance in England in, say, five or 10 years’ time? How do we get there? We live in a liberal democracy and I was struck by your earlier answer when you were asked to define a constitution, you did it in purely liberal terms, so, in a sense, the democratic element, the people, was left out of that definition. In the context of city deals, on which we have heard quite a lot, you mentioned that they are deals, but who does the deals? How do you bring in the public and civil society? Several of the witnesses that we have heard have felt that there has been a lack of transparency and they have not really been engaged. Some representatives of business have said they have not felt properly engaged in the process. How do you bring the people in? Your point was that, when you get there, there will be democratic elements, with elected mayors and so on, but it is getting from here to there. How do you bring the people, the public and civil society, into the process?

Rt Hon Oliver Letwin MP: In answer to the first part of the question, the direction is clear. We are trying to arrive at an England in which there is a great deal more power a great deal nearer to the people and less of it controlled further away from them. Exactly what powers reside exactly where is something which will evolve and continue to evolve. So far as the question of who is negotiating with whom is concerned, it is important that we should have sufficient confidence in locally elected governments and the nationally elected Government to hold those discussions and come to conclusions. Inside England, part of this is about recreating the faith in, and the importance of, electoral participation in relation to traditional local government. I resist what I think is increasingly a tendency in some quarters to be dismissive of traditional local government and to wish to see rule by plebiscite in each locality. On the contrary, what is important is to build back what was a very fine tradition of civic engagement by very serious people, many of whom still miraculously continue to operate in our local governments, and we can have more of that if we trust in them, have faith in them and give them real power. Therefore, we should be willing to negotiate with them and they should be able to establish things, but, of course, at the end of the day, they have to submit themselves to election. I think that if we have given them real powers in the meantime, there is a real chance that more people will turn up and decide who they really want to have governing them. I speculate that we will see, for example, a very considerably enhanced turnout for the police and crime commissioners in this set of elections over what we saw in the last, because I think people have seen that they are not toothless but have real powers. So I trust these local governments, and it is worth trusting them. That does not mean that in every case all of them are perfect, any more than central government is always perfect, but, if we trust them, we will get better results.
**Lord Norton of Louth:** Coming back to the point about the shape that governments may take if we trust them also to reach agreements, there may be areas where agreement is not reached, and is there a danger of some areas being left behind in the process? What can we do about that? Coming back to my point about five or 10 years’ time, are we going to see some disparity where there is no agreed form relative to those areas where agreements have been reached quickly, there is something in shape and they are moving ahead?

**Rt Hon Oliver Letwin MP:** This is certainly a live issue. My own county of Dorset is one in which people are currently not agreed about the pattern, so I certainly recognise the force of your question. I think that what Greg Clark has shown us is that you can engender agreement much more frequently than people imagine. I do not know anybody, except Greg, who believed that he was going to be able to get all the housing associations in Britain into a voluntary agreement on right-to-buy. Of course, many members of the Committee may disapprove of the policy, but it was a remarkable fact that this was a group of people who, we were told, were never going to reach agreement and who reached an agreement. I recall people saying that it would be quite impossible to reach an agreement with Manchester and, if we did with Manchester, we certainly would not with any other major city, but agreements are being struck. So my sense is that once these agreements start to be made, although they will be more difficult to reach in some places than others—there are many histories and problems—in the end we probably will get to very high levels of agreement. I am very optimistic about that. It is really important we should operate in that way rather than imposing this from the centre. It is only in that way that, however much turmoil has been gone through on the way, people will feel that it is something which they have generated from below that suits their circumstances rather than something that somebody in Whitehall has designed for them.

**Lord Norton of Louth:** So you are proceeding on the basis that ultimately there will be fairly comprehensive agreement.

**Rt Hon Oliver Letwin MP:** At least very widespread, yes.

**Q326 Lord Hunt of Wirral:** Chancellor, you are giving us a much clearer picture now. Implicit in what you have said is the fact that, where there is leadership, as Greg showed, agreement follows. You are in a key co-ordinating role with a view to making sure there are no instabilities or sense of unfairness in any part of the country. You have also said there is no place for a one-size-fits-all, neat, theoretical box to fit everyone in. I suppose my experience in government during the 16 years I was a Minister was that, at the start, you had a clear vision. Provided that was clear enough, and quite often perhaps you were not able to specify it in sufficient detail, you had a clear vision. Will you be able to tell us that, when we approach the General Election in 2025, your clear vision has been realised—and, if so, what is it?

**Rt Hon Oliver Letwin MP:** Clearly, I cannot prejudge the outcome of the 2020 election; you are asking about a long way away. My hope is that even by 2020, let alone 2025, what we will see is a country in which a large number of transfers of power from the centre to various bodies, devolved Administrations, local administrations, neighbourhoods, and so on, have been successfully achieved, that there is an acceptance of the settlements they have generated, and, above all, that the various governments of the various parts of the country are, therefore, governing well and in the public interest. As I say, in the end I am much more interested in getting to the point where people have good government over which they feel they have an appropriate level of control than I am in precise configurations and neatness. We are well on the way to that. There has been a considerable tendency in some quarters to become alarmed by the degree of change and in other
quarters to bemoan the fact that it is not all happening at once, but I do not share either of these opposing views. It has been a process, it is proceeding at a reasonable pace, but not at breakneck pace. It seems to me to accord with the way we have done things over many years in this country.

**Lord Brennan:** Perhaps I can ask you a very general question in your role as chair of the constitutional reform committee, and it is particularly appropriate perhaps for you to answer it compared to other witnesses we have had. You talked about the constitution in this country, which is in a continuous mode of change, where you would eschew a uniform process because you think that these reforms generally seem to work in practice. Suppose they do not work in certain areas, particularly fiscal. Scotland is about to have the greatest income tax powers of any devolved Government in the world—or one of the greatest. Suppose it goes wrong. My question is, wherein lies the guardianship of the constitution in all this? Is it for the people to vote the wrongdoer out when perhaps they do not really understand the issue, especially financial? Is it to be put into the legislation that creates individual, separate systems: city development, or whatever? Is it for Parliament and Westminster, ultimately, to be the long-stop? How do the people have the reassurance in the plans that you are dealing with that there is guardianship within the nation?

**Rt Hon Oliver Letwin MP:** It is really the first of your alternatives that I would point to. To take the case of Scotland and fiscal autonomy, which is the most striking, once the fiscal framework is in place and Scotland has this enormous degree of fiscal autonomy, the people of Scotland will recognise that fact. I have very considerable faith in democracy to do that. I do not share the view that people do not understand things; I think people do understand things. Over time, I think they will vote for Governments whom they think are delivering a good outcome or vote against Governments whom they think are not. Democracy is never perfect and never immediate, but, over time, that is exactly what it does. If, over time, a Government of Scotland does not deliver what the people of Scotland feel they should be delivering on the basis of the fiscal autonomy they have, they will vote in different Governments. At any time in the past when we have been reluctant as a nation to recognise the power of democracy to right the ship over time, I think we have taken the wrong turning. Some of us, in some cases in much grander capacities than me in a very lowly capacity, were involved in attempts to ensure in the 1980s that people in particular parts of the country were protected from local governments that sought to exact too high a tax. In retrospect, that was not the right approach. It is better to trust democracy. That is why now we say of local government that it is able to raise any council tax it wishes, but, if it goes beyond a certain point, it has to hold a referendum, so that there is a very perspicuous relationship to democratic accountability. That is a much better approach. The check in the end is democratic on what works and does not work as a policy within a framework.

When you come to the question of the framework itself, of course, just as we have seen over recent years, over time people will come to views about whether the framework is the appropriate framework and, if they come to change their view, gradually they will elect Governments and Parliaments in the various parts of the country that may make further changes. But for the time being, the settlement we are moving towards is one in which there will be so much democratic accountability that the practical problems that emerge will get righted.

**The Chairman:** We are running out of time. I wonder, Chancellor, if you could spare us five minutes so that I can ask Lord MacGregor to ask the final question.

**Rt Hon Oliver Letwin MP:** Of course.

**Q327 Lord MacGregor of Pulham Market:** I am actually in favour of EVEL, but we have heard a number of criticisms from our witnesses and I wonder if I could very quickly put four of them to
you: that it has the possibility of creating two tiers or categories of MPs; that it can prevent a Government without an English majority being able to pass their Budget; that it would prevent a Scottish MP from becoming Prime Minister; and that it may undermine a strong foundation for the union.

Rt Hon Oliver Letwin MP: Let me take the first and fourth first. It does not create two tiers of MPs for the very reasons that I outlined in my first answer to Lord Judge. All MPs, or the majority of all MPs together, have to approve a piece of legislation, and that is the guarantee that every MP elected to Parliament is properly an MP and not some second-rate citizen. I know that some people who disagree with EVEL have tried to make the case that somehow the rights of some MPs are being trodden down. I do not think that is getting any traction because it is simply not true. We could, of course, have tried to introduce a kind of EVEL in which, for example, Scottish Members simply were not allowed to vote. Then it might have been argued that it was creating a second class of MP, but it cannot be argued as things are at present. Therefore, to take the fourth question, I do not think it in any way undermines the union; in fact, I think it strengthens it. What it does is to say, “We are a single Parliament, we all vote together and have to be satisfied in the majority of any legislation, but there is a protection to ensure that the English cannot have legislation passed over the heads of the English MPs”. That is a very reasonable balance at a time when so much power is being devolved elsewhere and will strengthen the union.

For the same reason, I do not see the slightest reason why there should not be a Scottish Prime Minister. That Prime Minister would be a full Member of Parliament, able to vote like everybody else on all the legislation that comes before Parliament and, therefore, there is no inhibition to a Scottish Prime Minister, nor should there be.

That brings me back to your second question about a Budget. I think what is instructive here is our experience in coalition. It is perhaps slightly unfair, but I recall coming before this very Committee— I do not think any present member was a member then—shortly after the 2010 election, and great scepticism was expressed about whether it would be possible to manage the coalition because, it was said, conflicting interests within government would lead to people being unable to reach any kind of accommodation. Of course there will be differing views about whether the programme we followed was a good or bad programme, but I think I can claim honestly and accurately that we had a sensible, business-like relationship with one another and we conducted government in a perfectly orderly way. In fact, I think it was a more harmonious Government than many single-party Governments have been in the past. In just the same way, in the United States or in many other countries where there is a separation of powers, people, one way or another, come to understand how to negotiate and deal with these situations. I think we are rather better perhaps in the UK than in many other places. Therefore, if there were a situation in which there had to be negotiation about a particular piece of legislation affecting England that was material to the programme of the Government, there would be grown-up, business-like discussions and people would arrive at an agreement.

The Chairman: Chancellor, we have had a very long process of evidence-taking sessions for this inquiry and I am delighted that you have been given the last word. We shall study what you have said, just as we have listened very carefully to it. You have been extremely forthcoming and very informative. We are very grateful to you. Thank you very much.
Details and Responsibilities of the UK Governance Group

At my appearance before your Committee on 11 February I promised to write to provide further information on the UK Governance Group. The Group was established in June 2015 and is led by Philip Rycroft, Second Permanent Secretary at the Cabinet Office. It brings together under one command the Scotland Office, the Wales Office, the Office of the Advocate General for Scotland and the Constitution Group (part of the Cabinet Office).

Ministerial responsibilities are unchanged in this arrangement; the Secretaries of State for Scotland and Wales and the Advocate General continue to lead their departments at Ministerial level as before and the offices retain their own distinct identities and budgets. I lead on the overarching constitutional agenda.

The UK Governance Group is the primary source of knowledge within the UK Government on constitutional and devolution issues and advises UK Government Ministers and Departments on all matters to do with the UK constitution and on devolution to Scotland and Wales. It works collectively with all UK Government departments to build their constitutional and devolution capability and supports them in their relationships with the devolved administrations.

The group comprises four teams:

- the Constitution Group in the Cabinet Office has the overarching responsibility within the UK Government for the constitution and its constituent parts. This includes: managing the relationship between the Crown, Executive and Parliament; ensuring the good function of the democratic process through the delivery of electoral and registration policy and law; strategic oversight of the devolution settlements and the interaction between the governments of the UK; and implementing Parliamentary reform. This team has the equivalent of 86 full time roles;

- the Scotland Office, which is responsible for the smooth working of the devolution settlement in Scotland and for representing Scottish interests within the UK Government and the UK Government in Scotland. This team has the equivalent of 71 full time roles;

- the Office of the Advocate General for Scotland (OAG), which is the UK Government’s Scottish legal team. OAG provides legal advice, drafting and litigation services to the UK Government in relation to Scotland and support the Advocate General in his role as a Law Officer. This team has the equivalent of 44 full time roles; and

- the Wales Office, which is responsible for the smooth working of the devolution settlement in Wales and for representing Welsh interests within the UK Government and the UK Government in Wales. This team has the equivalent of 43 full time roles.

The Group is a visible and active presence in Scotland and Wales, and its creation reflects the Prime Minister’s clear commitment to governing for one nation and with respect.

17 February 2016
1. To someone like myself who – despite being half-English and half Ulster-Scots, and also having a Welsh sister-in-law – was denied a vote in earlier referenda to approve the establishment of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly, as well as the recent referendum on Scottish Independence, on account of my being resident in England, I welcome this opportunity to comment on Devolution and the Union.

2. I am sure you will appreciate that, given my family’s roots in all four parts of the United Kingdom, I am unashamedly a UNIONIST with a capital U, N, I, O, N. I believe very strongly that the sum of the Union is greater than its component parts; that the Union is – or should be – a partnership of equals in which no one part has, or should have, dominance over the other three; that without any of its parts the residue of the kingdom would very soon cease to remain “united”; and that one’s primary allegiance, other than to Almighty God, should be to the maintenance of the Union of the United Kingdom of England, Scotland, Wales and Northern Ireland, rather than to any political party (or parties).

3. Like a four-piece jigsaw puzzle or a multi-threaded tapestry, each piece of the jigsaw – each localised but, nevertheless, currently interwoven thread – is unique and special. Without the contribution of any one piece or thread the picture itself becomes incomplete, its beauty marred, and its value depreciated by others at home and abroad. It is therefore fundamental to the well-being of the United Kingdom (as a whole) that a way forward is established which will buttress the Union of the United Kingdom for many years to come, lest we degenerate into being merely a federation of semi-independent nation-states bound and gagged together, possibly via our shared membership of the leviathan European Union.

4. Above all else, I believe the United Kingdom to be – and should remain – a unitary state, not a multi-national state. There is a difference: the former assumes the UK (as a whole) to be one nation and should be governed by one government which may, or may not, decide to devolve powers to subordinate institutions and/or local authorities, whereas the latter believes the Union to be four semi-independent nations bound together by a common head of state, with a large degree of autonomy over matters not directly legislated for in the United Kingdom Parliament.

5. At this point too, it also seems important – when discussing devolution – to distinguish legislative devolution (i.e., devolving the power to enact legislation) from administrative devolution (i.e., devolving the responsibility to execute and apply legislation), to locally-elected representatives, as prior to the establishment of the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly, the UK (as a whole and, to a greater or lesser extent) enjoyed a modest level of administrative devolution.

6. The Union of the United Kingdom has served the diverse peoples of England, Scotland, Wales and Northern Ireland well for 214 years, whilst the legislative union between Scotland and England established by the 1707 Treaty of Union – and underpinned by the earlier Union of the Crowns of 1603 – has proved to be largely successful in promoting peace and harmony, growing prosperity and lasting stability, between the peoples of England and Scotland for that much longer. Together, we have become – to coin a phrase – “a force for
good” on the world stage, and have achieved much more together than would have been the case had we remained – or, God forbid it, were we to ever again become – apart from, rather than parts of, one another. We are not merely strangers, or even neighbours, in the same street, but members of the same family and occupants of the same house.

7. It follows from this, that I believe it was a grave mistake to allow the electorate of Scotland the right to unilaterally decide whether or not they wanted a devolved legislature, the electorate of Wales the right to unilaterally decide whether or not they wanted an (initially administrative but, more recently, increasingly legislative) assembly, and the electorate of Northern Ireland whether they unilaterally wished to see the restoration of some semblance of devolved government in the Province along with all the other constitutional baggage (particularly the North-South Ministerial Council and Secretariat, the scarcely-mentioned North-South Implementation Bodies, and the British-Irish Agreement, Conference and Secretariat) prescribed in the 1998 Belfast Agreement, without affording the electorate in all other parts of the United Kingdom (particularly England which, after all, is the largest part of the UK) a say on whether or not such institutions should be established and whether or not legislative and/or fiscal powers should be devolved from the United Kingdom Parliament to those institutions. That said, in the absence of a devolved legislative assembly, successive UK Governments from 1972 to 1998 had no business legislating for Northern Ireland by non-amendable Orders-in-Council in the UK Parliament – rather than by Bill (as was the case for the remainder of the United Kingdom) – and should apologise profusely to the electorate of Northern Ireland for the harm and distress such shoddy governance afforded them, in rendering them second-class subjects of the UK via being governed as though they were citizens of some coconut colony rather than an integral part of the United Kingdom.

8. One does not need to be either an acclaimed, or self-styled, “constitutional expert” to realise that legislative devolution will inevitably lead to the anomaly known as “the West Lothian Question”, and possibly compromise laws and policy pertaining to taxation and social security throughout the United Kingdom as a whole, to the detriment of largely harmonious relations between, and within, the four parts of the Kingdom.

9. One also has no way of knowing whether it was this, or the recent surge in electoral support for the Scottish National Party, which has led the great constitutional vandal Tony Blair to recently admit it was a mistake to press ahead with devolving primary legislative powers to locally-elected representatives in Scotland, though even his predecessor (the late and much-respected John Smith) could not have foreseen that – far from legislative devolution being “the settled will” of the Scots – it would, in turn, ignite a spark for separatism which even the most ardent unionist would find difficult to extinguish, before it became a fire hell-bent on destroying all which is common and dear to patriotic Britons in all four corners of the Kingdom.

10. It should also be acknowledged that Margaret Thatcher probably stoked the embers of the 1979 referenda for Scots and Welsh devolution (introduced by the Callaghan Government) when she introduced the community charge a year earlier in Scotland than in the remainder of Great Britain (if not necessarily the United Kingdom as a whole, for it was never introduced in Northern Ireland), and that John Major further fermented demands for devolution when he, in turn, irresponsibly replaced the two-tier structure of local government in Scotland and Wales with a small number of unitary authorities there.
11. Indeed, it should be noted that (in 1997-98) only a tiny majority of Scots, Welsh and Northern Irish electors originally voted in favour of legislative devolution. In Scotland as a whole, whilst the electorate voted by approximately 74% to 26% in favour of establishing a devolved legislature (in the 1997 referendum which led to the creation of the same), it should not be forgotten that only 60.4% of the total electorate turned out to vote and therefore one could argue that a majority of all eligible electors did not actually vote for legislative devolution. In the parallel referendum in Wales, whilst the electorate voted by 50.3% to 49.7% in favour of establishing an administrative assembly, only 50.1% of the total electorate turned out to vote and therefore one could argue that the assembly was established on the whim of just over a quarter of the entire electorate, whilst three-quarters of all eligible voters did not vote specifically for it. In Northern Ireland, whilst 71% of those voting in the referendum on the Belfast Agreement (re-establishing the Northern Ireland Assembly) voted in favour of it, given the Agreement’s virtually unanimous acceptance among Irish Nationalists (i.e., approximately 35-40% of the population of the Province) and deep division among Unionists whether or not to accept it, it soon became clear that whilst an overwhelming majority of Irish Nationalists and Republicans voted in favour of it, only a minority of Unionists did so, whilst only 81% of the total electorate turned out to vote. Therefore, if one adds the 19% of the Ulster electorate who did not vote in the referendum to those who did but voted against the Belfast Agreement, one soon realises that more than four out of ten voters eligible to vote either voted against it or, at least, did not vote for it: hardly the most emphatic endorsement of the then UK Government’s commitment to executive and legislative devolution in Northern Ireland. In short, there is no mandate – even within those parts of the United Kingdom where legislative powers have been devolved – for legislative devolution to any, or all, of the four parts of the UK.

12. Insofar as administrative devolution is concerned, it is to be regretted that successive United Kingdom Governments (of all political hues) have not always appreciated the motives of the electorate in voting for particular political parties in the various states/regions of the United Kingdom, and have often used – or should one say abused – those states/regions who have rejected Members of Parliament belonging to political parties other than their own, as being not unlike the political equivalent of rats in a vivisectionist’s laboratory when experimenting with controversial policies (particularly relating to the reform of local government finance and the restructuring of local government) to the detriment of good relationships between the government and the governed as a whole. I referred earlier to the animosity Margaret Thatcher cemented between the United Kingdom Government and Scots voters when she introduced the community charge there a year earlier than its introduction in England and Wales, whilst John Major’s abolition of the two-tier structure of local government in Scotland and Wales was widely perceived to be little more than an ideological attack upon Labour-controlled regional councils in Scotland and Labour-controlled county councils in Wales rather than an experiment to see if unitary authorities could effectively execute and apply legislation prior to their introduction in largely Conservative England. Clearly, then, amidst the growing conflict between central government and local authorities, politicians (in all parties and none) at all levels, appear to have lost track of the reason why administrative responsibility over particular functions and services was historically devolved to locally-elected representatives and the purpose for, and of, local authorities as they have been traditionally understood.
13. It was with this in mind that, counselling against the possibility of devolving legislative powers to those Hell-bent on destroying the Union of the United Kingdom, Willie Ross (who was Ulster Unionist MP for Londonderry from February 1974 to 1983 and for Londonderry East from 1983 to 2001) once claimed — quite rightly in my view — that “there can only be devolution in a unitary state if those in control of any devolved authority are unionists, lest the devolved authority itself becomes a springboard for separatists.”

14. Unfortunately, Ross’s words were interpreted simply and solely as a rejection of power-sharing in Northern Ireland on account of a purportedly “bigoted” Unionist objection to including Irish Nationalists in the government and administration of Northern Ireland, without fully appreciating that Ross meant any and every power (including administrative responsibility, let alone legislative power) can only be devolved to assemblies/legislatures and local authorities if their members are committed to maintaining the integrity of the Union, as nationalists (whether they be of the Irish, Scots, Welsh or even English variety) will use — or should one say abuse — any powers devolved to them and the devolved institutions/local authorities themselves to advance the cause of separatism. A true separatist will never be content with simply having any power devolved to him but, ultimately, seeks total authority and autonomy from the body (i.e., United Kingdom Parliament) which currently exercises authority over him. This is the inherent danger of the current Government’s proposals for “devo-max” which, if allowed to proceed unchecked, will only serve to exacerbate (rather than quash) demands for separatism and may, in turn, lead David Cameron to belatedly join Tony Blair in admitting that such far-reaching constitutional reform is a mistake.

15. The hitherto latent, but recently-unleashed, acrimony between the United Kingdom Parliament and Government and devolved institutions/local authorities throughout the UK has undoubtedly been compounded by Scotland having its own legal system and complications/misunderstandings surrounding the level and range of powers hitherto devolved to the Northern Ireland Parliament and Government between 1921 and 1972 — which many see as a prototype for legislative devolution elsewhere in the United Kingdom — rather than the comparatively short period of direct-rule in the Province between 1972 and the restoration of some semblance of devolved government in Ulster in 1998 ahead of the subsequent creation of the National Assembly for Wales and the Scottish Parliament and/or any serious consideration of how best to enact and execute legislation for solely English matters.

16. At the outset I declare that, historically, I opposed the devolution of fiscal and primary legislative powers to those directly-elected bodies often referred to as “the devolved institutions” — believing such bodies would indeed institutionalise the anomaly which has come to be known as “the West Lothian Question” (whereby Scots/Welsh/Northern Irish MPs could potentially vote on English laws made in the UK Parliament at Westminster but English MPs cannot vote on analogous matters in Scotland/Wales/Northern Ireland for whom responsibility has been devolved to the Scottish Parliament, the National Assembly for Wales and/or the Northern Ireland Assembly). In my heart of hearts too, I would much prefer all pro-union parties in Scotland and Wales would revert to a pre-1995 scenario when Scotland and Wales both enjoyed a modest degree of administrative devolution channelled via a two-tier structure of local government (i.e., regional/county councils and district councils) rather than a smaller number of unitary local authorities with either the Scottish
Parliament or the National Assembly for Wales acting as both a state-wide upper-tier of devolved administration (in a local authority sense) and a legislature (in a law-making capacity) for functions and services transferred to it from the United Kingdom Parliament and Scotland Office/Welsh Office respectively.

17. However, recognising that this is not an option being actively considered by any of the self-styled “pro-union” parties I have reluctantly come to the conclusion that, in order to overcome the anomaly of “the West Lothian Question”, rather than devolve more powers over a wider range of government functions and public services in Scotland, Wales and Northern Ireland, all efforts must now be placed on federalising the governance of the United Kingdom as a whole, if we are to avoid creating two classes of Parliamentarian in the UK Parliament and institutionalising the very division which the United Kingdom Parliament was created to dissolve. In saying that, I hasten to add I remain firmly opposed to the transfer of powers over corporation and income tax, and/or national insurance contributions and social security payments, to state legislatures, believing that in the event of the UK moving to a federal system of government such powers must remain reserved by the federal parliament for all four parts of the United Kingdom.

18. That said, the current devolution of further powers to the Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly – primarily, it would appear, as a sop to nationalists Hell-bent on destroying the integrity of the United Kingdom – surely calls into question the level and range of powers devolved to each of these institutions. The disparity of authority devolved from Whitehall and Westminster – coupled with the absence of a uniform structure of local government throughout the UK – could unleash currently suppressed antagonism between, and within, elected local representatives throughout the United Kingdom.

19. At the same time, as devolution may well result in the eventual contracting-out of more public and local services to the private and voluntary sector or the ending of UK-wide pay and conditions of employment for remaining public-sector workers – as both the devolved institutions and local authorities struggle to prudently operate on finite resources – one should be aware that this may, in turn, subconsciously nurture a further loosening of the wider public’s allegiance to the United Kingdom as a whole, as it has hitherto among many employees of many newly-privatised industries. One could argue that the renationalisation of certain industries, services and utilities may strengthen the Union of the United Kingdom but that is not a road I would wish to go down, and cannot help feeling that the love one has for one’s country (by which I mean the United Kingdom as a whole) does not extend to wishing to renationalise that which has recently been privatised, lest one’s patriotism is usurped by an unhealthy belief in national socialism.

20. Nevertheless, faced with growing disparity in terms and conditions of employment for any remaining public sector workers, and inequality in the level and range of powers devolved to locally-elected representatives throughout the United Kingdom, one feels it is imperative that members and officials of the devolved institutions and local authorities from across the UK liaise with each other more closely than they have hitherto – perhaps via the forum of the British-Irish Council and/or more regular joint meetings of the Local Government Association (representing local authorities in England), Convention of Scottish Local Authorities, Northern Ireland Local Government Association and the Welsh Local Government Association (representing local authorities in Scotland, Northern Ireland and
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Wales respectively) – to prevent any powers being devolved to quasi-autonomous non-governmental organisations by default although, in doing so, one is mindful of the need to ensure any such forums and organisations are accountable to the electorate as a whole (rather than simply Her Majesty’s Government at best, and the UK Parliament as a whole at worst), lest they be viewed as supra-quangos in their own right.

21. In any event, administration by quango (aka “quangopus government” as it was rightly described by the late Clifford Forsythe, who was Ulster Unionist MP for South Antrim from 1983 until his death in 2000 and Ulster Unionist Parliamentary Spokesman on Local Government from 1983 to 1995) will surely result in increased, not fewer, calls for separatism, from those who will soon come to realise that the devolved institutions and/or local authorities are little more than smokescreens to masquerade the absence of any meaningful decentralisation of authority to locally-elected representatives. Forsythe, it should be noted, was a passionate opponent of quango-rule and consistently argued for greater administrative devolution to, and in, Northern Ireland, citing the unimplemented 1979 Conservative General Election Manifesto commitment to establish one or more elected regional councils with a wide range of powers over local services in the Province as the way forward for administering the affairs of Northern Ireland.

22. Amidst the current uncertainty surrounding the level and range of powers scheduled to be devolved, both the Prime Minister and a large element of both the Conservative Parliamentary Party and HM Opposition appear, at best confused, and at worst ignorant, over the differences between devolution and federalism.

23. The two are not synonymous. In a federal United Kingdom, the state legislatures of England, Scotland, Wales and Northern Ireland, would not be subordinate to the United Kingdom Parliament (from whom any devolved institution/local authority would devolve its authority, and by whom they could, if needs be, either be over-ruled or even abolished), but autonomous from each other and, most importantly, fully independent from the federal parliament and government of the United Kingdom at Westminster, to allow all Members of the United Kingdom Parliament to continue to vote on what would then be solely UK-wide matters.

24. Much as it irks me to say it – as one who strongly supports the hereditary principle and who was, and remains, strongly opposed to the eviction of all but a remnant of hereditary peers from sitting and voting in the House of Lords – this could be further strengthened by replacing the existing House of Lords with an elected senate (comprising either of nominated representatives from an English Parliament, the National Assembly for Wales, Northern Ireland Assembly and the Scottish Parliament or directly-elected senators from each of the states of the UK chosen to represent that particular state rather than any political party) and, furthermore, possibly abolishing the Scotland Office, Northern Ireland Office and Wales Office, and transferring their remaining powers to the Scottish Parliament, Northern Ireland Assembly and the National Assembly for Wales respectively.

25. This would, of necessity, require the creation of an English Parliament and, in all probability, the creation of a Constitutional Convention to determine the number of senators from each state in a future federal senate, the voting system for electing senators, the tenure of a senator’s term in office, and the powers of veto (if any) the House of Commons would have over the Senate, as well as to decide which functions should be exercised and what services
should be provided/purchased at federal level and which functions should be exercised and
what services should be provided/purchased at state or even local authority level, as well as
the future role (if indeed there is one) for the Scotland Office, Wales Office and the
Northern Ireland Office.

26. It is significant that, to the best of my knowledge, during the recent debate on devolution in
the House of Commons on 14th October 2014, not a single MP cited Edmund Burke’s
apposite remarks in his speech to the electorate of Bristol on 3rd November 1774, when he
said “(The United Kingdom) Parliament is not a congress of ambassadors from different and
hostile interests, which interests each must maintain as an agent and advocate against other
agents and advocates, but parliament is a deliberative assembly of one nation with one
interest that of the whole, where not local purposes, not local prejudices ought to guide, but
the general good, resulting from the general reason of the whole. You choose a Member
indeed, but when you have chosen him he is not a Member of Bristol but he is a Member of
Parliament.” In other words, all Members of the United Kingdom Parliament should be
etitled to debate and vote on all legislation enacted in the United Kingdom Parliament.

27. The Prime Minister’s proposal for “English Votes For English Laws” (i.e., legislation for
England to be made by English Parliamentarians alone) not only transforms the Conservative
Party into an English Nationalist Party— with as much contempt for the Union as a whole as
the separatists in the Scottish National Party, Sinn Fein and Plaid Cymru— but it seeks to
destroy the legislative union which the United Kingdom Parliament was created to maintain.

28. Furthermore, by failing to explain that the “Barnett Formula” – designed in the late 1970s by
the then Chief Secretary to the Treasury, Joel Barnett, as a “short-term solution” to minor
Cabinet disputes over the cost of executing and applying legislation in Scotland, Wales and
Northern Ireland, in the countdown to expected devolution in 1979 – was never designed
either to be permanent or a territorial subsidy by the taxpayers of allegedly “prosperous”
England, to fund the machinations of profligate elected local representatives in the
purportedly “disadvantaged” regions/states of Scotland, Wales and Northern Ireland, Her
Majesty’s Government is failing to remind others that it is a temporary means of addressing
the higher cost of providing/purchasing services in rural parts of the United Kingdom with a
smaller population spread over a larger geographical area, until such times as the elected
representatives of those regions/states assume responsibility for their provision from
Whitehall. This failure has served only to increase (rather than diminish) existing acrimony
between voters in England and the electorate elsewhere in the United Kingdom to the
detriment of the Union as a whole.

29. Time alone will tell whether a decentralised, or federal, United Kingdom will prove to be as
lasting and secure a legacy for future generations as the post-1707 pre-1995 legacy was for
those of us who were fortunate enough to have enjoyed the dying days of the latter. It is
undeniable, however, that the status-quo is unsustainable. Whilst the recent referendum
on Scottish Independence may have sedated the clamour for an independent Scotland for
the time being, it has not fully slain the prospect of Scottish Independence in the future,
anymore than one suspects that the referendum on the Belfast Agreement in 1998 has fully
slain Irish Republican clamour for the reunification of Ireland as an All-Ireland Republic
independent of Great Britain. The creation of either an independent Scotland or an All-
Ireland Republic would surely lead to wanton instability and the long-term destruction of all
of us.
30. May Almighty God be moved to afford the unionist parties wisdom in how best to buttress the Union of the United Kingdom of England, Scotland, Wales and Northern Ireland, and improve the governance of all its component parts in the months and years ahead.

31. As an essential first step, perhaps the sovereign’s official birthday could be made a bank holiday throughout the United Kingdom and renamed “Union Day” so all her subjects could celebrate their shared British identity and – particularly in the wake of Her Majesty Queen Elizabeth II recently surpassing Queen Victoria as our longest serving monarch – a concerted effort could (and should) be made to promote the regular singing (or citing) of the UK National Anthem (preferably all three verses), to underline allegiance to the Crown, our largely unwritten constitution, and our shared heritage.

September 2015
Summary

1. In this submission, I wish to address the terms of the inquiry of the committee by approaching it through the idea of ‘constitutional essentials’ in constitutional theory and constitutional practice. By analysing the question of the limits of devolution in this way, we can outline certain core features of the constitution which give it its own distinct identity. The undermining of these essentials could put the identity of the British constitution, and the British state as a ‘union state’, in jeopardy. Thus the terms of the current inquiry can be rephrased as ‘what are the constitutional essentials of the UK constitution’?

2. This document will look at the idea of constitutional essentials from a number of perspectives. It will begin by looking at the idea of constitutional essentials in constitutional theory, and in particular the work of US philosopher John Rawls. It will then look at examples from comparative constitutional law, particularly Germany, where the German Federal Constitutional Court has developed a sophisticated constitutional doctrine of constitutional identity. The subsequent section will examine some candidate features of the contemporary British constitution which could qualify as constitutional essentials identifying four key constitutional principles: the rule of law, fundamental rights protection, democracy and the separation of powers. The conclusion explores the practical relevance of constitutional essentials to further constitutional reform.

A Theory of Constitutional Essentials

3. Perhaps the most well-known use of the term ‘constitutional essentials’ is in the work of the renowned US political philosopher John Rawls. The idea of constitutional essentials is central to Rawls ‘liberal principle of legitimacy’ which attempts to outline a blueprint for legitimate government. For Rawls, the liberal principle of legitimacy entails the idea that: ‘[O]ur exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonable be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational.’

4. Rawls identifies two different kinds of constitutional essentials in this liberal principle of legitimacy:
   1. **Fundamental principles** that specify ‘the general structure of government and the political process’ and include ‘the powers of the legislature, executive and the judiciary’ and the ‘scope of majority rule’; as well as
   2. the ‘**equal basic rights and liberties** of citizenship that legislative majorities are to respect’, including ‘the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law’.

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71 Political Liberalism, 227.
72 Political Liberalism, 227.
5. With regard to the first kind, Rawls argues that changes to governing structures such as how power is distributed among the different branches of government should only be changed ‘as experience shows to be required by political justice or the general good’\(^73\) and not for the political advantage of sectarian political interests.

6. What Rawls tells us, then, is that the legitimacy of constitutions relies on certain core features which cannot be violated, that these rely on the fundamental equality of citizens, and that changes to the constitution, not least changes to governing structures must respect the fundamental equality of citizens.

**Comparative Perspectives**

7. Comparative constitutional practice can also shed light on the idea of the ‘essentials’ of a constitution. In particular, analysing provisions of constitutions which explicitly preclude the amendment of parts of the constitution, known as ‘eternity clauses’, provide a good idea of the nature of ‘constitutional essentials’ in constitutional practice.

8. Eternity clauses or doctrines abound in constitutional practice. Examples include the entrenchment of a republican form of government in the French\(^74\), Italian\(^75\), and Greek\(^76\) Constitutions; the multiple restrictions on amendments contained in Art. 288 of the Constitution of Portugal,\(^77\) the ‘basic structure doctrine’ of the Indian constitution\(^78\) and, perhaps most famously, Art. 79(3) of the German Constitution (basic law).\(^79\)

9. German constitutional law enjoys a particularly sophisticated constitutional identity doctrine developed by the German Federal Constitutional Court (GFCC). This doctrine has undergone rapid development in recent times in the light of the challenges of European integration to German constitutional supremacy. The question facing the GFCC in these cases is the analogue of the question animating the current inquiry; how much transfer of powers away from the organs operating under a constitution (whether ‘up’ or ‘down’), leads

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\(^73\) Political Liberalism, 228.

\(^74\) Art. 89.

\(^75\) Art. 139.

\(^76\) Art. 110(1).

\(^77\) Which includes the independence and the unity of the state, the republican form of government; The separation between church and state; Citizens' rights, freedoms and guarantees; The rights of workers, workers' committees and trade unions; The coexistence of the public, private and cooperative and social sectors in relation to the ownership of the means of production; The requirement for economic plans, which shall exist within the framework of a mixed economy; The elected appointment of the officeholders of the bodies that exercise sovereign power, of the bodies of the autonomous regions and of local government bodies by universal, direct, secret and periodic suffrage; and the proportional representation system; Plural expression and political organisation, including political parties, and the right to democratic opposition; The separation and interdependence of the bodies that exercise sovereign power; The subjection of legal rules to a review of their positive constitutionality and of their unconstitutionality by omission; The independence of the courts; The autonomy of local authorities; and the political and administrative autonomy of the Azores and Madeira archipelagos.

\(^78\) Which provides that ‘the power to amend the constitution does not include the power to alter the basic structure, or framework of the constitution so as to change its identity’. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461, 1510, 1603, 1624-25.

\(^79\) Which prohibits amendments to the constitution which would change the division of the German Federation into Lander, violate human dignity, the constitutional order, or the basic institution principles establishing Germany as a democratic and social federal state.
to the undermining of the character or identity of the constitution itself. It is therefore worth examining in detail.

**German Constitutional Identity Doctrine**

10. The question of the amount European integration permitted by the German constitution, in essence, tests the limits of Art. 24(1) [now also Art. 23(1)] which explicitly permits the transfer of ‘sovereign powers’ to international organisations. In early decisions, the GFCC fleshed out the nature of some of the ‘constitutional essentials’ referred to in Art. 79(3) and clarified their limiting effects, particularly with respect to the application of EU law in Germany. In a series of cases known as the ‘Solange’ decisions, it promised to monitor the activities of the (then) EEC institutions, vowing to step in if they were perceived to violate the guarantees contained in the German constitution. In doing so it set limits to Art. 24(1) by arguing that it does not permit amendments to the ‘basic structure of the Basic Law’ which ‘forms part of its identity’. This involved:

‘the constitution’s essence, […] the basic framework of the constitutional order in force and the legal principles underlying the Basic Law’s fundamental rights guarantees.’

11. Further development came in the Court’s headline *Maastricht* and *Lisbon* decisions relating to German ratification of the EU’s Maastricht and Lisbon Treaties respectively. The particular ‘essential’ at stake in these decisions related primarily to the democratic character of the German state and the Court clarified both the nature of this constitutional essential as well as the limits it set to the process of European integration. In its *Maastricht* decision, the Court relied on Art. 38(1) which guarantees the right to vote and the holding of regular free and fair elections to German Parliament to argue for the safeguarding of democracy as a ‘constitutional essential’ of the German constitution. Interpreting the principle of democracy in this way, the court found that there was an absolute limit on the amount of sovereign power Germany could transfer to the EU set by this particular constitutional essential. Moreover, it required a close monitoring of EU institutions by the Court to ensure that they did not go beyond their conferred powers, thereby running the risk of violating this democratic essential of the German constitution.

12. Again in the *Lisbon* decision, the ‘democratic state principle’ as enshrined in Art. 38(1) was the basis of the challenge to German ratification of the Lisbon Treaty and set the limits for further expansion of the EU. In finding limits to the potential of European integration, the Court found that an act ratifying a Treaty ‘must protect against violations of the member states’ constitutional identity, which is not open to integration.’ It furthermore asserted its right to undertake ‘identity review’ to ‘preserve the inviolable core of the Basic Law’s constitutional identity.’ It therefore retained the ‘authority to review the inviolable core content of the constitutional identity of the Basic Law [based on Art. 79(3)] is respected.’

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82 Solange II (1986) 73 BVerfGE 339, para. B.2.b
85 Para. C.I.bb.
86 Para. C.I.bb.
87 Para. C.I.bb.
13. Perhaps more strikingly, in this decision the Court went on to enumerate other areas in which European Integration could not interfere, based on its interpretation of the principle of democracy. In expounding upon the idea of sovereign and constitutional identity, the Court found that:

‘European unification on the basis of a treaty union of sovereign states may not be achieved in such a way that it deprives the member states of the authority they need to politically shape economic, cultural and social living conditions. In particular, this applies to areas that shape the citizen’s living conditions, including: the private sphere subject to their individual responsibility; political and social security, protected by fundamental rights; and political decisions that rely especially on cultural, historical, and linguistic orientations – political decisions that develop in public discourse through the involvement of political parties and parliamentary process, both of which contribute to public policies. Essential areas subject to this democratic action consist of, inter alia: citizenship, the civil and the military monopoly on the use of force; revenue and expenditure, including external financing; and all acts of state authority that encroach upon fundamental rights, especially including major encroachments on fundamental rights such as the deprivation of liberty in the administration of criminal law or detention in other institutions. These important areas also include cultural issues, including: language policy; family and educational policy; and the manner in which the profession of faith or ideology is addressed.’

Constitutional Essentials and the UK Constitution

14. The partly written, partly un-written, partly legal, partly political and partly customary nature of the UK constitution does not contain an overarching ‘eternity clause’ from which we could start an analysis of the ‘constitutional essentials’ of the constitution to consider the limits of devolution. Furthermore, the absence of a supreme canonical constitutional document allows for a wider variety of views and interpretations of its character and identity than might otherwise be the case. In this section, I will examine a number of candidates for the ‘constitutional essentials’ of the British constitution; the supreme legal authority of parliament, reserved or excepted matters under the devolution settlements, the idea of constitutional statutes and the principles of the common law.

Parliamentary Sovereignty

15. It is best, perhaps, at the outset to rule out, or at least identify as inadequate, one of the most prominent legal doctrines of the constitution; the doctrine of parliamentary sovereignty. Leaving out for the moment, the many views which deem the doctrine to be moribund in the contemporary British constitution, the legal doctrine does not contribute much to an understanding of the essentials of the constitution. Simply put, the doctrine of parliamentary sovereignty, at least in its traditional guise, means that ‘anything goes’; parliament can make or unmake any law unfettered by external constraints barring the binding of future parliaments (although even this constraint is subject to dispute). This militates against the idea of constitutional essentials, at least in the form of substantive limits to amendments of the constitution. Answering the question raised by the current

88 para. 3(b)(aa)
inquiry with the doctrine of parliamentary sovereignty, results in a simple ‘no’. There are no limits to devolution as long as the legal sovereignty of parliament remains intact. The only way this would not hold would be the secession of one of the devolved nations in which case the question posed by the current inquiry would be entirely moot.

**Reserved Matters**

16. Another possible starting point for the identification of the ‘constitutional essentials’ of the UK constitution would be to examine the specifically ‘excepted’ or ‘reserved’ matters in the devolution legislation itself. The reservation of specific powers relating to political issues such as defence, international relations or the currency could be seen to be a statement of the ‘constitutional essentials’ of the British constitution. However, this is also an inauspicious place to start given that the ‘reserved’ matters themselves are not uniform across the devolved institutions. Moreover, the definition of ‘reserved matters’ has been subject to change to allow for the further devolution of powers such as tax and borrowing powers devolved in the Scotland Act 2012.

**Constitutional Statutes**

17. The idea of ‘constitutional statutes’ has become an increasingly prominent feature of the contemporary constitutional landscape. First identified by Laws LJ in *Thoburn v. Sunderland City Council* [2002] EWHC 195 (Admin); they are distinct from ordinary statutes in that they are immune from implied (but not explicit) repeal. They are also subject to a more constitutional, ‘purposive’, interpretation than ordinary statutes as the Supreme Court illustrated in cases such as *Robinson v. SSNI* [2002] UKHL 32 and *H v. Lord Advocate* [2012] UKSC 24.

18. In terms of distinguishing constitutional statutes from ‘ordinary’ statutes, in the *Thoburn* decision, Laws LJ stated that:

‘a constitutional statute is one which (a) conditions the legal relationship between citizen and the state in some general, overarching manner, or (b) enlarges or diminishes the scope of what we could now regard as fundamental or constitutional rights.’ (para. 62).

19. He went on to list a number of examples including the devolution statutes, the European Communities Act 1972 and the Human Rights Act 1998. However, in terms of constitutional essentials, this list is over-inclusive. The statutes themselves are subject to amendment, albeit explicitly rather than impliedly, and such amendments could not be said to compromise the identity of the constitution. However, much of the *subject-matter* of constitutional statutes in terms of, for example, the rights accorded to citizens and the arrangement of the institutions of government, as captured in the test established in *Thorburn*, seems to provide a solid foundation for identifying the essentials of the constitution. This receives support from the doctrines and principles of the constitution elaborated by the Courts in recent times.

**Principles of the Constitution**

20. In the contemporary UK constitution, notwithstanding the absence of an eternity clause or other provisions which would allow the easy identification of ‘essentials’ of the constitution,
decisions of the courts, and particularly recent decisions, allow for the extrapolation and development of key constitutional principles which are arguably the clearest case of constitutional essentials of the UK constitution. Four principles can be identified: the rule of law, fundamental rights protection, democracy and the separation of powers.

The Rule of Law

21. Recent judgements have seen the considerable fleshing out of this long-standing principle of the constitution. In the R (Jackson) v. Attorney General [2005] UKHL 56, the House of Lords found that the rule of law was the ‘ultimate controlling factor on which our constitution is based.’\(^9\) The subsequent Supreme Court decision in AXA v. Lord Advocate [2011] UKSC 46 reiterated the commitment to the rule of as a core and foundation aspect of the constitution.

22. The rule of law, moreover, is closely connected with the institution of judicial review. In Jackson judicial review was also identified as a ‘constitutional fundamental which even a sovereign parliament cannot abolish.’\(^9\) In AXA, the court found that the rule of law would be upheld by the Courts were a democratically elected legislature to ‘abolish judicial review or diminish the role of the courts in protecting the interests of the individual.’\(^9\)

Fundamental Rights

23. That fundamental rights form a part of the basis of the UK constitution is clear from the prominence of the Human Rights Act 1998 in the workings of the Courts. However, whereas the Human Rights Act enhances and renders explicit the protection of fundamental rights under the British constitution, recent decisions have made clear that even if the Human Rights Act did not exist, the principle of the protection of fundamental rights would be ensured by the basic principles of the constitution including the rule of law.\(^2\) Indeed recent decisions have intimated that the rights protected by the constitution through the common law should, in some cases, take precedence over the Convention rights protected in the Human Rights Act 1998, with the latter relegated to a supporting role in adding to the protections already recognised by the common law.\(^3\)

Democracy

24. It is with respect to the principle of democracy that the doctrine of parliamentary sovereignty can provide a substantive limit to amendments to the constitution over and above the ‘thin’ account discussed above. The normative justification of the sovereignty of parliament as being based in the principle of democracy has been recognised by the courts on a number of occasions including in the Jackson and AXA decisions where the Courts found that the doctrine of parliament sovereignty was, in effect, the embodiment of the principle of democracy.\(^4\)

\(^9\) Jackson at [107].
\(^9\) Jackson, at [102].
\(^9\) AXA at [51]
\(^4\) Jackson at [126].
25. This long-standing principle of the constitution was given a particular endorsement as a ‘constitutional essential’ of the British constitution in the Supreme Court’s recent decision in HS2. In this case, in an echo of the GFCC in the Maastricht and Lisbon decisions, the Supreme Court found that the British constitution could set limits to the application of EU law in the UK. For example, in considering the argument (ultimately rejected) of the applicants Lord Reed found that there were certain ‘long-established constitutional principles governing the relationship between Parliament and the courts’ and referred explicitly to Article 9 of the Bill of Rights of 1689 regarding judicial scrutiny of parliamentary procedure. He referred approvingly to the GFCC’s jurisprudence on the reception of EU law in Germany where it found that ‘a decision of the court of Justice should not be read by a national court in a way that places in question the identity of the national constitutional order.’ Lord Neuberger also noted that Article 9 was ‘one of the pillars of constitutional settlement which established the rule of law in England’ and referred to Lord Browne-Wilkinson’s dictum in Pepper v. Hart that it was ‘a provision of the highest constitutional importance’.

26. The analysis undertaken here into constitutional theory and comparative constitutional practice and the constitutional practices of the domestic courts of the UK provide a useful way of analysing the question of whether there are limits to devolution as set by the ‘constitutional essentials’ of the UK constitution. As such the idea of ‘constitutional essentials’ lends support to the idea that where identified, they cannot be transgressed or undermined in the on-going negotiation of the devolution of powers to the regional parliaments and assemblies of the UK. In this regard a number of practical, but necessary speculative conclusions, can be advanced.

27. Firstly, following Rawls, and particularly the restrictions on changes to the structure of government, it can be argued that further amendments to the governing structures in the UK, including the devolution of further powers should only be done in the interests of ‘political justice and the general good’ and not for strategic, partisan or sectarian political interests. Significantly, at the UK level, this must include the general good of the UK as a whole.

28. Secondly, the principles of the constitution as identified by Courts, and shared by many other constitutions in their ‘eternity clauses’ can have practical implications for future developments of the British constitution

1. With regard to the protection of fundamental rights, some of the proposals being developed around a replacement of the Human Rights Act with a British, or English,
The principle of democracy as noted above, is another important constitutional essential both in theory and practice. In the context of the British Constitution and the Union state, the representative component of the principle of democracy relates to the representation of the British people, including British citizens living under a devolved jurisdiction. Therefore it is arguable that this particular constitutional essential could set limits to the amount of devolution of powers permitted under the constitution. If we consider how the principle has been interpreted by the German Federal Constitutional Court, it could require that some substantive powers remain at Westminster to ensure the continuing and effective representation of the British people. The precise extent, content and nature of those powers would require some specification but some inspiration can be drawn from the GFCC’s Lisbon judgement, particularly where it points to certain areas which must be governed by democratically-representative institutions in order to ensure the effectiveness of the principle of democratic representation of a people. For example, in the case the court identified areas such as citizenship, the civil and the military monopoly on the use of force; revenue and expenditure, language policy; family and educational policy; and the manner in which the profession of faith or ideology is addressed as areas over which democratically-elected institutions must have power in order to give full effect to the principle of democracy.\footnote{Lisbon Treaty Case (2009) para. 3(b)(aa)} Of course this list cannot be directly translated into the British context, not least because some of these powers have already been devolved. However what the GFCC’s interpretation of the principle of democratic representation does is to force our attention to the need for adequate representation of the British people at Westminster with sufficient powers to make such representation meaningful.

2 October 2015
INTRODUCTION

1. I would like to thank the Constitution Committee for the opportunity to contribute to their inquiry into the Union and devolution.

2. The scope of this inquiry is broad, and proportionately complex: firstly, to identify the principles underlying the Union between the constituent nations and sub-nations of the United Kingdom, and second, from these to derive consistent principles and practical measures so that the Union, and its central and devolved governance, might be not merely preserved but systemically maintained and strengthened.

3. The focus of this submission is on subsidiarity in the nationality and immigration law of the United Kingdom, including the development of sub-national status or regional citizenship among several of the constituent polities, its place in the constitutional system, and the likely consequences of devolution.

4. I have previously submitted written evidence on this subject and related matters to the Scottish Affairs Committee, the Scottish Parliament’s Devolution (Further Powers) Committee, and the Smith Commission, with particular emphasis on the Acts of Union of 1706-1707 and other statute and case law, and the place of the 'reserved powers' of immigration and nationality in both the Scottish settlement and the wider context of constitutional (d)evolution. The first and second submissions appear at the respective Committee websites; other sources in addition to these will be indicated in the course of my argument, but I will here acknowledge a particular debt to several online resources, including the BAILII and AUSTLII websites, the United Kingdom Nationality Instructions, and the "Records of the Parliaments of Scotland to 1707" website.

5. I shall begin by considering how the United Kingdom is to be defined in constitutional or juridical terms, in the current context, and some of the consequences for the constitutional basis of its nationality law; I shall then discuss the place of subsidiarity or sub-national status, especially Scottish nationality law, within the tradition of British citizenship, and then conclude with several observations as to the possible inter-action between sub-nationality and the devolutionary process.

6. I write, not from an academic or legal, or, for that matter, a political perspective, but as a private individual with an interest in the devolution process and its outcome. No opinion is expressed here as to whether the present Union can or should be preserved; but it can be said that, even in the event of the independence or near-independent autonomy of Scotland or Northern Ireland, given the degree of inter-connection or of integration with England, the respective governments would need to reach agreements on a wide range of issues, amounting almost to a new Union.

DEFINING THE UNITED KINGDOM

7. A conventional definition, in territorial, or constitutional and juridical terms, of the United Kingdom would usually include the nations of England and Wales, Scotland, and Northern Ireland. Such a definition may (like the current Immigration Bill) go further and include the crown dependencies, that is, the Isle of Man and the Channel Islands; these are not, strictly speaking, an integral part constitutionally of the United Kingdom, but sub-national polities affiliated to it through a common head of state and, to some extent, common government (albeit mediated through orders in council) and with a measure of parity with the United Kingdom. This inclusion appears reasonable enough, given historical and geographical considerations, the community of governance
and legal tradition, and, with qualifications to be explored, a common citizenship. "The Overseas Territories", to quote a 2008 Foreign Affairs Committee report, "are not constitutionally part of the United Kingdom"; but, given the criteria applied above to the dependencies, the inclusion appears warranted, if the potential consequences of devolution are to be considered, as sub-nations of the United Kingdom, of some of the overseas territories, in particular Gibraltar, Bermuda and the Caribbean islands, and the Falkland Islands and Saint Helena, the inhabitants of which since the British Overseas Territories Act 2002 have largely been British citizens.

8. In defining the United Kingdom reference could also be made to, for example: the holders of British Overseas and other 'residual' categories of British nationality, given the Goldsmith Report; the Republic of Ireland, on account of Northern Ireland; the 'right to reside' in the United Kingdom derived from Irish citizenship, and also held by some citizens of other member states of the European Economic Area and Switzerland and their relations, as well as European citizenship itself; and the Commonwealth, on account of 'Commonwealth citizenship', as originally envisaged, and the shared legal tradition and current legal influence. I shall make further reference to several of these aspects.

9. It is to be noted that, for each nation or sub-nation or territory, the basis of the Union is a different constitutional document, or a range of constitutional documents and conventions specific to each polity, in some cases of very long standing.

10. In the case of Scotland and England (including Wales), the basis of their union could be regarded as commencing with the 1603 Union of the Crowns and the constitutional parity between England and Scotland, the Scottish Claim of Right 1689 (recent Church of Scotland written evidence to the Devolution Committee relates to both this and subsidiarity), the English and Scottish Acts of Union of 1706-1707, and concluding with the Scotland Act 1998, the current Scotland Bill, and the proposed Full Fiscal Autonomy Commission. For Northern Ireland, there is the other Act of Union of 1800, the Government of Ireland Act 1920, and subsequent Constitution and Northern Ireland Acts. For the dependencies and the overseas territories there is a range of separate constitutional ordinances "set out in Orders in Council". In some cases, such as the British Indian Ocean Territory, or Gibraltar, these are still based ultimately on conquest or cession, as noted in Bancroft v Secretary of State for Foreign and Commonwealth Affairs, [2008] UKHL 61 (22 October 2008), paragraph 31 and following; compare also, for example, Molloy, *de jure maritimo et navali*, 1682, page 376, and Davis v Lynch, Irish Reports 1869-1870, 570, on the historical distinction between the status of Ireland, as a dependency of, and Scotland, as equal to, England, and the legislative consequences for the application of English law, including nationality law.

11. In the case of the European Union, there is a range of treaties and agreements comparable to those listed above; with regard to the Commonwealth, and the process (to which the term 'devolution' could be reasonably applied) by which the United Kingdom and certain affiliated external territories were finally distinguished from the former dominions and other territories, the relevant constitutional instruments include the Statute of Westminster 1931 and the related post-war arrangements which envisaged an equal partnership between the constituent nations, and the relinquishing Canada, Australia and New Zealand Acts in the 1980s. Some authorities seem to have understood the dominions and colonies to have been integral parts of the United Kingdom (their citizens are still regarded as not being aliens in United Kingdom); such is the view put forward in White v Busby [1859] NZLostC 69, where New Zealand, by virtue of the cession effected by the Treaty of Waitangi in 1840, became 'a portion of the realm, as formerly happened in the case of the northern counties of England, of Wales, of Berwick on Tweed, and of Calais', and Scotland is described as being as much a part of the United Kingdom 'as Middlesex'.


SUB-NATIONAL STATUS

12. The variegated basis of the Union in the United Kingdom is reflected in its nationality and immigration law, above all in its tendency to sub-nationality or regional citizenship, separate immigration rules, and the local "right of abode" or "belongership" of the overseas territories. Belongership is conveniently defined in the 2008 Foreign Affairs Committee report already cited, as "a status which indicates freedom from any immigration restriction and also confers rights usually associated with citizenship including the right to vote".

13. The constitutional basis for the citizenship of the United Kingdom has been held to lie in the Act or rather Acts of Union between Scotland and England, in particular the reference in Article IV to the "subjects of the United Kingdom of Great Britain". Some authorities have gone further and advanced the claim that there was neither English nor Scottish nationality law before 1707; this position, however, is contradicted by the Act of Union itself, given its references to the "subjects of either kingdom", and the existence and formative influence of at least English nationality law in the development of British citizenship is acknowledged in the current United Kingdom Nationality Instructions; a more complex understanding, to be discussed below in connection with Scottish nationality law and the interpretation of Articles IV and XV of the Act of Union, has been held by the United Kingdom government in legislation and litigation since 1707.

14. Both the crown dependencies and the overseas territories have each their own local status and immigration systems; although, as might be expected, the Islander status associated with each of the dependencies at present merely distinguishes between those British citizens from the Isle of Man and the Channel Islands who have employment and establishment rights in the European Union, and those who do not, and the Immigration Rules of the Isle of Man are very similar to those of the United Kingdom. The basis of the sub-nationality or regional citizenship of each of the overseas territories, namely the "right of abode" or "belongership", are the separate constitutional ordinances, for the most part recent, including, for example, the Falkland Islands Constitution 2009, section 22(5), whence "Falkland Islands Status"; the provisions of the Gibraltarian Status Act 1962 appear to be the most elaborate.

15. As a general observation, diversity appears to be inherent in the current citizenship legislation of the United Kingdom, given the several types of British citizenship, quite apart from the local rights of abode and other forms of regional status; and full British citizenship is not only defined by the 1981 Act but by subsequent legislation in connection with Hong Kong and other former and current territories, and by parts of the British Nationality Act of 1948 and the Immigration Act 1971. There are similar situations with regard to the nationality or citizenship, including sub-nationality and regional citizenship, legislation of other Commonwealth countries, of which perhaps the nearest parallel to the United Kingdom’s course of development and hence best example is Australia. For mainland Australia, in a single long lifetime, there has been an evolution from the common 'imperial' British subject status, often acquired under the laws of individual colonies and subsequently states of the Commonwealth of Australia after Federation in 1901, combined with "Australian domicile" or "right of abode"; then the system under the Statute of Westminster and the Australian Citizenship Act 1948, which conferred both Australian and Commonwealth citizenship; followed by the subsequent decline in the importance of the Commonwealth citizenship, most notably with regard to the present alienage of British subjects and Irish citizens as a result of the High Court's interpretation of constitutional evolution, especially after the Australia Act 1986. With regard to the former external or acquired territories, it is perhaps sufficient merely to refer to the Australian citizenship, with or without the right of abode in mainland Australia, attached to the territory of Papua, and the Australian Protected Person status attached to the Trust Territories of New Guinea and Nauru, and the introduction of the Special Circumstance Visa to
resolve the status of certain persons resident in Australia after the independence of Papua New Guinea, together with McDermott's essay, "Australian Citizenship and the Independence of Papua New Guinea", [2009] UNSW LawJl 50, and litigation, including the Walsh case, [2002] FCAFC 205, and Re MIMIA; ex parte Ame, [2005] HCA 36. Since 1979 the 'devolved administration' of Norfolk Island has had its own immigration law, under which permanent residence is conferred, as it is in New Zealand's Cook Islands, another "devolved administration", in much the same way as "belongership" is conferred in each of the British overseas territories, or citizenship is elsewhere. It may be added that Commonwealth countries have recognised persons as British subjects who had no claim to any form of British nationality under the British Nationality Act 1948 and subsequent legislation, as will appear from, for example, the Australian Citizenship Instructions on the 1949-1987 transitional provisions; indeed, New Zealand citizenship legislation continues to recognise the British subject status of New Zealand and other Commonwealth citizens.

16. Reference could also be made to the concurrent immigration powers held by the federal and provincial governments of Canada under section 95 of the 1867 Constitution Act. Apart from the "French citizenship which appears formerly to have been associated with Quebec, and the proposed Quebec Identity Act 2007 (Mme Marois' Bill 195) defining provincial or Quebec citizenship, there is the Quebec Residence status, used to determine individual eligibility for tertiary education support.

17. Regional citizenship is not unknown in the European Union: there is recognition, of a kind, in the Spanish Constitution, section 2, and an assertion in the Catalan Statute, article 7; France has similarly recognised a New Caledonian citizenship; Bavaria has issued its own 'Blue Card'; as pointed out in my unpublished submission to the Smith Commission, Denmark's separate immigration systems for Greenland and the Faeroe Islands; and lastly, Finland and the Aland Islands' 'right of domicile'. Conversely, it is possible European citizenship, which today stands in the same relation to British citizenship as Commonwealth citizenship did in 1949, may evolve beyond its initial definition in the Maastricht treaty of 1993 and become independent of national citizenship law, either by decision of a British or a European court; see further Pham v Secretary of State for the Home Department, [2015] UKSC 19 (25 March 2015), [2015] 1 WLR 1591.

SCOTTISH NATIONALITY LAW

18. In other submissions I have examined at length the evidence for the existence of Scottish nationality law at the time when the Act of Union came into effect; it is therefore appropriate here simply to state that Scottish subject status appears then to have been acquired either (under common law) by birth in Scotland itself, or by birth or residence in Nova Scotia or other external territories designated by charter or legislation; by birth outside Scottish and English territory to a father born in Scotland; possibly by marriage, by natural or moral law; by compliance with the last clause of the Bank of Scotland charter, or possibly under the reciprocal legislation with France; or by individual Acts of naturalisation or denisation. I note that under the Nova Scotia charter of 1621 (the first of several) those who settled in or were born there were not only Scottish, but English subjects, and subjects of all other territories under the Crown; with regard to other Scottish colonies, the Africa and Indies Act of 1695 seems to provide only for Scottish subject status.

19. At somewhat greater length I shall now review the evidence for the continued existence of elements of Scottish nationality and of Scottish subject and denizen status after the Act of Union came into effect, and to what extent it has, perhaps, been preserved by the Act.

20. Either on the basis of Articles IV and XV of the Act of Union, which, in addition to the common citizenship of the United Kingdom, can be read to imply the continued existence of Scottish subject status after the Act came into effect (and the reciprocal extension to English subjects), or from the
general preservation of private and some public rights under Articles XVIII and XXV, or for some other reason, the old Scottish Parliament's last legislative activity includes, with other naturalisations, the Huguetan Act, which, in language borrowed from the 1705 Act naturalising the Electress of Hanover and her family as English subjects, confers Scottish subject status on Huguetan 'and the children of his body, and all persons lineally descending from him'; this perpetual entitlement also appears in the Graham Act of 1641, and was perhaps modelled on English usage. The Sophia Act was repealed in 1948 by the British Nationality Act, which presumably implies that it was part of British nationality law; the Nationality Instructions still contain guidelines, based on the Hanover litigation of 1956, for assessing claims ultimately based on it. It seems possible to infer that the unrepealed Huguetan Act remains part of British nationality law; and that, in accordance with either the Sophia guidelines or those relating to denization, Scottish subjects whose claim is derived from Huguetan, or another beneficiary of naturalisation or denization, with no closer connection to the United Kingdom would either be British Overseas citizens or "accorded administrative recognition".

21. The Attorney-General (Manningham-Buller) in the Hanover case made several interesting observations with regard to English and Scottish nationality law from 1707 (HL [1957] 436, especially 443-444), which could provide the interpretative basis for a prospective Scottish nationality law:

(i) article IV of the Act of Union assumes Scottish subjects are to be subjects of the United Kingdom;
(ii) 'the Act of Union must not be treated as repealing all the statutory provisions in England and Scotland providing for English or Scottish nationality';
(iii) unless pre-Union English (and Scottish) nationality law applied after the Union, so as to govern British nationality, there was no British nationality at all in existence when the Act of Union took effect';
(iv) pre-Union nationality law was 'regarded as still in force after the Union';
(v) those who became English (or Scottish) before or after the Union 'automatically became citizens of the United Kingdom by virtue of the Act of Union';
(vi) subsequent common law did not necessarily cease Scottish subject status.

It is possible that Scottish subject status, at least for those who are natural born Scottish subjects, retains the 'indelible' character formerly attached to British nationality (Singh v Commonwealth of Australia [2004] HCA 43).

22. In earlier submissions I have cited Dr Talbott's research into Franco-Scottish relations, including the apparent French recognition of Scottish nationality until at least 1907, and Dr Fahrmeir's research into the Bank of Scotland charter, which, including the famous or notorious last clause interpreted until 1820 as conferring Scottish subject status on investors, was confirmed by the United Kingdom parliament on several occasions in the 18th century and again in 1802; I have not been able to trace further details of the Scottish Denizen Bill mentioned in the Scottish press in 1822, which was presumably connected to the Bank of Scotland charter; Mr White's 1999 Scottish Law Times article I have not seen. Among other examples of the recognition of Scottish nationality by the United Kingdom and other governments, there is a range of legislation, relating to the registration of births, deaths and marriages, some of which was not repealed until the 1980s. The most important legislation appears to be section X of the Registration of Births, Deaths and Marriages Act (Scotland) 1854, which provided for a Foreign Births Register for the children of Scottish subjects, registration being undertaken by the British consular network; I understand some English births were so registered, but of course England was no more foreign than the dominions.
were, at least until the Statute of Westminster or equivalent legislation came into effect in the 1930s and 1940s. It is possible, therefore, that a person born in, for example, a former dominion before the Statute of Westminster came into effect, with at least one parent born in Scotland, is also a Scottish subject and hence a British citizen by birth rather than by descent, and presumably allowing the next generation to claim British citizenship with the right of abode; other permutations can be considered.

23. Some of the legislation refers to not only Scottish but Irish subjects; for the latter, there is perhaps case law in Davies v Lynch, Irish Reports, 1869-1870, 570, mentioned above, which may indicate the existence of nationality law specific to Northern Ireland.

SOME CONCLUSIONS AND OBSERVATIONS

24. Several principles and observations emerge from this analysis of the reserved powers of immigration and nationality in the United Kingdom and their constitutional basis.

25. Firstly, subsidiarity and a measure of variation are inherent to the United Kingdom's composite constitutional and juridical arrangements, even with regard to reserved matters.

26. Secondly, as demonstrated by the outcomes of the Westminster Statute and the United Kingdom's admission to the European Union, the consequences of what has been called constitutional evolution within the context of devolved governance can diverge greatly from what was originally intended, and no settlement is necessarily conclusive.

27. Thirdly, the constitutional parity of Scotland within the Union gives rise to several jurisdictional questions, especially with regard to the authority of the parliament of the United Kingdom to legislate in matters such as immigration and nationality which may be protected by the Act of Union.

28. Lastly, the consequences of devolution are not limited to the United Kingdom, especially given the possibly indelible character of Scottish subject status, and the interpretation of the citizenship law of several Commonwealth countries.

2 October 2015
Transcript to be found under Professor Ailsa Henderson, University of Edinburgh
You asked me to provide answers to the questions we ran out of time to discuss when my colleague and I gave evidence to the Committee last month. Please find some thoughts below.

10) How important is it for states to foster a sense of national, rather than regional, identity? Which other countries offer successful and unsuccessful examples of this?

National identity helps to strengthen the legitimacy of the state in the eyes of its citizens. It helps to secure solidarity bonds between the population, to facilitate and support redistribution and the pooling and sharing of resources among citizens. It helps to legitimise the decisions taken by government in the name of ‘the people’ they represent, and to ensure the authority of state institutions and the forces of law and order are recognised. It helps to secure sacrifice – to fight and risk dying or losing loved ones for one’s country is more bearable than to do so for ‘the state’.

All governments in all democratic countries find different ways of fostering national identity to help reinforce the view that the state is also a nation embodying some emotional commitment and sense of belonging among citizens. This may often be through what Michael Billig referred to as ‘banal nationalism’ – everyday practices and behaviours that serve as ‘unmindful reminders’ of nationhood. Institutions like the BBC, the NHS, for some, the Royal Family, can also embody a sense of nationhood. Common lived experiences – through TV programmes and cultural and sporting events – also serve nation-building purposes, and government support for these ventures can have a subtle nation-building effect.

But it is more likely to be successful when it is subtle and allowed to evolve naturally, through lived experience. Overt flag-waving can be more alienating than inclusive. This is especially the case if a government decides to do more to promote national identity because it believes that the country is facing an existential threat from secessionist pressures.

National identity at the level of the state does not need to be promoted at the expense of national or regional identity in other parts of the country. The UK has been quite unusual in comparison to other countries in its capacity to recognise the multi-national character of the state, and most citizens see no inherent conflict in having a dual national identity, i.e. in being simultaneously English and British, Scottish and British, etc. This has been a strength of the UK and a positive example to other countries.

11) Do citizens of other states understand their constitutional structures and the sharing of powers among different state institutions?
To what extent do you believe it is useful for states to have a document clearly setting out their constitutional structures?

My colleague Ailsa Henderson will have data that she can provide you which sets out citizens’ understanding in more detail. I believe it is important to try to generate understanding among the electorate about the roles and responsibilities of different levels of government, to enhance democratic accountability. The Scottish Parliament has provided some very useful educational
resources that set out the evolution of devolution through its different stages, and the roles and responsibilities of parliamentarians. This parliament also produces useful resources to promote awareness of the work of both chambers and of government. But we should not be naive in assuming that these roles and responsibilities will not be confused in political debate. It is a common feature of multilevel government that governments at one level may seek to take credit from or shift blame to the other, especially when they are led by competing parties. Constitutional interdependence also makes it very difficult to disentangle neatly the powers and responsibilities of each level of government. This will become even more the case in light of the complexities of the Scotland Bill 2015, while the draft Wales Bill risks adding even more complexity to multi-level government in Wales. A single document is unlikely to capture the nuances and effects of these interdependencies and overlaps, and risks over-simplifying something that is inherently complex.

December 2015
Transcript to be found under Stephen Herring, Institute of Directors
The Mile End Institute, Queen Mary University of London—Written evidence (UDE0042)

About us

1. The Mile End Institute is a major new policy centre based at Queen Mary University of London. Its mission is to enhance public understanding of the challenges facing our systems of politics and governance, and to promote a richer debate about public policy issues and the UK’s role within the wider world.

2. Our evidence to your committee focuses entirely on the constitutional implications of recent proposals for ‘English Votes for English Laws’ (hereafter ‘EVEL’). The Institute is currently running a major research project into EVEL, conducted by Professor Michael Kenny (Director of the MEI) and Daniel Gover (a Research Fellow; also a researcher at the UCL Constitution Unit). The project is funded by the Centre on Constitutional Change and by the Economic and Social Research Council. Further information is available through our website: http://mei.qmul.ac.uk/about/english-laws/index.html.

English Votes for English Laws (EVEL)

3. The government’s proposals for introducing EVEL are, on one level, an internal matter for the House of Commons. Yet they also raise substantial constitutional questions that extend far beyond the lower chamber, including whether it is appropriate for England to now be treated as a distinctive political unit with a right to greater say over its own domestic affairs. Yet, acceptance of this principle raises further constitutional questions. One concerns how the different parts of the UK ought to relate to each other, particularly given the deep inter-relationships between the four territories and the dominant position of England within the Union. Another is whether provision of a distinctive English voice within the Westminster parliament undermines or weakens the latter’s capacity to act as a legislature for the whole of the UK. There is also a question to be asked about whether EVEL will in any way change the relationship between the two Houses of Parliament, given that the legislative process in the Lords will remain unchanged. More generally, the current proposals need to be assessed in terms of their capacity to achieve the government’s stated goal of securing the Union and placing it on a more equitable and stable footing. Given the innovative character and potential constitutional ramifications of these reforms, it is important that they are considered in conjunction with debates about the devolution settlement across the UK.

4. EVEL has emerged as a politically salient topic at the present time for a number of overlapping reasons. The devolution of varying powers to Scotland, Wales and Northern Ireland has made more transparent the asymmetrical nature of UK governance. At the heart of this is the so-called West Lothian question, whereby English MPs are no longer able to vote on policy that has been transferred to devolved legislatures, but MPs representing territories with devolved government may continue to vote on comparable English policy decisions. The gradual expansion of devolved powers has exacerbated this asymmetry.
Alongside this, there is considerable evidence of a strengthening sense of English national identity, and signs of a growing correlation between this sentiment and dissatisfaction about England’s position in the Union, notably over the question of different spending allocations across the UK.\textsuperscript{101} Another issue associated with this dissatisfaction is the West Lothian anomaly. Polling in 2012 indicated that the proportion in England who strongly agreed that Scottish MPs should no longer be able to vote on England-only policy stood at 55%, compared to 18% in 2000.\textsuperscript{102} The Scottish independence referendum appears to have made these concerns more salient. The government’s contention that the introduction of EVEL is an important and necessary step to assuage a growing sense of English grievance is therefore not without foundation.

5. Nevertheless, the implementation of EVEL in parliament creates a number of constitutional challenges and carries the risk of inflaming territorial tensions. We believe that there are three broad areas that the government should now focus its attention on in order to deal with these risks.

6. First, much will hinge upon how EVEL operates in practice. A large number of different objections have already been registered, including concerns about the implications of these changes for the role of the Speaker, the effect of using Commons standing orders rather than primary legislation, and the potential for the Speaker’s decisions to be challenged in the courts. These are all matters that need careful consideration, but they are not themselves insuperable objections, in our view.

7. We believe that particular attention should be paid to the question of ‘spillover’, whereby decisions taken in one part of the UK may have consequential effects in others. If there is a perception that elected representatives from other parts of the UK are being unfairly prevented from intervening on matters that affect their constituents, this may well inflame territorial tensions. The most commonly cited example of spillover is the Barnett consequentials, which refers to the capacity for decisions that affect spending in England to have consequential implications on the block grant to the devolved administrations via the Barnett formula. Criticisms of the government’s proposals on this score often overlook the fact that these provide for a double veto, so that all legislation will continue to require the support of a majority of MPs from across the UK in order to pass.

8. A more important, but less noticed, spillover issue in the current proposals has been highlighted by former civil servant Jim Gallagher, who notes that there is no mechanism for ensuring that the consequences of tax decisions taken by a subset of MPs do not spill over into spending consequences for UK-wide projects.\textsuperscript{103} As Gallagher notes, given that income


tax must be reapproved by parliament each year in order to remain in force, the provision of a veto to a subset of MPs could potentially enable them to hold the government to ransom. This therefore shifts the balance of power in favour of the subset of MPs, providing far less protection for UK-wide MPs against this form of spillover. In general terms, while there is a strong, principled case for the introduction of EVEL in relation to most primary legislation, the argument for extending it to Finance Bills is much less persuasive.

9. Equally, careful consideration should be given to how such consequential effects should be managed. One response might be for certain types of consequence to be taken into account by the Speaker during the certification process. Here the government’s position is somewhat ambiguous: the Conservative party’s English manifesto stated that ‘the Speaker will have regard to any cross-border effects’ (p8), but the proposed standing orders state that the Speaker should disregard ‘minor or consequential effects outside the area in question’ (83J(2)). As an alternative to loading these issues onto the Speaker, there is, we believe, a strong case for the establishment of a new committee (potentially composed of both MPs and peers) to consider them. The McKay Commission made such a recommendation, advocating the formation of a Devolution Committee in the Commons. Such a committee would serve as a valuable integrative forum in a context where the UK is facing significant centrifugal pressures. And it could well take the heat out of some of the most fraught, territorial conflicts relating to spillover.

10. Second, the implementation of EVEL may have important political effects within parliament, and these need careful consideration. The procedure effectively creates alternative majorities in the House of Commons: for MPs across the UK, as well as for various territorial subsets (most notably those representing English constituencies). This makes it possible that a UK government might in future lack a majority to legislate on matters that solely affect England. In such a scenario, there would be a renewed onus on both government and opposition parties to negotiate and bargain over policy. But there may be exceptional moments when the government needs to override this convention, if, for example, it is unable to secure its budget even after making various offers of compromise. The principle of parliamentary sovereignty, indeed, implies that the UK-wide parliament retains the right to override these new arrangements as it does in relation to devolved governments elsewhere. But, because the current proposals do not specify this option, any future government would face the task of repealing or suspending these standing orders, should such an exceptional situation arise. There is a debate to be had about whether it is preferable to suspend standing orders in this situation or whether the reforms themselves should explicitly recognise that they may be exceptionally overridden. Our own view is that it would be better for the term ‘normally’ to be introduced in relation to these proposals. More generally, for these proposals to work, and be seen to be legitimate across the House, it is important that the government works to secure as a wide a consensus as it can.

11. In order to do so, we would contend that the government ought to have taken up the suggestion of the McKay Commission that a vote on the principles underlying EVEL should have preceded the introduction of specific mechanisms and procedures designed to reflect
them. This would have also provided an opportunity to incorporate the term ‘normally’ into the proposals. The principle suggested by the Commission was that ‘decisions at the United Kingdom level with a separate and distinct effect for England (or for England-and-Wales) should normally be taken only with the consent of a majority of MPs for constituencies in England (or England-and-Wales)’. In the current situation, the government needs to demonstrate its willingness to work with other parties and heed their concerns as these proposals are introduced and evaluated. It is especially important that the government’s review process is as transparent and comprehensive as possible.

12. Third, very little attention has so far been paid to how these reforms will be received outside parliament. As indicated above, there is clear evidence of a growing sense of dissatisfaction about the constitutional status quo within England. The implementation of some form of EVEL does present an opportunity to address these sentiments. Yet the government also needs to strike a careful balance. Specifically, it needs to present EVEL as a pro-Union – and not as a narrowly pro-English – measure. This will also require a clear statement of why a fully symmetrical settlement, in which England enjoys exactly the same constitutional mechanisms as other parts of the UK, is inappropriate given England’s size and position in parliament.

13. Aside from these immediate concerns, EVEL is also likely to have longer-term constitutional implications, and these are hard to predict in concrete terms. One possible outcome is that they may open up a debate about a more substantive form of EVEL, perhaps involving an English executive within a federal UK structure. Exploring how the current proposals articulate with other planned changes to the constitution and governance of the UK, notably the Scotland Bill and the expansion of the City Deals programme in England, is now imperative, and this suggests an additional reason for establishing a Devolution Committee. There is an intimate relationship between these reforms and other territorial questions, not least the question of the mechanism for allocating spending across the UK and the principles that ought to inform it. The introduction of EVEL is unlikely to quell debate about this and other questions relating to the governance and constitution of the UK.

October 2015

Professor James Mitchell, University of Edinburgh—Oral evidence (QQ 149-159)

Transcript to be found under Professor Michael Keating, University of Aberdeen
Transcript to be found under Professor Richard Rawlings, University College London
Dame Gillian Morgan—Written evidence (UDE0066)

I was Permanent Secretary to the Welsh Assembly Government from May 2008 to August 2012. I was a new entrant to the Civil Service having spent most of my career in health. The views expressed are my own and I cannot comment on developments in Wales since my retirement. I am sorry that it has proved impossible to find a date to discuss these issues in person.

1. **How important is it that the different Governments across Great Britain are served by a single Home Civil Service?**

A skilled Civil Service could make either integrated or separate services work for the good of the Union and the Devolved Administration (DA). There are however significant advantages, with our complex devolution settlements, to have civil servants who share a unifying ethos, common skills and standards and know each other. This helps joint working on shared and non-devolved issues and allows problems and disagreements to be resolved.

- **To what extent is that Civil Service genuinely still a unified service?**

The UK Civil Service felt unified during my initial tenure. Lord O’Donnell worked hard to ensure that there was coherent leadership on UK and shared issues whilst respecting the development of differing policies in fully devolved areas. The Wednesday morning meeting allowed briefing, debate and discussion between the Permanent Secretaries and allowed joint solutions to be developed, particularly with respect of the development of the Service. Initiatives such as the ‘top 200’ pulled together senior Civil Servants from all the administrations and facilitated shared discussion and debate. When the National School of Government existed it provided a focus for more junior people and helped maintain the shared ethos and standards. Although Wales was a small user of the School, I share Sir John Elvidge’s regret about its demise as it removes a place where Civil Servants from all departments and DAs learn and develop together. This type of opportunity is a strong binding force that has now been lost.

Maintaining common approaches became harder with changes in Governments and with increased discussions about potential Scottish Independence. I sensed some concern about whether senior Civil Servants could maintain confidentiality where UK interests might differ from those of the DAs. At one level I understand this but it made the concept of a unified civil service more complex to manage. The Civil Service code is, as yet, blind to these issues. Civil servants are independent, impartial and work with integrity and I am not aware of any situation where confidentiality was breached.

Later the mechanisms were changed to bring more managerial focus through smaller sub-committees. With concern about potential independence the default was to regard Scotland as the most significant DA and to assume that, if someone from Scotland was involved then that individual could represent the views of all three DAs. My argument was and remains that one DA cannot speak for the others in view of the asymmetric devolution settlements and the differing political environments. Whilst the DAs are small players within the overall Home Civil Service their Constitutional position is different to that of a Whitehall Department. For example in Wales the First Minister is Minister for the Civil Service and can take a different view to the UK Minister.

2. **To what extent should officials working in the Scottish and Welsh administrations serve the UK as a whole, rather than the devolved administrations?**
There is not a simple answer to this question. There are three areas of work in Wales:

**Fully devolved** - here policy and implementation is entirely the responsibility of Welsh Ministers serving the Crown. This is the majority of day to day work and Civil servants have no formal responsibility to the UK government. They must behave as laid out by the Civil Service Code and in the accounting officer standards. It is unlikely that exercise of devolved functions could damage UK interests although different approaches might be politically uncomfortable.

**Not devolved** - in these areas civil servants may or may not be involved in delivering UK policy in partnership with Whitehall Departments. This is relatively simple where there is no political conflict but can be more challenging where there are differing interests or policies. In the former it is simple for Civil Servants to serve the UK interest whilst still being directed by Welsh Ministers. Examples would be the excellent work on security issues or on joint planning for disasters. Where there is conflict it is more difficult and Civil Servants must navigate in some difficult territory to deliver the UK agenda without losing the trust of Ministers in Wales. A real example would be the very different views held by the UK and Welsh Governments on the best approach to welfare and work. Civil Servants were able to help Ministers make a case for a different approach in Wales but were also able to work with DWP officials to deliver UK policy when that case was rejected.

**Shared areas** – these cause most tension. Differing political parties in power lead to more inherent policy conflicts for which both Governments have an electoral mandate. Where there is common purpose, Civil Servants can deliver both for the DA and for the UK. Often however there is a need to ensure that differing policies can dovetail together to make a coherent whole. This requires negotiation and flexibility at both ends of the M4. It can be challenging as the default in London is that the UK position trumps the DA position despite the parallel mandates and even though delivery mechanisms may differ significantly. In other areas the positions adopted are irreconcilable. An example is around the business agenda. UK Ministers have the objective of getting more investment into the UK including Wales. For Welsh Ministers the priority is getting this investment into Wales. A UK wide perspective is not achievable other that at a ‘if it doesn’t come here we will be happy to see it in....’ level. Officials in Wales will fight for the investment whilst at a UK level there will be other technical and political considerations.

- **To what extent are civil servants still exchanged between the different administrations in the UK?**

Exchanges and secondments were common in my day, for example the Welsh Office had many WG secondments. This did not cause any difficulties with confidentiality. Individuals were also seconded to other Whitehall departments. In general however it was more difficult to get secondees from Whitehall to Wales. We were more successful in appointing individuals from Whitehall to posts in Wales although many of these people had links to Wales and wanted to move back. Some of these people brought expertise in areas that were harder to develop in Wales. For example we had very good experiences of bringing people with Treasury experience into Wales.

- **What changes will be needed for the UK Government and the devolved administrations to ensure that the increasing ‘shared rule’ elements of devolution are handled effectively?**

I think this is a matter of mutual understanding and respect together with strengthened inter-governmental mechanisms. Whitehall Civil Servants must understand the asymmetric nature of the Devolution settlements when they are working on areas of shared responsibility whilst Welsh Civil Servants need to understand Whitehall mechanisms. There was a tendency to assume that Wales was the same as Scotland. I also felt that there was an implicit belief that
Civil Servants in Wales were weaker and, on occasion, mutual respect could be hard to find. Shared professional development and exchanges can help here. In my time there was also a tendency to regard the DAs in general as the junior partners rather than as equals tackling a shared agenda. Whilst this was sometimes correct, on other issues it was not and could lead to unnecessary friction. Behaviours are very important in ensuring effective delivery and DA officials must feel that their views are taken on board and valued. In other sectors there would be more use of true joint teams for big changes but these would need a clear and unambiguous political mandate from both UK and Welsh Ministers to work effectively and this could be difficult in many policy areas.

4. Has the asymmetry of powers between the nations of the UK caused problems for managing the relationships between the four governments of the UK?

Yes. UK Ministers and officials have to understand three very different settlements both in scope and in local delivery mechanisms. With the focus on Scotland there was sometimes an assumption that if something worked for Scotland it would be acceptable and would work for Wales even though the devolved powers differed.

5. Is there merit in a Statute or Charter of the Union, setting out in statutory form the principles underlying the UK’s territorial constitution and the relationships between the four governments?

The devolution settlements are changing and developing; in international terms they are still very young. Allowing arrangements to develop whilst learning what leads to successful outcomes has been beneficial. Many of the things that lead to good relationships are practical rather than constitutional. At some point codifying the principles will be helpful. The more practical aspects could be documented for officials.

6. What are the most important features of the Union to Wales?

The Union represents shared history, culture and values that remain important to the majority of the population. I think this transcends most of the political features.

- Why do you think that secession from the UK has not gained the level of popular support in Wales as it has in Scotland?

Wales has always been much more integrated with England than Scotland. The border is much more permeable and is close to significant centres of population. Many people cross it daily for work, shopping or to obtain services. The geography has driven a transport network which is more developed west/east than north/south. It is easier and quicker to get from North Wales to Liverpool than from North Wales to Cardiff. Current policies are delivering better north/south links. There is also less history of separate institutions as seen in Scotland. The 1997 referendum was very close with only 50.3% of voters in favour of establishing a Welsh Assembly. The 2011 referendum on giving the Assembly powers to make primary law was supported by 63%. Only Monmouthshire had a majority (50.64%) against these increased powers. This seems to be a significant increase in support for devolution. What is unclear is whether this will, over time, lead to more support for independence as citizens become used to seeing decisions made locally.
7. What could be done now to clarify to the Welsh people the respective roles of the UK and Welsh Governments?

I think there is a great lack of clarity about the roles. I am not convinced however that the majority of people are that interested. They want good public services delivered locally and many are not interested in which Government is accountable. It would take tremendous effort to increase the level of knowledge. This is a UK-wide position as only a minority understands or is interested in the workings of Government. Explanations that help people get the best from services will probably be the most effective way forward. Personally I believe that understanding how Government works should be an important part of the school curriculum but I recognise my interests make me biased.

8. What should be the respective roles of the two Governments in doing this?

Any initiative should be made jointly to ensure that common language is used to deliver clear and simple messages. If this is not the case then there is the potential for misunderstanding being accentuated by different language and emphasis.

January 2016
Northern Ireland’s union with the rest of the UK

1. The UK has been described as a ‘state of unions’. How does Northern Ireland’s union differ from those of Wales and Scotland?
   - How does Northern Ireland’s relationship with the Republic of Ireland affect its union with the rest of the UK?

Northern Ireland’s constitutional position within the United Kingdom is the consequence of a number of Acts of Parliament. Firstly, the Crown of Ireland Act 1542 passed by the Parliament of Ireland (33 Hen. 8 c. 1) created the title of King of Ireland for Henry VIII and his successors. This Act recreated the Kingdom of Ireland which had previously been abolished by a papal Bull in 1171. The Act of Union of 1800 in Ireland, (which followed the Act of Union between England and Scotland in 1707); created a parliamentary union between the Parliament of Great Britain and the Parliament of Ireland.

The Irish Free State Parliament self-declared a Republic, which came into effect in 1949, thus ending the parliamentary union of 1801; and the Crown relinquished its claim of sovereignty over the former Irish Free State. As a consequence the United Kingdom of Great Britain and Northern Ireland emerged within a territorial boundary which incorporated two Kingdoms (Scotland and England), a Principality (Wales) and a Province (Ulster from the Kingdom of Ireland). Through the common Monarch, joint parliament and the unwritten constitution which emerged within the United Kingdom all citizens under the Sovereign have equal rights and equal responsibilities.

Thus all four parts of the United Kingdom, having evolved from joint Crowns and merged Parliaments are of equal significance and importance. Each country may have its own peculiar characteristics and history but over two hundred years of common purpose and service have created one of the most successful and prosperous nations of the world. In the modern context, the political difference relates only to the varying levels of devolved powers enjoyed by three devolved regions under the sovereign national parliament. Each nation has its internal opponents seeking change, but to date those who wish to maintain a strong UK have attracted majority support.

Despite the Parliament of the Irish Republic having demonstrated decades of political hostility towards the United Kingdom and in particular Northern Ireland, there is currently a much improved relationship primarily because the Irish Constitution has been amended to remove the political claim of sovereignty over Northern Ireland. Whilst there remains concerns around ‘legacy’ issues from the Troubles and questioning over the need for some of the structures which manage North-South relations, generally political relations are considerably better and economic relations have improved dramatically.

However it is important to state that whilst it is in everyone’s interests to improve relations, it has no impact upon the Northern Ireland as an integral part of the UK, and indeed safeguards to prevent any threat to the constitutional status of Northern Ireland are in place. Northern Ireland’s constitutional position within the United Kingdom is now respected by the Irish Republic and the Union is secure for as long as the majority of the people of Northern Ireland wish to remain within
the United Kingdom. Recent opinion polls have strongly indicated that a majority of the Roman Catholic population and an overwhelming majority of the Protestant population support the Union.

2. **Would attempts to set out common principles of the Union be disruptive for the political settlement in Northern Ireland?**
   - If not, would a new statute or charter of the Union be an appropriate vehicle for these principles?

The United Kingdom is almost unique amongst modern democratic nations in not having a written constitution. Historic documents such as the Magna Carta and the Bill of Rights (1688) have set out some rights. However, both the common law and modern legal precedent has created a significant body of judicial material which create difficulties at times to fully understand citizen’s rights and the limitations placed on Executive powers. In addition the Human Rights Act 1998 and the ever growing encroachment of legislation from the European Union has created conflict between the United Kingdom’s historic constitutional conventions and the new European based jurisprudence.

Within this evolving context the DUP believe that the United Kingdom would be strengthened by the adoption of a set of unifying principles based on the traditional values of the British nation as formerly encapsulated in the Magna Carta, Bill of Rights 1688 and the Habeas Corpus Acts. For example we would like to see the principles enshrine the sovereignty of the United Kingdom Parliament, civil and religious liberty, freedom of speech, an independent judicial system with a fair and just legal system and social protection of vulnerable people in our nation.

The local political settlement recognises the constitutional status of Northern Ireland as part of the UK, and whilst there are those who seek to change this, our priority must be to strengthen and unite it and ensure it is ‘fit for purpose’ in the challenging years ahead. A set of common principles would strengthen the political settlement through the promotion of equality and freedom for all the people of Northern Ireland within the constitution.

The format for principles is open to further debate – however it is essential that they are formulated in a manner that makes them relevant to the lives of people and communities within the Union, that they demonstrate the tolerance and social, political and religious values that have been reflected for so long in the UK.

The DUP would favour the common principles to be incorporated within a new Bill of Rights reflected by an Act of Parliament as occurred following the 1688 Bill of Rights.

3. **Does the existence of a separate Northern Ireland Civil Service affect its relationship with the UK Government and other devolved administrations?**

This view is based largely on perception, and it is felt that the question merits further detailed study.

The Northern Ireland Civil Service works closely with its colleagues in other parts of the UK, and where it is necessary collaborates effectively, in areas such as agriculture, economy etc.
Within the context of a devolved Assembly in Northern Ireland it is appropriate that the Civil Service should reflect the administrative structures within Northern Ireland. It is also acknowledged that within Northern Ireland a number of Civil Servants from the national Civil Service in London work in support of ‘reserved matters’; for example in the Northern Ireland Office.

It is not considered that the current structure has any significant material impact on Northern Ireland/UK/other devolved region relationships. In this case, structures which reflect local needs are beneficial rather than being UK centralised, and in this age of technology, effective partnership working ensures that different parts of the UK can come together as and when necessary to meet threats or develop opportunities.

4. Would it be more appropriate to their status and aid inter-government relations if the devolved institutions were referred to collectively as parliaments and governments, rather than legislatures and administrations?
   - Would Northern Ireland’s history and constitutional settlement make this terminology problematic?

The current arrangements and terminology are in place and generally accepted by all political stakeholders as being acceptable. Therefore it is not necessary at this point to change titles. In the Northern Ireland context ‘parliament’ has the potential to cause issues amongst some sections of the community.

Inter-government relations within the UK have been generally good to date, and not dependant on name variations.

The ‘social union’

5. The sharing of risks and benefits in a ‘social union’ is seen by many as important to the Union. Is this UK-wide sharing and redistribution of resources seen as important in Northern Ireland?
   - Does increasing fiscal responsibility by devolved legislatures and city-regions risk entrenching inequality across the UK?

The concept of a ‘Social Union’ is largely theoretical. The social context of the United Kingdom emanates primarily from legislation promoting social policies which are managed through the provision of funding from central government. Social policy rests with the mandate of the government in power and any ‘social union’ which derives from current policies is largely artificial and swings from left-of-centre to right-of-centre depending on the political composition of the government.

With regards to entrenching inequality across the UK, it should be a priority of all governments to implement policies which challenge this and seek to improve the conditions of everyone within its jurisdiction. Increasing fiscal responsibility should only be delivered where there is a confidence that the devolved legislature is capable of meeting this challenge.

The emergence of a ‘social union’, if one could be genuinely create, should be a part of a strong political and economic union between the existing members of the UK. People in Northern Ireland are most keen to ensure that all parts are treated fairly and where the resources are in place to issues such as educational underachievement, health and most recently, flooding. The welfare
issues is largely addressed and the challenge is not to ‘make work pay’ whilst looking after those who are incapable of work.

6. Do you believe there should be a minimum level of welfare benefits set across the UK which devolved governments can supplement but not reduce—i.e. responsibility over welfare would be split between the UK and devolved legislatures? If so, who should be involved in setting that minimum level and how?

Northern Ireland is already in this position, with a supplementary welfare scheme struck as part of the Stormont House Agreement, and reaffirmed following the political negotiations (‘Fresh Start Agreement’) in late 2015. Around £500m has been set aside for a series of supplementary payments to carers, people suffering ill health and families on low incomes, as part of a scheme drawn up by a group of benefits experts led by Professor Eileen Evason. It is important to note that in order to deliver this scheme it was necessary to return welfare powers to the UK Parliament, and through which the Northern Ireland (Welfare Reform) Act 2015 has progressed.

As a result of this agreement Northern Ireland is now deemed to have the most generous welfare scheme in the UK. However, this experience shows that when it comes to implementing reform schemes which may be unpopular but necessary, there is not always the levels of political maturity in some political parties required. Therefore, while some urge greater and greater devolution of powers, before doing so, consideration should be given as whether the capability is there to manage the responsibilities given the potential impacts upon the wider stability of the institutions if not.

In the current climate it is believed that the UK Government should retain the responsibility for setting the minimum level of welfare benefits. How this is achieved requires further consideration although the DUP would strongly recommend that there is a core principle which incentivises a work ethos, where is more attractive to be in paid employment and discourages a culture whereby benefits become a long term option for some.

Development of devolution

7. Should Northern Ireland be considered alongside Wales, Scotland and England in discussions of the future of devolution, or is the situation there too distinct for a UK-wide perspective to be appropriate?

Every part of the UK must have a voice at the table of any discussions on the future of the UK and devolution arrangements. Northern Ireland is an integral part of the UK and must be regarded as such by the UK Government/Parliament. Where devolution settlements are amended all the devolved Assemblies should be consulted to ensure that full cognizance is taken of both the positive and negative impacts constitutional changes may have on each nation. The nations of the United Kingdom are not ‘independent’ political entities but are linked by an umbilical cord to the political centre of the United Kingdom. Changes in one nation can have unintended consequences in other areas. For example the devolution of budgets have resulted in anomalies in public sector provision across the nations, for example, tuition fees, free transport for pensioners and care in nursing homes. These policies have resulted in inequality of service provision to citizens in other parts of the United Kingdom who pay the same level of tax and National Insurance contributions.
There is a danger that the variation of service provision may lead to significant public disquiet and unease with the fiscal settlement upon which the nations are funded with central government. This could lead to the de-stabilisation of the Devolution model.

Decisions on future devolution arrangements must be taken in the context of ensuring that they make sense for the betterment of local service delivery for the population, and not to further a political ideology. Every part of the UK has its different political voices. Those who previously endorsed violence to support political change have moved from this position, and therefore should support the majority wish in Northern Ireland – to remain as active participants in the affairs of the UK.

8. Are we heading eventually to a point where Northern Ireland, Scotland and Wales have symmetrical devolved powers? Are there particular factors in Northern Ireland that mean its Assembly will continue to have different powers?

There is no reason why there should be symmetrical devolved powers. Instead each should be based on local requirements and desirability. For example whilst the DUP has consistently campaigned for the devolution of Corporation Tax, others have attempted to widen this to personal income tax, a complicated system which we do not believe is necessary or feasible. However other devolved parts of the UK have made income tax devolution a priority.

The issue of political stability in Northern Ireland is one which must still be taken into consideration. The Executive/Assembly must continue to demonstrate its capability to provide this stability, and generate confidence in its abilities from the wider community.

It is worth noting the fact that Northern Ireland is the only part of the UK with a land border with a foreign state (Republic of Ireland), and thus means that this is consistently raised in discussions on the need for devolved powers. For example it is frequently cited in the campaign to reduce VAT rates for the Northern Ireland tourism industry. How feasible a VAT rate change would be in the context of the UK remains unclear.

Taking into account the current challenges facing the Northern Ireland Executive it is unlikely that any additional powers should or will be sought in the short-to-medium term. Therefore the current political settlement should be regarded as Northern Ireland’s position for the foreseeable future and it should not the case that for the sake of political expediency any changes should be made to this position.

This does not distract from the overarching point that all parts should remain at the table. It is one United Kingdom.

9. We have heard that there is a lack of clarity among the public over the relative responsibilities of the UK and devolved administrations. Is this a problem that is apparent in Northern Ireland?
   - If so, what practical steps might be taken to achieve this, and by whom?

This has been raised as an issue but not convincingly as being one of major concern for the majority of people. There is considerable material available, both online and through more traditional resources which highlights responsibilities but experience shows that people are generally
concerned with the quality of delivery and accountability for decision making as opposed to the structures of government.

For example, post May 2015, there will be a reduction in the number of government departments in Northern Ireland, and changes in a number of cases of responsibility as a result. Whilst these changes will inevitably cause short term disruption to administrative responsibilities, those dependant on the services that each deliver should see no disruption.

Clear, concise explanations of department responsibilities and channels of communication are key to maintaining user confidence and where situations do arise they are dealt with rapidly and lessons learned.

Overcomplicating issues is the biggest danger to be avoided!

10. We have heard arguments for and against a ‘draw-down’ model of devolution being applied to other nations in the UK, whereby certain powers are reserved to the UK Government, but any others may be requested and granted to devolved nations and regions. Are there lessons from Northern Ireland’s system of ‘reserved’, ‘transferred’ and ‘excepted’ powers that would inform consideration of such a system?

As outlined in previous answers the Northern Ireland devolution process has faced considerable challenges, some politically-inspired, others as a result of wider factors such as the economic downturn.

In terms of governance, Northern Ireland is the only part of the UK to have mandatory coalition as its core, which given the diverse nature of the component parts can make agreement more protracted to reach. Strong political leadership must be at the heart of any process, which the DUP has given and I believe the record in government bears this out.

The necessity to return welfare powers to the UK Government demonstrates that powers should only be devolved if there is complete confidence in the capability of local politicians to deliver their responsibilities. Too often in Northern Ireland, some have used their political ideology to shield them from making important governmental decisions, which undermines confidence and tends to ‘merely push decisions down the line’.

With regards to excepted and reserved matters lists it is not deemed there is any need for change.

January 2016
Executive Summary

- The UK’s transition away from an essentially unitary governance structure since the enactment of the 1998 devolution legislation has impacted upon the stability of the Union. Such instability is nonetheless characteristic of the “bedding in” of new governance arrangements, and it is entirely possible that persisting with the pre-1998 system of governance would have further destabilised the Union.

- In a federal governance order legal mechanisms exist for settling disputes between federal and state-level institutions. The devolution legislation, however, provides for a partially legalised structure, by which the courts can adjudicate on whether devolved institutions have acted within their competence but have no capacity to challenge the Westminster Parliament’s primary legislation.

- The UK’s constitutional arrangements therefore place an emphasis upon political mechanisms (especially the Joint Ministerial Council and the shared ethos and personnel connections across the Home Civil Service) to navigate contentious issues between Westminster and the devolved institutions. These structures, however, often operate in a behind-the-scenes manner and focus on engagement between executive actors. Strengthening relations between UK’s devolved legislatures and Westminster law makers could provide another avenue for dispute resolution.

Author Information

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Devolution and the UK’s Constitutional Framework

[1] The 1998 devolution legislation closed a highly centralised chapter of the UK’s constitutional history, with Westminster extending law making authority to Scotland and Wales and restoring it to Northern Ireland following a near 30-year period of direct rule. Michael O’Neill nonetheless noted at the time that the UK’s reformed constitutional arrangements were based upon ‘sharing a degree of power, but [fall] far short of undermining the common authority [of Westminster]’.105

Westminster’s formal legal authority as the UK’s sovereign Parliament was preserved within the devolution legislation by specific provisions affirming that its ability to make law was unabridged even when its legislation impacted upon a competence transferred to a devolved jurisdiction. The devolution legislation also set out express limitations on the competences of the devolved legislatures. The courts can strike down devolved legislation which exceeds the remit of the enacting institution.

Devolution cannot therefore be regarded as comparable to federalism in terms of the institutional relationship that it has constructed. Countries with federal governance arrangements maintain constitutional separations between functions within the remit of the central institutions and institutions within particular regions, provinces or states responsible for their internal governance. As the constitutions of federal countries divide up powers between “state” and “federal” institutions, so too must a supreme court be able to rule on instances where either set of institutions might have exceeded their mandate. As Lady Justice Arden has recognised, the devolution legislation imposes no such restrictions upon Westminster as a legislature:

The United Kingdom devolution arrangements lack some of the characteristics of a federal system. The Westminster Parliament has not given up its sovereignty over the devolved administrations and that means that in theory, subject to constitutional conventions, it could restrict or revoke the powers that it has given to the devolved administrations. Furthermore, there is no provision for judicial review of legislation passed by the Westminster Parliament on the grounds that it deals with devolved matters.

Despite the subordinate nature of the devolved institution’s competences, the UK’s devolution arrangements have not been static, with significant shifts in competences and powers to Scotland, Wales and Northern Ireland since 1998. This “instability” in the devolution arrangements was not, however, unforeseen by the Labour Government. As Ron Davies informed the House of Commons during the passage of the devolution legislation, ‘[d]evolution is a process, not an event’.

For all of the shifts in competences and specific powers since 1998, devolution remains asymmetric, in that the same levels of power and competences have not been devolved in Wales, Scotland and Northern Ireland and comparable arrangements do not exist in England. The pressure upon the three different sets of devolved institutions to respond to their constituents has produced an ongoing cycle of power and competence transfers. Devolved institutions pressurise Westminster for more powers by reference to each other and any transfer of particular powers to the control of one devolved jurisdiction produces concomitant demands in the others (as seen in efforts by Scottish Ministers to secure a comparable deal on corporation tax powers to the transfer to Northern Ireland set out in the

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106 See, for example, s.28(7) Scotland Act 1998.
107 See, for example, s.29 Scotland Act 1998.
109 R (Horvath) v Secretary of State for the Environment, Food and Rural Affairs [2007] EWCA Civ 620, [57].
Stormont House Agreement\(^\text{111}\)). No body has been specifically tasked with holistic oversight of whether such power or competence transfers are in the interest of the UK as whole.

**The Constitutional Underpinnings of Devolution**

[6] The strict delimitation of powers and competences inherent in federal systems ordinarily means that these governance arrangements are actively policed by the courts. The maintenance of the Westminster Parliament’s sovereignty has, by contrast, stunted legal oversight of devolution arrangements. The courts have rarely entertained challenges to the legislative competence of the devolved institutions, and when they have done so, they have suspended the effect of their decisions to allow for the enactment of remedial legislation.\(^\text{112}\)

[7] The UK’s constitutional aversion to legislative review prevents the courts from becoming the sight of messy turf wars at a time when devolved institutions and Westminster are controlled by parties with divergent political agendas, but it also forecloses the clear cut decisions on particular points of contention that judicial rulings provide. In the place of two-way legislative review, political mechanisms including the Sewel Convention\(^\text{113}\) and the Memorandum of Understanding between the UK Government and the devolved administrations are intended to prevent the UK Government from inadvertently impinging upon the devolved institutions’ remit. These tools are, however, not necessarily engaged by legislation which has spill-over, as opposed to direct, effects in devolved areas. Being political mechanisms, moreover, they can ultimately be set aside by a UK Government commanding a House of Commons majority.

[8] Given the considerable attention paid within the devolution settlements to the powers and areas of competence of the devolved institutions the lack of jurisprudence applying the formal legal constraints on their operation should come as little surprise. Political mechanisms have headed off most competences disputes over devolved institution’s legislative proposals before they have become law. This approach, however, means that institutional friction can instead be generated by the ill-defined political boundaries upon imposed by the Sewel Convention and the Memorandum of Understanding.

**Navigating Devolution Disputes at an Executive Level**

[9] The absence in UK Devolution of a fully-legalised structure for dispute resolution places much of the burden of navigating competence disputes upon ‘the relationships, both formal and informal, between Governments, Parliaments and the other institutions of the state’.\(^\text{114}\) Informal relationships are maintained at both ministerial level (especially in periods when the governing party or parties at Westminster has aligned with a devolved administration) and within the Home Civil Service. The formal arrangements for maintaining good relations have shifted alongside other aspects of the devolution settlement. In the early phases of devolution the Secretaries of State for Scotland, Wales and Northern Ireland and their


\(^{112}\) See Salvesen and Riddell v Lord Advocate (Scotland) [2013] UKSC 22; 2013 SLT 863, [58] (Lord Hope).


departments were envisaged as the principle conduits for maintaining good inter-administration relations.115

[10] As the Calman Commission recognised such back-door channels became increasingly strained as the UK’s devolution arrangements matured.116 Since 2002 structured formal relationships have been maintained through the Joint Ministerial Council (JMC).117 As parties with politically divergent views have taken office in Westminster and in the devolved institutions the nature and use of these channels of communication have been adapted.118 The JMC’s arrangements, in particular, have been expanded to include a formal dispute resolution protocol.119

[11] A recent example of a dispute referred to JMC mechanisms was the Northern Ireland Executive’s complaints over funding arrangements and the impact of budget cuts.120 The annual report, however, contains little detail on the role of the JMC in achieving this resolution. The JMC often functions as little more than a public forum in which the devolved administrations grandstand for the consumption of their own constituencies (producing countervailing efforts by the UK Government to sanitise the agenda).121 Northern Ireland’s First Minister, Peter Robinson, has publically dismissed the process as ‘useless’.122

[12] The reported “resolution” to the dispute over funding for Northern Ireland (in as much as this particular dispute remains a live issue), for example, was the product of high-level talks outwith the JMC process. The reliance upon the JMC as the formal mechanism for addressing devolution disputes, and the degree to which even this body is in practice sidelined in favour of informal contacts between ministers, both highlight and reinforce the executive-centric nature of the UK’s governance arrangements.

Reinforcing the Relationship between UK’s Devolved and Centralised Institutions

[13] Even though many flashpoint instances of friction between Westminster and the devolved administrations concern efforts by Westminster to legislate which under the Sewel Convention require the devolved legislatures to pass legislative consent motions, the Constitution Committee warned in 2002 that links between the UK’s legislatures had been a ‘relatively neglected’123 aspect of the devolution settlement. Over a decade on and little

118 See Akash Paun and Robyn Munro, Governing in an Ever Looser Union (Institute for Government, 2015) 52.
121 See Akash Paun and Robyn Munro, Governing in an Ever Looser Union (Institute for Government, 2015) 6.
progress has been made towards the development of formal structures for fostering co-operation across the UK’s legislatures.

[14] In terms of legislation, the relevant “Lead Committee” of the devolved legislature and the Scottish Affairs/Welsh Affairs/Northern Ireland Affairs Committees in the House of Commons can respectively scrutinise specific legislative consent motions and the operation of the system as a whole, but in general contacts between committees of the devolved and Westminster legislatures are rare and ad hoc. The British-Irish Parliamentary Assembly does provide a forum in which representatives of the UK’s legislatures meet, but in spite of its importance within the Good Friday Agreement, its remit does not extend to providing input into devolution disputes.

[15] Legislative committees have provided a means of overarching scrutiny of the activity of the UK Government and the devolved administrations. As the Calman Commission noted, appearances of UK Government ministers before committees of the devolved legislatures and vice versa have occurred since the earliest days of devolution. Recent years have seen an increasing number of such appearances. The UK Parliament’s Welsh Affairs Committee, for example, has taken steps to deepen its relationship with the Welsh Assembly (although these steps have not been mirrored by the Northern Ireland Affairs and Scottish Affairs Committees). The efforts of the Welsh Affairs Committee, it should be noted, mirrored the much more extensive role of Westminster in legislating for Wales (by comparison to Scotland and Northern Ireland) under the devolution arrangements applicable to Wales until May 2011.

[16] There has been no movement on the Calman Commission’s recommendation that a ‘standing joint liaison committee of the UK Parliament and [each devolved legislature] should be established to oversee relations and to consider the establishment of subject-specific ad hoc joint committees’. Nor has anything come of the Ministry of Justice counter-proposals in 2009 to extend the British-Irish Parliamentary Assembly’s role to build relations between the devolved institutions and Westminster. As the McKay Commission has noted, Westminster’s structures have not kept pace with changes in the UK’s governance arrangements since devolution.

[17] Since devolution, the Westminster Parliament’s Scottish Affairs, Welsh Affairs and Northern Ireland Affairs Committees have seen their remit limited. Interest in their activity and output has declined, even if in theory they have the capacity to oversee the relationship between

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124 See, for example, Standing Orders of the Scottish Parliament, Rule 98.
127 See Derek Birrell, Comparing Devolved Governance (Palgrave, 2012) 223-224.
Westminster and the devolved legislatures’ activity. The re-evaluation of Westminster’s arrangements in the context of proposals for “English Votes for English Laws” provides an opportunity to revisit the relationship between the UK’s legislatures.

[18] In this context the McKay Commission’s proposal of an overarching Devolution Committee has considerable merit, but if it draws its membership only from the House of Commons it is likely to be as reluctant as the existing territorial committees to consider matters within the remit of the devolved legislatures. The best solution to this missing element of the devolution settlement is therefore a joint committee, drawing its membership from across the UK’s legislatures.

[19] Inter-legislature co-operation through a joint committee has the potential to deepen understanding of the different institutional perspectives on tensions within devolution arrangements long before they reach the crisis point of dispute referral before the JMC. Such a committee would also provide an opportunity to share experience on different legislative approaches to pressing social issues, ensuring a comparative aspect to its oversight activity, and a forum to address legislation with a spill-over effect across jurisdictions.

[20] The substantive benefits of a committee with shared membership outweigh the procedural and institutional difficulties which would accompany its establishment. But comparable benefits could potentially be achieved without the attendant institutional upheaval by attaching such a body to the British-Irish Parliamentary Assembly (or establishing it as a stand-alone body). Committee members would have to have their involvement the committee credited as committee work by their respective legislatures. Moreover, legislation would be required to give such a committee the power to call witnesses and to compel witnesses to participate. If such a committee’s reports are to have weight, legislative provision must ensure that they be laid before all UK legislatures.

[21] A joint committee of parliamentarians cannot, of itself, be responsible for identifying structural issues within the devolution settlement, but it can provide focused and collective oversight over the workings of devolution. It has the capacity to work as sounding board, warning light and safety valve with regard to contentious elements of the devolution settlement, and to do so on a UK-wide basis. Given the reliance upon political, and not legalised, methods of dispute resolution within the devolution arrangements, some such body is a necessary part of the contemporary UK governance order.

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133 Comparable, for example, to the Privacy and Civil Liberties Board set out in s.46 Counter-Terrorism and Security Act 2015.
134 Comparable, for example, to the powers set out in s.23 Scotland Act 1998.
135 Comparable, for example, to the obligation set out in s.36(5) Terrorism Act 2006.
How can we stabilise and strengthen the Union?
This is submitted by concerned citizens on an individual basis.

Sirs,

We welcome your enquiry and are concerned that the United Kingdom will remain a prosperous, outward-looking harmonious nation, with a significant role in world affairs, rather than a fragmenting, inward-looking nation with destructive and divisive nationalist feelings leading to a diminished and poorer future.

We would like to focus our submission on your question 6:
What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

The impact of the current asymmetrical settlement is significant and destabilising to the Union:

1. The absence of any boundaries on how far devolution can be taken in any one part of the UK means that the Nationalists can always ask for more. They will never be satisfied by the current devolved settlement, because by definition they want independence not devolution. So, for example, the SNP will claim that Westminster has not delivered on “The Vow” made just before last year’s referendum, because they have a different interpretation of what was promised. And repeated claims by the SNP will start to be believed by the general population.

2. Similarly, the nationalists will always hold the initiative. Those wishing to preserve the Union are forced into a defensive position every time the nationalists make another demand for further powers. In the absence of a uniting structure holding us together, Westminster is made to look like it is clinging onto its own powers, rather than upholding the integrity of our great nation for the good of us all.

3. The fact that the current settlement provides increased scope for nationalism is resulting in weaker, unchecked and unbalanced government in parts of the UK e.g. in Scotland where traditionally balanced right wing/centrist/left wing politics seems to have been replaced by something like a “one party state”. This will have a destabilising effect on the whole of the UK.

4. In the parts of the UK with little or no devolution (most parts of England) there is a rising exasperation with the continual demands for more powers in the devolved regions. The nationalists encourage this as the more they can stoke up feeling in England, the more they can garner support from their own people.

Therefore in our opinion this issue undoubtedly needs to be addressed and we suggest that now is the time to consider how to establish a more stable settlement that will preserve and strengthen the Union as a whole. What then is the solution?

The current messy ad-hoc state of devolution is very much in line with how our unwritten constitution has developed over the years. And although there is nothing necessarily wrong with this, we feel that left to itself, the constitution may not be strong enough to counter the destructive forces currently operating. We suggest:
1. It is time to introduce a new Act of Union, dealing only with what is needed to hold our country together. We could define what powers need to be retained by the UK government to ensure we have a secure, prosperous future as a significant player in world affairs. This should be celebrated by all, as we are stronger working together, rather than looked at in resentment. All other powers are then open to negotiation. It is therefore made clear to each member state where the parameters lie.

2. The nations and regions that make up the UK in its current modern state could and should be clearly defined in any new Act of Union.

3. We could introduce some clear procedures as to how further devolution could happen. All nations or regions of the UK would follow the same procedures, wherever they are in the devolution pathway. This would remove some of the initiative currently held by the nationalists.

4. We could introduce a standard procedure for future referendums, with sufficient checks in place to ensure they are fair. Any referendum that deviated from these procedures would be illegal. Any changes to these rules would have to be agreed by all parts of the UK.

5. Give a symmetry of powers between the countries and regions that make up the UK. If one part is given a power, all the other parts automatically are given the right to apply for this power should they so wish, using standard procedures as described in points 3 and 4. Conversely, if some regions decide not to take up a particular power, they accept that Westminster will rule instead. In essence this means that the so-called “West Lothian Question” is being answered by the populace and not by politicians. By doing this we are effectively paving the way for the creation of a fairer, more federal United Kingdom.

In conclusion, the present asymmetrical nature of devolution presents a danger to our country because it can be exploited by nationalists for their destructive ends. The United Kingdom government needs to give some strategic thought into how they can introduce some simple structuring that will bring new clarity and symmetry to the Union and take the initiative away from the nationalists. And the time to do it is now, not in the heat of the next referendum campaign.

We are grateful to the House of Lords Constitution Committee for giving us the opportunity to submit this evidence.

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Q226 The Chairman: The Committee is very grateful to have the opportunity to ask questions of two such distinguished former civil servants with huge experience throughout their Civil Service careers. The Civil Service is a strand of the inquiry that we are conducting into the union and the devolved Administrations and their relationship. It is one that we followed up in Scotland when we met Sir John Elvidge, and when we met the Minister for Culture, Fiona Hyslop, and her secretary, Mr Ken Thomson. Their views were slightly at odds with what we thought the United Kingdom view of Civil Service obligations should be. Let me just start with a general question. Is the unified Home Civil Service now a constitutional fiction? Would you like to start, Lord O'Donnell?

Lord O’Donnell: Certainly. Perhaps I could kick off. No, I do not think so. If you look at the various codes we have for the different Civil Services you will see they are all very similar: shared values. That is a hugely important part: the whole honesty, objectivity, integrity, impartiality—and particularly the impartiality part; that is very important. If you were thinking of trying to devise a stress test for a unified Civil Service, what would you do?

You would have a referendum where the Scottish Government are in favour of it, and the UK Government are on the other side. That showed you, to my mind, the success of Peter Housden in Scotland and Bob down in London in the way a unified Civil Service was able to manage what I would regard a probably the hardest thing that you can manage when you have a unified Civil Service. This is where you have one Government arguing the case for independence, and the UK Government arguing completely the opposite. It reminded me, to be honest, of being in the Coalition Cabinet when we had the vote on alternative voting: another referendum, with two sides,
both within the same Government in this case, having to go out there, argue completely different things, and then once that had been decided come back and form together.

That is an example where I give the credit to David Cameron and Nick Clegg—to the politicians. However, during the referendum I would say that was a real example of a unified Civil Service working extremely well. It is very difficult to think of examples in other countries where you could have that operating so successfully and coming back together so successfully.

Lord Kerslake: I would entirely endorse what Gus said, so I will not repeat it. I do not believe it is a fiction; it is an absolute reality, and it is shared values, shared culture and, indeed, often shared processes. Peter would attend the Wednesday morning colleagues’ meetings, but he would also be on the Civil Service Board and involved in other processes of assessing performance and so on. It is a very intertwined set of arrangements that combine both the value of being a single Civil Service with the proper flexibility and difference that you needed in Scotland and Wales. It is not a fiction; it was a well-functioning reality in my view.

The striking thing about the referendum was how few challenges came up. There were a few bumps along the way—you would have expected it—but given how hard-fought and passionate the issues were, there was the risk you might have seen divisions building; they did not. I entirely endorse the view that it is not a fiction but an effective reality.

The Chairman: You use the word flexibility, and Lord O’Donnell referred to the Civil Service Code. I understand that in Scotland, and separately in Wales and Northern Ireland, accountability peels off towards the Government in the devolved Administration, as well as to the United Kingdom. That implies that, in an existential situation, where the future of the United Kingdom is at stake, as happened in Scotland, if the Civil Service is accountable to the Scottish Government, it cannot be accountable to the United Kingdom Government. Therefore, there cannot be a united UK Civil Service.

Lord O’Donnell: Okay. You can have a united Civil Service in the sense it is one body with one set of values—and I will come back to the accountability question, if I may. As Bob mentioned, you can have one set of processes and procedures, so all the Permanent Secretaries from Scotland and Wales would come to every Wednesday morning meeting we would have. I included them in all my structures for the development and training of staff, for example, and all those sorts of issues.

Furthermore, there was the exchange of staff. I remember going up to see Alex Salmond about the change from John Elvidge, whom you saw, as Permanent Secretary, and half-wondering whether he would say, “I am going to have someone from my Scottish Civil Service”. In fact he said, “I want the best person; I want to look as widely as possible”, and ended up picking the Permanent Secretary who at that point was Permanent Secretary in DCLG. To my mind, that is a demonstration of the commitment to that broader role.

In terms of accountability, the civil servants have accountability to their Government, directly, and there are some UK-wide issues, particularly in the international sphere, where they need to be very careful about the accountability, as there may be a UK position. That is where it can get quite complicated at times.

Lord Kerslake: Yes. I have two additional points. I did not go through a process of appointment in Scotland but I did in Wales, and we were able to have an open recruitment process. The First Minister was closely involved in the process as it went along. The panel considered and made recommendations, and he was happy with the outcome of that process and felt, I think rightly, he got a very good person to be the Permanent Secretary. Therefore, there are two examples here,
not one, of how this process worked very effectively to deliver from the devolved nations’ perspective and fit in with the principles of the Civil Service.

On the accountability, it is absolutely clear that the Permanent Secretaries in the two devolved nations had to work to the priorities and the agenda for devolved Governments, of course. That is their role there, in the same way as Permanent Secretaries in departments work to their Secretaries of State, I think. The key thing was that you had a clear framework in which civil servants would operate during the time of the referendum. Where there were conflicts, there was a clearly established process and understanding of how those issues would get resolved. You can’t put civil servants in that position. There is a responsibility here, and you have to address the underlying issue of accountability that you have raised through clear understandings between the Governments, such as the MoU.

Q227 Lord Cullen of Whitekirk: Sir John told us that he regretted the loss of the National School of Government, which was dissolved, I think, some three years ago or thereabouts. Has that effectively been replaced by what has followed? It was done, I think, by the Cabinet Office. Is that right?

Lord O’Donnell: Yes. This is where it is good to have both of us here. I was there for the closure as part of the cutbacks that were going on and resulted in 20% cuts in the Civil Service, which is now the smallest since the Second World War, and it was replaced by a different system of training—that is absolutely right—which Bob can talk about.

Lord Kerslake: Yes. The point about the National School of Government—obviously there were differing views about that—was whether we should invest funds in a building and an organisation, or in a programme of training and development that people could use and that was commissioned and delivered by a wide range of people. It was not simply that abolishing the National School of Government meant we did not do some of the things that were done by the National School of Government. They were done in a different way and reflecting the fact that resources were very tight, and therefore choices had to be made about where you put your money to best effect.

If there is an issue here, it is about what things you can do that emphasise and build on this unified Civil Service across the different nations. In the transition we lost something, but this was more about changing the model than changing the underlying intent.

Lord O’Donnell: I would add just one point, which is that I had started this process of the top 200 getting together. As you would expect from a former Treasury person, we never had 200 people in the top 200; there were about 160. However, this brought together the senior people both in Government and agencies, and across Scotland, Wales and London and the UK. That was really effective in terms of getting all the senior staff on one page. Whilst we did not have the national college, which went further down as a place where they would all come together, we had this at the top. That was a partial replacement at least.

Q228 Lord Lester of Herne Hill: What do you think would be the advantages and disadvantages of following the Northern Ireland example of having a separate parallel Civil Service, say for Scotland and for Wales?

Lord O’Donnell: I always had a very strong interest in Northern Ireland, as you can imagine, dating back to the days when I worked with John Major and the IRA almost blew me up in a Cabinet room. I had gone with him a lot; I was very interested in the peace process. We had a separate Northern Ireland Civil Service, which meant that there were issues. They did not come to Wednesday meetings. When it came to the selection of, say, a head of the Northern Ireland Civil Service, I was
not part of that process. I went out of my way, and I always had great co-operation to go over to Northern Ireland and talk to them about the common issues we had, and it was very important the Northern Ireland Civil Service worked very closely with the UK Civil Service. It worked; it shows you that model is not impossible, but there were definite drawbacks from them being a separate Civil Service, in my eyes.

Lord Lester of Herne Hill: Such as?

Lord O’Donnell: The fact that they were not there every Wednesday; they were not listening to everything we were doing as a Government. When it came to selecting civil servants and senior civil servants, they selected from a far smaller pool than anywhere else. That was not great, and I talked to a number of heads of the Northern Ireland Civil Service, who also thought it was not great. However, the one thing I would say that would improve matters is, alas, not within the hands of this Committee, which is: please, could you reduce London house prices? That will make an enormous difference, and that really did seriously damage mobility between Northern Ireland, Wales, Scotland and London.

Q229 The Chairman: To what extent have either of you, as head of the Civil Service, had direct authority over the Civil Service in Wales and Scotland?

Lord Kerslake: I shall say a few words on that. In passing, Gus, I am leading a review called the London Housing Commission on exactly this issue of supply of housing in London. I will not yet say I am brave enough to say I have an answer to it. However, on the substantive point, of course the Northern Ireland arrangements worked, and I think can be made to work. What was different, I think, was through the Scotland/Wales model, the Permanent Secretaries were permeated more into the systems and processes of the UK Civil Service. That helps them enormously in dealing with issues where they need to connect into the UK.

Any smart person thinking who they would have as their Permanent Secretary for Wales or Scotland would think they need to be somebody who gets our issues and priorities, but they also need to be incredibly good in connecting into the UK as well, because we can only survive and prosper if we have that relationship right. That is just easier to do with the model for Scotland and Wales. It might be possible for Northern Ireland. I have regular meetings with the Permanent Secretary, but it is easier with the Scotland/Wales model.

Lord O’Donnell: In terms of Scotland and Wales, I was the line manager for the Permanent Secretaries. I would work with them on setting objectives. I would have appraisal sessions six-monthly and annually. I would go to Scotland and Wales and talk to the First Minister and say, “How is the Permanent Secretary doing?”, and talk about performance, succession and objectives for the next year, and all those issues. I felt very much directly in control.

Lord Kerslake: It was exactly the same for me. I was supervising those two Permanent Secretaries in the same way as I was exercising a supervisory role for other Permanent Secretaries. It was not really a different process. It was the same process, I think, Gus.

Lord O’Donnell: Yes.

Lord Kerslake: That is quite a powerful role. That is a powerful connecting role. I did not expect them to do everything the same way as we did it in the UK Civil Service, but I did expect there to be a commonality of objectives and approach to the issues about raising capacity, proper performance management and so on. It could be done differently, but the functions, if you like, needed to be the same. I met regularly with the Permanent Secretary for Northern Ireland, but we had a different kind of conversation.
Q230 Lord Norton of Louth: Lord O’Donnell, you mentioned what you saw as the disadvantages of the separate Civil Service in Northern Ireland. Some of those would relate, as you mentioned, to the size. Would you see the same problems being replicated if there was a separate Civil Service for Scotland?

Lord O’Donnell: On this point about trying to fish in the biggest possible pool, it may well be that the right Permanent Secretary for Scotland and the right senior civil servants grow up within the Scottish Civil Service—absolutely. I am sure they are working on all that. However, the interchange of senior civil servants who start in Scotland then come down, spend some time in Westminster, and then go back is great for understanding how both sides see the issues.

Lord Norton of Louth: Would that be ruled out if you did have separate Civil Services?

Lord O’Donnell: It is not that it is ruled out. I cannot think of an occasion when someone, for example, from the Northern Ireland Civil Service came across and did a senior job in the UK or in London.

Lord Kerslake: That is right, Gus, and interestingly when we did the appointment to the Permanent Secretary in Wales, we had candidates who were actively involved in the Welsh Government and people from the UK Civil Service going for the job in the end. Derek Jones had been somebody who spent a large part of his career in the Welsh Government, but he had had a significant part of his career in the UK Civil Service as well, and that was immensely helpful to him in doing his job. It is not impossible for Northern Ireland; it can happen, but it would have to be, for example, a more formal secondment arrangement than a natural move into a job. That is the difference, and that is quite a big difference in practical reality.

Lord Norton of Louth: Looking at it from the perspective of government, your view would be that that is, therefore, problematic in terms of, presumably, ease of communication.

Lord Kerslake: It makes it harder. You have to work harder at it. I suppose the point you might make is both the Scottish and Welsh Governments have found it a good model to work with. They could quite easily at different points along the way, Gus, have said, “Actually, we would like to change. We would like a separate Civil Service”. They could have asked the question at least.

Lord O’Donnell: Remember the SNP have a manifesto commitment to a separate Civil Service, but they have never implemented it.

Lord Kerslake: They never implemented it.

Lord O’Donnell: I talked to Alex Salmond about that, and on balance we are happy where we are, I think.

Lord Kerslake: The reality is, even though it was in a manifesto, I do not recall big conversations happening. That can change, of course, but all I can say is I deduced from that that they saw the value in the current arrangements.

Q231 Lord Lester of Herne Hill: There is, I suggest, another way of looking at this. I am out of date, of course, but when I was working in Northern Ireland in the 1970s I perceived resentment that the Home Office was dominating the Northern Ireland Office in ways that the local politicians and civil servants did not really agree with. I am thinking of when they were debating whether there should be a European convention incorporated into Northern Ireland and so on. There was a great deal of feeling that this should be the business of the Northern Ireland civil servants and the Northern Ireland Minister, and not being backseat-driven from the Home Office. I do not know to what
extent any of that is within your experience. I am simply speaking about the experience that I encountered in those days.

**Lord O'Donnell:** I did not come across those sorts of issues, to be honest. I am sure they exist because there is always the question of something that is UK-wide and how that will be represented. The area where I found most tensions would be in EU negotiations, where you take a fisheries issue or something that was very strongly felt in Scotland and they wanted to have the seat for that negotiation. In fact, the UK Government would often insist on having that seat, because there were more interests than just the Scottish interests in all that, and hence the UK Minister had to take all those into account.

**Lord Kerslake:** I would not say I experienced that as you have described. The issue was more about whether departments had properly thought through the particular issues for Scotland, Wales and Northern Ireland—particularly Scotland and Wales—when they were bringing forward policy: had they consciously put time into it? That has got a lot better now than it was, but that was an issue that came back regularly: had they put enough time into both thinking about the different issues for the devolved nations and then having the conversation with them ahead of publishing legislation or regulation, or whatever it was?

**Lord O'Donnell:** One other obviously really big issue that we should mention on Northern Ireland was the Northern Ireland Office and the Secretary of State for Northern Ireland, who was often annoyed by the fact on the Northern Ireland side they wanted conversations directly with the Prime Minister. That was a big issue.

**Q232 Lord MacGregor of Pulham Market:** I understand all the points that you are making about the unified Civil Service in terms of the code, ethics, manners of operation, personalities and all that. However, I want to turn now to the policy issues that follow. Do civil servants working for devolved Administrations have a responsibility in terms of policy from the UK Government as a whole, and how should they act if they perceive that the aims of the two Administrations are contradictory?

**Lord O'Donnell:** It is very clear the Civil Services have to act with respect to the objectives of their Government. A classic case would be the referendum. The Scottish Civil Service had to support the Scottish Government in its objective in terms of independence, just as the UK Government had to support the UK position. Like I say, the caveat I put to that is when you get to these issues where there may be differences between the Governments but the UK has to come to a position—particularly in EU areas, where you need a UK position. You will have officials from the Scottish Government arguing with officials from the UK Government, but in the end there will be a UK position, because that is the way we are represented.

**Lord Kerslake:** Exactly. Their first duty must be to the Administration they work for, but they also have a duty to ensure that we come up with workable solutions to issues that cover the whole of the UK. Where we have a difference, both the UK Civil Service and Scotland or Wales need to put time into working constructively to resolve and address those issues. It is the responsibility of civil servants to use their skills to work through the issues and put clear choices in front of their Ministers, and where possible resolve things that can be resolved. That is how I would see it, and by doing so, clearly, they help with the effective functioning of the union.

**Lord MacGregor of Pulham Market:** Before I come on to the broader question on this, can I just go back to the fisheries point that Gus O'Donnell raised? I was the Minister of Agriculture, Fisheries and Food at a period when fisheries dominated a lot of the European Union discussions. I always took with me the Scottish Minister. Now, of course, it was within the same Administration, but I
always took him with me, and we never had any problems, nor with the ferocious Scottish media on this issue, or fishermen themselves, because they could see we were working very closely together. However, going to the wider issues beyond that, the written evidence from Scotland in Union to us recommended that one civil servant in Scotland “should (naturally) assist Scottish Ministers in carrying out the devolved functions of those Ministers within terms of the Scotland Act”, and I understand all that. It goes on that they should not be able to “carry out work which relates to reserved matters”—and “reserved matters” is the distinction I want to make—“unless it is in support of” the UK Government. Would you like to comment?

Lord O'Donnell: Who is saying this?

Lord MacGregor of Pulham Market: It is evidence from Scotland in Union to us.

Lord O'Donnell: Scotland in Union?

The Chairman: That was the lead campaign for staying in the Union during the referendum.

Lord MacGregor of Pulham Market: I am asking you just to take the point they make.

Lord Kerslake: I am nervous of commenting on something I have not read the entire content of. Clearly, I see their role in part as to understand the impact of the UK policy being referred to—let us say it is welfare—in the Scottish context, if you like, and advise the Scottish Government about the issues that might flow for Scotland. That is different from saying they are in support of the UK policy, because they may have issues that are particular to Scotland that they want to raise. That is a perfectly reasonable thing for them to do, and they should have capacity and expertise to properly analyse the impact of proposals on welfare in Scotland and say, “This works for us, but this does not”. That is clearly part of their role.

Lord O'Donnell: Yes. I think we are saying we disagree with them.

Lord MacGregor of Pulham Market: In reserved matters, are you saying that the Scottish civil servants, perfectly properly, can put the Scottish point of view in the discussions leading up to the final decisions, but in the end they must support the final decision because they are reserved matters and it is the UK Civil Service position that should be taken?

Lord O’Donnell: Yes, absolutely.

Lord Kerslake: Once the policy has been formalised and agreed by the Government, or taken through Parliament, of course they have to implement it because it is the law of the land.

Lord MacGregor of Pulham Market: Would this create any tension within the Scottish Government: tension between the civil servants and the Ministers who are taking a very different view?

Lord Kerslake: I do not think it should, because, as I said earlier, the first role they will have is providing proper advice to their Scottish Ministers about the impact of the policy in Scotland. Their Ministers will expect them to engage in a robust debate on their behalf on those issues with the UK civil servants, and then they would accept that if a decision is taken it has to be implemented. That is how I would see it.

Lord O’Donnell: I would also point out that there are lots of UK civil servants in Scotland and Wales, so you are concentrating on the issue of those civil servants who work for the Scottish Government and Welsh Government, but there are plenty of civil servants in Scotland working for DWP, for example.

Lord Kerslake: There are more for the departments than there are for the Government—quite a lot more.
Q233  **Lord Brennan:** Here is a different form of stress test to examine your proposition about unified Civil Service standards: let us suppose there comes a time when a Scottish Government breaks with the fiscal framework established between London and Edinburgh, for example, by taking a deliberate political step as part of a ploy to expand the fiscal framework or amend it, or alternatively through economic incompetence. What then would be the position of specialist senior civil servants in Scotland when in either position you have a frank difference of political objectives with an adverse consequence to the UK Government?

**Lord O’Donnell:** It would depend on the nature and status of that fiscal framework. Having spent a long time in the Treasury, we have had fiscal frameworks we have for one reason or another not managed to live up to. That is quite possible. The world and the economy is not entirely predictable, and sometimes you might have an objective and you fall short of it—in fact that is rather more normal in those circumstances. If it is a legal requirement, of course that is different, and then the civil servants would have to be advising their Ministers that they needed to do what was necessary to meet that legal requirement. For example, on the 0.7% commitment on aid, that would be one thing. If there is a vague statement about, “Well, we should have a sustainable fiscal policy”, what does that mean? Therefore, it would very much depend on the nature of that fiscal framework and its legislative status.

**Lord Brennan:** That is why I gave you the example of deliberately breaking it or doing it through simple incompetence.

**Lord O’Donnell:** Yes, but it depends. By breaking “it”, what is “it” in this case? Is the fiscal framework in legislation or is it aspiration?

**Lord Brennan:** We are expecting it to be in legislation.

**Lord O’Donnell:** If there is clear legislation, civil servants will be required to advise their Ministers that certain things they are doing are inconsistent with the legislation.

**Lord Kerslake:** However, that is no different from any civil servant role, is it, in that sense? They have a duty to ensure that their Ministers are acting in accordance with the law—whatever that law is.

**Lord O’Donnell:** Remember, on the point about fiscal frameworks, if I come back to that—and I can understand where you are coming from on this—within the Treasury officials would give advice, and Ministers may decide where they want to go. All parties now have come to the view that they think that system needs to be strengthened, and hence that is why we have the Office for Budget Responsibility, and that has been a fantastic improvement in the way in which our fiscal frameworks are implemented.

**Lord Lester of Herne Hill:** I hope I do not sound paranoid. I probably am, but I have to say listening to both of you that the impression you give is that everything is more or less fine. My experience is when you have a devolved institution that is playing a different game from Whitehall and Westminster, things are not fine. We have to assume that there will be folk in Scotland who are interested in maximising friction with Whitehall and Westminster in the search for independence. I simply want to put that to you, because my experience in Northern Ireland was that the Home Office was looking over the shoulder of the Northern Ireland Office to make damn sure that Northern Ireland would not have its own Bill of Rights. Furthermore, a number of things happened at that time that caused great resentment in Northern Ireland, where the politics were very different. I just wanted to say that so you have a chance to tell me that I am paranoid.
Lord Kerslake: We need to distinguish between two things here. One is if there are huge political forces challenging the union, and quite clearly there are. That is happening and that is a reality. That in turn creates challenges in the way the Civil Service works. I do not think either of us would deny that. I think we are saying that, notwithstanding those huge political forces, the model we have has managed some very big issues, like the referendum, as well you could possibly have expected to have done, and certainly a lot better if you look across Europe in other similar situations. Could they prevent, or should they even try to prevent, further change? That is not in their role. Have they handled the situation we have faced so far well? The answer is yes.

Lord O’Donnell: Your example is about Northern Ireland. Obviously the issue about Northern Ireland is that Northern Ireland does indeed have a separate Civil Service. That is part of why I would expect there to be greater tensions than there are with Scotland or Wales, even though we are talking about in Scotland, particularly, the harshest test you could have, with such a virtual one-party state. Is it SNP, is it not? It is SNP land, and that is going to create big tensions. What surprises me is that has been managed, and that is down to the responsibility of the politicians involved. The discussions I have had with Alex Salmond and the odd chat with Nicola Sturgeon have suggested to me that they see the value of a unified Civil Service.

Lord Kerslake: Ultimately, whether it is manageable comes down to the way in which the politicians act and behave. That is really what I am saying.

Q234 Lord Judge: Unlike Lord Lester, I am not paranoid. Instead, I am a 30 year-old, very bright civil servant working in Scotland. Is it my duty to seek to preserve the unity of the United Kingdom?

Lord O’Donnell: No.

Lord Judge: To advise my Ministers that they should?

Lord O’Donnell: No, absolutely not.

Lord Judge: Therefore, how do I square this with the unified Civil Service, when I actually work for a United Kingdom service?

Lord O’Donnell: You are working for the Scottish Government and you are doing what that Scottish Government’s objectives are. You could transfer to London, subject to being able to afford the rent, if you are a bright 30 year-old, where you would be working for a UK Government who have a different set of objectives. That is part of being a civil servant, because you have to have that ability and flexibility to work for a Government who have a different set of objectives, because, surprise surprise, every five years a Government come in who have a different objective, potentially. Therefore, you need that flexibility. I would say your bright 30 year-old will have no problem with that. They would have understood from the day they joined the Civil Service that “servant” is in there: they are a servant of the democratically elected government of the day.

Lord Judge: Forgive me—before Lord Kerslake answers, because I would like you both to—but you were going to reassure me, as a 30 year-old civil servant, that those for whom I work in Scotland for the moment are not going to have it against me that I have a loyalty, which I have to have, to the United Kingdom service.

Lord O’Donnell: No, as long as you interpret that loyalty in the correct way, which is you uphold the values of the Civil Service, one of which is to operate according to the code, which says that you will help your Government implement their policies.

Lord Kerslake: I have two points to make. Gus has covered it exactly as I would. One is to say that the loyalty here is to the principles and the values of the Civil Service, and to serve the Government
that you work for. I spent much time up in Scotland during the referendum period, and that was very well understood by very bright civil servants.

The addition I would make is that they also have a responsibility to ensure that the agreements and frameworks that are established between the different countries are honoured as well. Going back to a point that was made earlier, whether that is a legal framework or a less binding framework, they do have a duty to point out to their own Government, “You signed up to this agreement, and therefore that brings with it responsibilities”. However, that is again back to the values of the Civil Service, of honesty and integrity, is it not?

Q235 Lord MacGregor of Pulham Market: You have partly answered the question I was going to ask; can I just probe you a bit further? It is a reserved matter. The Minister in Scotland is urging his senior civil servants to challenge the reserved matter in every way possible and to undermine the position on the reserved matter, because that Government takes a very different view about what should be reserved from the UK Government. What is the position of a civil servant in that instance?

Lord Kerslake: It is clear, and it has happened, of course, on welfare issues, that their job is to represent their Government’s views in the debate on that reserved matter with as much rigour and skill as they possibly can.

Lord MacGregor of Pulham Market: Do you mean the discussions between the two Governments?

Lord Kerslake: Yes. Clearly, whether in private or not, in the advice they give back in their conversations with civil servants in the UK they are of course going to make the arguments that their Government has about that policy. That is their role.

Lord MacGregor of Pulham Market: They do that, but do they also say to their own Ministers, “Frankly, this is a reserved matter, and you are asking us to do something way beyond what is our duty on a reserved matter”.

Lord Kerslake: It is not beyond their duty to properly express the views of that Government to the UK Government. That is not beyond their duty. It would be wrong if that policy is then determined and is law and needs to be adhered to.

Lord MacGregor of Pulham Market: In Scotland.

Lord Kerslake: In Scotland.

Lord MacGregor of Pulham Market: Yes.

Lord Kerslake: That is how I would distinguish it.

Baroness Taylor of Bolton: Would that cover Trident and people who are working for Ministers in Scotland, where Scottish Ministers are wanting to say things about Trident and being asked to write speeches, put out press releases, whatever, on that topic, which is clearly a reserved matter?

Lord O’Donnell: They would certainly give objective advice about answering factual questions about Trident, which Ministers could then use.

Lord Kerslake: Particularly in relation to Scotland and its impact on Scotland.

Q236 Baroness Dean of Thornton-le-Fylde: Good morning. Could I follow up on the point that Lord Judge was making? I guess my interpretation would be we are expected to be comforted, with all due respect, by the responses you have given, but I am not and I am questioning why I am not. Lord O’Donnell, you said, “Well, of course, we have this issue every five years”, or around then. We have
an election and Governments change, but of course that is consequential. I am not talking about the lower-level civil servants. I am talking about the key senior civil servants, and we are talking about a situation that was brought into harsh focus by the referendum.

However, there is the day-to-day business, where there are, in some instances, significant differences. We are talking about Scotland at the moment, obviously. That situation is not going to remain the same, because as time goes on their own view of themselves is getting stronger. You have one government in Scotland—a one-party state almost. What happens in the day-to-day activity where you have politicians pushing very hard at the door of something that may be—and Trident may be one—in opposition or different from the UK Government? You are almost asking the civil servant in that situation to be a Samson, to be able to balance those challenges. My interpretation of what you are saying is that really is not an issue. I am not sure that it is not an issue. They are either successful as a Scottish civil servant in the eyes of the Scottish politicians in doing what their bidding is, or they are not because they are doing what the UK Government are saying in some instances: “No, this is the UK policy; you will do what we say”. How do you see that situation evolving?

**Lord O’Donnell:** I do not see that as a problem. I am a Scottish civil servant. I am working for the Scottish Government and they have certain objectives, maybe issues of Trident or welfare policy or whatever, and they happen to be different from the UK Government’s. Therefore, my job is to advise my Ministers in Scotland on those issues and to help them to support their arguments. Then there will be a debate and there will be a decision. Once that decision is made, my job, as a civil servant, is to ensure that it is implemented. It is not hard. I do not see the difficulty, and I do not think civil servants see the difficulty. If that had been really difficult, they would have fallen apart during the referendum, but they did not.

**Lord MacGregor of Pulham Market:** Can a civil servant say to a Minister, “You cannot do that, because it is clearly a reserved matter; the legislation is clear and I cannot give you advice on it”?

**Lord O’Donnell:** Absolutely, at times you spend your life saying to Ministers, “That is a brilliant idea, but it is illegal”.

**Lord Kerslake:** I have two points to make about what has been raised there by Lady Dean. One is that the model works as long as the politicians recognise and respect the model and see it has value. At the point at which they stop seeing it as that, it will not work or it will struggle. At the moment it works because all parties see the value of the model we have and recognise the conflicts, tensions and compromises that go with it.

Secondly, it has not been unknown for there to be quite ferocious differences between different UK Government departments on issues. Civil servants act on behalf of their Ministers in those discussions. They are robust. I am sure Ministers in the other departments see them being robust. Their most likely conclusion is: “If they are good at it, I would not mind having them in my department”.

**The Chairman:** We must move on, sorry; we are running short of time.

**Q237 Lord Morgan:** We have been circling around a bit what seems to me the absolutely essential problem, which is the growth of diversity. We have more and more diversity. You have both rightly and cogently talked about the need to have common values, common methods of operation, but we are operating in a situation, as you very well know, where the different Administrations are becoming more different. The reserved powers vary enormously. The balance of the exceptions to those reserved powers changes as Bill follows Bill.
We are discussing, as you know, the Scotland Bill at the moment. We have had evidence from distinguished civil servants saying the emphasis of it should be more marked about the difference, particularly between Scotland and Wales. They are not the same in their methods of operation. Is the task of the Civil Service becoming more and more difficult—to find some kind of uniform procedure within what seems to us and this Committee a picture of growing variety, almost in a destructive sense?

**Lord O'Donnell:** The UK was unusually centralised as a Government, when you contrast it with other, let us say, European countries. That has its strengths and its disadvantages. Obviously, we are moving through a process now where we are devolving not just to nations but also devolving—and I am sure Bob can pick up on this—the areas of the northern powerhouse, what is happening in Manchester and all those sorts of areas. Yes, it creates some tensions, but there are also big advantages. Scotland can do some things and the rest of the UK can learn from them. If you look at smoking in pubs or the Welsh example of reversing the opt-out for organ donation, there are lots of areas where we can look at what they are doing. John Elvidge may have talked to you about the changes to the organisation of the Civil Service in Scotland. There are lots of things we can look at and say, “Actually, there’s quite a lot we can learn from this”. Therefore, we have an area where we are testing different sorts of policies that we can then learn from and adapt, and I hope, for the UK as a whole and for the parts of the UK, come up with better Government and better decisions for the people. In the end, that has to be a good thing.

**Lord Kerslake:** I have two or three points to add. One is I share Gus’ view that diversity strengthens the ability to learn and try out new ideas, and I would like to see more devolution and diversity in England as well as what we are achieving across the UK.

Secondly, the UK constitution is facing some very considerable challenges across a range of fronts, and they have been pretty well articulated, particularly in Vernon Bogdanor’s pamphlet on this, which sets out the issues we are facing. They are very stark, very real and very considerable, and that brings a need for civil servants to grow and develop new skills in handling this complexity and diffusion of power—in handling a constitution and a nation in transition. Those things do test civil servants, and they have to develop new skills and capabilities to manage it, whether they are part of the devolved nations’ Governments or whether they are part of the UK Government.

**Lord Morgan:** Thank you. May I just ask another one?

**The Chairman:** Yes, of course.

**Lord Morgan:** You mentioned, Lord O’Donnell, particularly, that there might be, so to speak, opportunities or refreshing chances for people in some particular part of the United Kingdom to operate differently. Would there be a Civil Service view on occasions when parts of the Civil Service in these islands would like to experiment but their capacity for so doing is held back by the system we have, for example by the distribution of reserved powers? That is to say that diversity might conceal equality of opportunity, including within the Civil Service.

**Lord O’Donnell:** Within the Civil Service itself, the constraints are, like I have said, mostly about financial issues. In terms of the ability to test and try out different ideas, that is growing throughout the Civil Service and individual parts are doing that. The fact there are differences going on will indeed lead to inequalities, and I regard that as quite healthy in that we will learn from that. I do not think there should be one policy for everybody. The whole principle of devolution is that by devolving power to smaller areas sometimes you can come up with better answers. Obviously, for some areas that does not work, but it is well worth testing out whether that is true or not.

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Lord Kerslake: The caveat is about how you ensure equality of resources and capacity, and how you align devolution with equality of distribution and opportunity. That is a much tougher ask, because you have to look at the whole way finance happens, particularly in England, and if you localise business rates, for example, how you ensure you get a proper re-distributional system across from Westminster to Sunderland. There are issues about how resources work in a devolved mode, but an inevitable consequence of devolution is that you will, even if you have the resource balance right, get different outcomes, otherwise why do it? The trick is to learn from that and then adopt the best.

Q238 Baroness Taylor of Bolton: Going back to the devolved Administrations, given that we are seeing an increase in shared powers and tax-raising powers, it seems that this means there has to be greater interaction between the different Administrations. Would a physical presence—offices—for key government departments, such as the Treasury or BIS, in Edinburgh or in Glasgow help in that? Would that help ease that issue, or would it help diminish the antagonism that often exists because of this centralisation that you are talking about—everything happens in London? Is there a strong case for an actual physical presence of physical offices to negotiate, to discuss, to ease these new administrative shared responsibilities?

Lord Kerslake: It varies from department to department. It is not absolutely the case that every department needs to have a physical presence. They do have to have a good understanding of the different issues in different areas. The mechanism by which they might do that might vary. For example, the Bank of England has representatives across the country to pick up local intelligence about how the economy is going. That is not separate offices or big teams there; it is individuals who connect to the local issues and the local players.

There are different ways of doing this, but it is an absolute and proper expectation that every department organises itself in a way such that it knows what is happening in different parts of the UK and, obviously, in different parts of England. That is how I would see it. How they do it is for each department to determine. As we touched on earlier, if you look at Scotland and Wales, we have a very big departmental presence in those areas anyway.

Baroness Taylor of Bolton: However, those departmental presences are usually administrative rather than policy, and if we are talking about shared powers, it is the people who make the decisions about the powers who can be very distant and can cause increasing difficulties in the future.

Lord Kerslake: I do see that. Obviously, a key issue in relation to Scotland and Wales is the Scotland Office and Wales Office and how they work. Each department, as I say, has to have an ability to gain that intelligence, sometimes through physical presence and sometimes through very strong networks, particularly in the way they run the department. I always felt very strongly, and this is how we did it in CLG, it was not so much about having lots of teams out there on the ground. Sometimes the Government offices found it difficult to make their views known back into the department.

What was really important was that senior civil servants saw it as part of their job to get out of Whitehall, however challenging it was in terms of their diaries, and spend time in different parts of the country. As I say, it is not a simple question of physical presence. It is about how the whole department operates, and does it have a conscious, agreed way in which picks up different views across the country, not just at the bottom but at the top as well?

Lord O'Donnell: One way that I tried to make what Bob is talking about a reality was, as I talked about, the top 200 and getting the top people together. I remember meeting in Cardiff and getting
everyone together there to say, “Let us see how these things really play out, and let us make sure that we have an understanding of what the issues in Wales are, so that we all go back”. That was across the whole of the UK Civil Service.

**Lord Kerslake**: In CLG we had assigned parts of the country to senior managers, who made it their business to connect with the key local players there. These are all ways of making sure you really grasp the different issues across the country.

**Lord O’Donnell**: Yes. Sir Bob mentioned the regional representatives the Bank of England have. Those regional representatives report to the Monetary Policy Committee as part of the two-stage decision-making process, and on the first day, and obviously throughout that period, you have a Treasury representative there. The Treasury representative is there listening to the bank’s regional reps report, and quite often they do surveys and all the rest of it. Therefore, they are getting an understanding of what is happening in all the different parts of the economy, which is pretty fundamental to most of the activities Government are involved in.

**Lord MacGregor of Pulham Market**: In Parliament you get a great deal of evidence and discourse about that from MPs in those areas. There is constant interchange. When departments go out like that, do they relate to the local MPs?

**Lord Kerslake**: I would expect them to, and certainly in relation to the department I ran directly, I did want them to connect with MPs, with the local authorities, with business and with the voluntary and community sector. All those should have been part of the conversations they had as civil servants to hear what was happening, because they were all able to bring different and valuable perspectives on what is happening in their area.

Q239 **Lord Cullen of Whitekirk**: I would like to ask about public perception. What could be done now to clarify for the public the respective roles of the United Kingdom Government on the one hand and the devolved Governments on the other?

**Lord O’Donnell**: The referendum campaign brought home a number of those issues to people. I do not think people wake up every morning thinking, “My goodness, I wonder if that is a reserved matter or not”, but it is important that in Parliament those things are clear. When you get Bills going through now, it is very clear in legislation what that applies to, so the territorial application and all that. That is an important part. I would say it is the job of everyone in this room to try to explain to the British people the constitutional settlement, what is reserved, what is not and how that operates in practice. I do not see that as necessarily a Civil Service matter. As members of the Lords—

**Lord Cullen of Whitekirk**: A view as expressed by one of our witnesses from Scotland is that the United Kingdom ought to make more visible what it is doing in the way of services to people who are in the devolved nations.

**Lord Kerslake**: I would buy that argument. As you know, quite a lot has already been done in terms of more investment in communication, and there is a leaflet or a document being circulated to that effect. This is not just a problem we face in relation to the devolved Administrations. Sadly, if we went to people and said, “What does local government do as opposed to central government?”, you would find that they would struggle, to be honest. Whenever you have different levels of government, people find it hard to work out who does what. We should constantly strive to do better at being clear about that, but in the end what matters to the public is that they get good and responsive services. We are never going to persuade them this is more interesting than those things they might spend their time on.
Q240 Lord Lester of Herne Hill: One of the proposals put to us by the Bingham Centre and the Constitutional Reform Group is that it might help if there were a charter of the principles of the union, or a statute, so that without getting to a written constitution at least there were a framework that sets out properly the allocation of powers, respective responsibilities, individual rights and so on. That is, as I understand it, an incremental way forward towards a written constitutional settlement. What do you both think about that?

Lord Kerslake: It is something that has come up in the devolution inquiry that Lord Norton and I are involved in. A set of guiding principles about devolution, both UK and within England, is worth exploring. It is easy to say it and harder to write it, but it would be worth exploring it. It is less about who does what and what are the guiding rules that would drive it. For example, if you take the NHS: free at the point of use. Is that one of the guiding principles that we would have that should inform any form of devolution that we talk about? There is definitely, in my view, territory worth exploring here. It will be quite a difficult debate to say what is in that set of guiding principles.

Lord O'Donnell: I would start by looking at the Cabinet Manual and saying, “Could we expand the Cabinet Manual to cover the recent developments in devolution?”, because it is now a bit out of date, and it should be updated to reflect the constitutional settlement that we have there and put in as much as we can of the points that you are talking about.

Lord Lester of Herne Hill: The Cabinet Manual is not the same as a considered view by Parliament itself.

Lord O'Donnell: Absolutely not.

Lord Lester of Herne Hill: We are, are we not, in a strange position among the common law and European countries of the world in not having something like a written code that sets all this out with the authority of Parliament?

Lord O'Donnell: Indeed. In the absence of a written constitution, I decided on the Cabinet Manual, and obviously with the Prime Minister’s approval, because it struck me that, if Parliament has not done this, and I do not think it will, the Executive—and it is obviously the manual of the Cabinet, so it is the Executive’s document—should lay out as far as they can what they perceive the answers to these questions to be.

Lord Kerslake: The only thing I would say on that is that the Cabinet Manual can only go so far. It could cover some of the principles and processes, but it could not cover some the bigger level principles that we are talking about here, which have to be agreed in Parliament in the end, I think.

The Chairman: We are into injury time, but I hope you will allow us a few more minutes just to touch on English votes for English laws. I know Lord Hunt has a couple of questions he wants to ask.

Q241 Lord Hunt of Wirral: What impact do you think the new procedures in the House of Commons, English votes for English laws, will have on how the Government operate and legislate?

Lord Kerslake: Personally, it is too early to say, in a sense.

Lord Hunt of Wirral: Thank you, Sir Humphrey.

Lord Kerslake: We are talking about October. The local government housing Bill navigated its way through the processes effectively, so it can be done. I genuinely think we do not yet know. A bigger point, if you like, is one of the things we have looked at through our devolution inquiry is this question of whether we are or should be moving to a federal system. Many of the experts who spoke to us pointed to the fact there is no federal model that works with 84% of the population in one part of the federation, so there are serious difficulties in making that model work. I personally
think that Vernon Bogdanor’s phrase, “Asymmetry is the price we pay for the union”, is quite a strong argument.

**Lord Hunt of Wirral**: Lord O’Donnell, what impact do you think English votes for English laws will have on the union? Is there an answer to this English question?

**Lord O’Donnell**: Having struggled to try to answer the West Lothian question for many years and failed, I do not have an answer to the English question. As in all these things, what we now have is an experiment, and we will be able to see to what extent the new procedures meet the requirements of our current constitutional settlement. In the light of that, we should learn from that and be willing to adapt those procedures to work more effectively within the constitutional settlement we have. We should be in the process now of looking, not with the view we have the right answer but with the view we have an answer that I hope we will be able to improve on.

**Lord Kerslake**: From my point of view, maybe the answer is that there is not an answer and you have to live with asymmetry as part of the deal.

**Lord Hunt of Wirral**: I suppose, Lord Kerslake, if anybody knew the answer, with all your experience in Sheffield and Hounslow, you would know what it is, so I am slightly concerned you do not think there is an answer.

**Lord Kerslake**: I am saying you have to trade off things. A simplistic answer is to move to a federal model. There are very considerable dangers with that, which could have more impact in relation to the future of the union than we realise.

**The Chairman**: You have been very forthcoming and very informative throughout your answers, and we are extremely grateful to you for giving so much time and thought to what we wanted to ask. Thank you very much.

**Lord Kerslake**: Thank you.

**Lord O’Donnell**: Thank you.
Akash Paun, Institute for Government—Oral evidence (QQ 32-43)

Transcript to be found under Institute for Government
Dr Bettina Petersohn, University of Swansea and Centre on Constitutional Change—Written evidence (UDE0043)

Key Points

(i) Federal systems and the allocation of power and resources are constantly under pressure to change and adapt to changing economic or social circumstances or political pressure from parties at both levels of government.

(ii) A formalised system of joint decision-making can serve as stabilising mechanism binding both levels of governments but at the cost of flexibility and opportunities for innovations in policy-making.

(iii) Intergovernmental relations provide a more flexible mechanism for coordination when opting-out is made possible (with or without financial compensation) thereby creating an opportunity to form agreements without imposing rules against the interests of devolved or central governments.

(iv) Judicial safeguards clarify rules of arbitration in case of conflicts. In order to be accepted as legitimate the consent or input from territorial entities on the selection of judges needs to be ensured.

(v) Procedural rules of how change is negotiated matter for the kind of dynamic that unfolds. While bilateral negotiations between one entity and the centre allows for taking differing interests in the entities into account, they also establish asymmetry in the power distribution of different territories and increase the likelihood of a spiral of distancing-catching up pattern between territorial entities.

The Meaning of Federalism

Daniel Elazar defined federalism as a combination of self-rule and shared rule with self-rule referring to the extent to which regional governments have the power to take decisions independently from central governments. Shared rule captures the capacity of a regional government to participate in and influence decisions taken at the centre, for example, through representatives in second chambers of parliaments. In reality, federal states differ in how they combine institutional arrangements that allow for self-rule and shared rule, for example Canada towards self-rule and Germany towards shared rule.

The institutional arrangement that has been put in place at one point in time remains exposed to pressures for change caused by social or economic developments or actors pursuing different interests at different levels of government. In consequence, federal systems are constantly in flux. Problems of efficiency, transparency and accountability have, for example, often been mentioned as resulting consequences of the German system of shared rule or joint decision-making.

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making. Federal reforms, like the last one in 2006, however, have been limited in their success of disentangling Lander and federal competences.

Mechanisms of Shared Rule as Linkages

Based on the definition above, mechanisms of shared rule and representation in central institutions provide the opportunity to link different entities with the centre. If these linkages establish systems of joint decision-making, the opportunities of each government taking decisions autonomously may become limited and the system overall rigid and inflexible. Shared rule can be organised in several ways, through:

- **Second Chambers**: members are selected based on a territorial basis (either directly or indirectly elected, or appointed). Territorial entities can be represented equally (like in the American Senate) or weighted according to different sizes in population (as in Germany).

- **Regional composition of cabinets**: This is a convention in Germany where cabinets reflect the regional strength of the governing party. The regional balance is maintained even in case of cabinet reshuffles, sometimes by promoting members of Lander cabinets to the federal level. The vertical integrated party system in Germany facilitates the application of this mechanism.

- **Intergovernmental relations**: Intergovernmental relations provide a mechanism for informal and formal cooperation involving central and regional governments bilaterally, or multilateral cooperation among all regional governments with or without central government involvement.

Joint decision-making

In the case of German federalism, different constitutional principles in the German Basic Law establish authority relationships of shared rule and the necessity for greater vertical coordination (after reform of 2006):

a) The functional allocation of power (Art. 83): The majority of legislative powers rests with the federal level while the Lander are responsible for execution and implementation within the federation – also called 'administrative federalism'. In consequence, coordination is used to facilitate policy implementation.

b) Joint tasks (Art. 91a) establishing joint decision-making in the areas of regional economic structure, agriculture and coastal protection; based on further agreements, coordination is also possible in the field of higher education and research or university infrastructure (esp. buildings) (Art. 91b).

c) Financial concerns (Art. 104a IV): The consent of the Bundesrat is required if federal legislation executed by the Lander creates financial duties or similar payments in kind for the Lander.
d) Joint taxation and fiscal equalisation: changes to the arrangements of fiscal federalism require the consent of Bund and Lander; decisions are taken with an informally established unanimity rule.

Vertical coordination and joint decision-making is ensured through the representation of Lander in the Bundesrat, but also through a variety of Bund-Lander commissions, Bund-Lander committees, and conferences of first ministers and cabinet secretaries establishing a tightly coupled system of intergovernmental relations in which decisions are mostly taken with unanimous consent.

Intergovernmental Relations

Vertical and horizontal intergovernmental relations serve different purposes, from agreeing and administering joint programmes, to coordinate policies with cross-border effects (such as water protection of rivers, or transport) or to share information and knowledge on policy instruments. In federal systems where the Second Chamber does not serve as a way to represent territories in central institutions, intergovernmental relations may offer an alternative linkage mechanisms and a channel for input from territorial entities into policy-making processes at the central level.

In general, those systems which lean more towards self-rule and mostly separate areas of jurisdiction for both levels of governments require from the outset less cooperation and co-decision between central and regional governments, but in reality areas of responsibilities overlap. Depending on the decision-making rule for agreements and their binding or non-binding character, intergovernmental relations can lead to systems of joint decision-making with greater constraints to all governments or they be organised as voluntary coordination leaving room for unilateral action in case no consensus can be reached.

- If **unanimity** forms the principle for coordination in order to reach an agreement on, for example, a framework for social policy or a tax arrangement, finding a consensus becomes a prerequisite. Governments of entities and the centre will be constrained in their legislative autonomy and become dependent on the willingness of the other to cooperate.

- In comparison, if no consensus can be reached with all participating governments, allowing individual governments to **opt out** while others proceed with the agreement reduces the constraints on governments. If an attempt to coordinate policies or implementation does not lead to an agreement each government will have the leeway to legislate autonomously with potentially diverging outcomes across the country but at the same time preserving the jurisdictional boundaries of each level.

Voluntary coordination with opting-out opportunity therefore preserves the autonomy of all governments involved and allows for greater flexibility in reaching agreements. It may also lead to greater differentiation or fragmentation of policies that apply to different entities of the state.

Judicial Safeguards
Constitutional principle serve to define or clarify the relations between entities and between entities and the centre. They establish, for example, a hierarchy of norms like in Germany, or equality of legislative acts from federated entities and the federal government like in Belgium.

Using the example of German federalism, one of the principles is the eternity clause ensuring that constitutional reforms that would abolish the federal system itself, democracy or human rights are inadmissible under Art. 79(3). This clause does not prevent a restructuring of Länder but makes it impossible to abolish them entirely through any kind of reform.

The principle of federal comity or loyalty dates back to an early ruling of the German Constitutional Court on the distribution of funds for building houses. It obliges both the federal level and the Länder to conduct their affairs in a manner ‘friendly to the idea of federation’. The principle covers not only federal-Länder but also Länder-Länder relations and it governs not only the substance but also the style of conduct. It basically established the principle of taking decisions with unanimous consent and that no Land can be outvoted by the other Länder. Over time, that principle was enshrined into the system of intergovernmental relations and joint decision-making that is governing the German federalism. Conferences of Lander secretaries of culture and education, for example, decide upon resolutions with unanimity by convention.

A third judicial safeguard for federal states can be embodied in the selection processes of justices for the Supreme or Constitutional Court. In Germany, Länder have influence over appointments through the Bundesrat. According to Art. 94 of the Basic Law, half of the in total sixteen justices of the Federal Constitutional Court are to be elected by the Bundestag ‘and half by the Bundesrat’. In Canada, an informal convention has been established to ensure that three of the nine Supreme Court judges are appointed from the Quebec bar. Other provincial governments may submit lists with suggestions for appointments but have no formal say in the selection process.

**Procedural Rules for Adaptation and Reform**

Comparative research on constitutional reforms shows that the way a negotiation process is organised matters for the question how similarly or differently powers are distributed across the entities and what kind of power regionalist or nationalist parties have to push for more autonomy for the particular entity they are representing.

- Reforms, that are negotiated between governing and opposition parties at the centre, lead to equal treatment of entities – meaning every territory is granted roughly the same powers and autonomy. Federalisation in Belgium followed this style of negotiation mode. Even though Flemish and Francophone parties had quite distinct interests (decentralisation of education and culture vs. decentralisation of economic policies), the necessity to form a consensus between them led to rather symmetric power distribution between Communities (Flemish and Francophone) and Regions (Flanders and Wallonia).

- A second option is to include representatives of all territorial entities in what has been called multilateral negotiations. A substantial reform to Canada’s federal system requires the consent of the majority or even all provinces, ensured by the premiers in so-called First
Ministers Conferences and since 1982 by a positive vote in provincial legislative assemblies within a three years window. That multilateral negotiation process produced outcomes saw each province getting the same powers despite Quebec's distinct character (being the only province with a majoritarily francophone population and civil law tradition) and demands for special recognition and for different powers in comparison to the other provinces.

- **Bilateral negotiations**, in contrast, have been the source of asymmetries between different parts of a state, particularly evident in the UK and Spain. Here, differences in demands from Scotland or Wales – there from Catalonia and the Basque Country – could translate into different agreements due to bilateral negotiations between the centre and representatives of the parts after devolution in 1999.

As it is parties negotiating for changes to the allocation of power, their power to push for a certain outcome is enhanced or limited by the way the negotiation process is organised. Especially for those parties campaigning only in one territorial region and potentially threatening the electoral success of a party governing at the centre, a bilateral negotiation setting offers the opportunity to push for further autonomy or resources for that particular entity. In a multilateral negotiation process, in contrast, particular interests need to be balanced and brought to a consensus with representatives from other entities as well as the centre. Here, preferences for special treatment or asymmetric solutions are more difficult to realise and parties with campaigning across the entire country (so called state-wide parties) have greater power to promote symmetric changes.138

Considering that pressures for change and adaptation are a central feature for federal systems, it matters for the long-term dynamic how the process in which actors are negotiating over changes is organised.

October 2015

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Political Studies Association—Written evidence (UDE0033)

Introduction
1. The Political Studies Association (PSA) is the leading organisation in the UK linking academics in political science and current affairs, theorists and practitioners, policy-makers, journalists, researchers and students in higher education.

2. Membership of the PSA is open to anyone interested in the study of politics. It spans academics in political science and current affairs, theorists and practitioners, policy-makers, journalists, researchers, politics teachers and students in Higher Education. Membership has grown steadily and now stands at over 1,900, making it the second largest such national association in the world.

3. In our submission to the Committee we respond to questions 3, 4, 5 and 6.

Summary
On what principles are the UK’s devolution settlements based, or on what principles should they be based?
4. Initially devolution was proposed to ‘kill nationalism stone dead’ in Scotland and Wales, and this reactive response has created the space where political decentralisation in England has become an urgent and pressing matter. We propose that further devolution should be based on principles of utilising identity to help to facilitate stronger democratic engagement; and economic rationality that helps to build strong regional economies through strengthening existing economic governance structures, and creating the space for new ones to emerge.

What is the effect on the Union of the asymmetry of the devolution settlement across the UK? Is the impact of asymmetry an issue that needs to be addressed? If so, how?
5. The effect of the asymmetry of the Union has led to the fragility and instability of the Union that we currently experience, allowing the space for English discontent to fuel and exacerbate tensions already existing between Scotland and England in terms of governance. This needs to be addressed as a matter of urgency, through political and economic decentralisation throughout the regions of the English administrative area. To achieve this, we need a thorough process of consultations incorporating governance, individuals and communities throughout the regions.

What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?
6. Further devolution of taxation and welfare without meaningful, properly understood decentralisation settlements through the English regions risk exacerbating existing tensions and deepening rifts. This provides the space for opponents of the Union to make political capital from deepening inequalities of power throughout the Union.

What practical steps, both legislative and non-legislative can be taken to stabilise or reinforce the Union? How should these be implemented?
7. The English administrative area needs an extensive consultation process to consider how best to decentralise power to the English regions. This is already beginning through the Devolution Bill, however in its current form it risks severe intra-regional inequalities that will risk additional rifts.
within England, not just between England, Scotland, and Wales. Some consultation is ongoing, but this needs to incorporate a national debate that moves beyond governance elites, to include civil society and communities.

On What Principles are the UK’s Devolution Settlements Based
8. Many proponents of devolution in the 1990s saw this as a ‘strategic policy’ aimed at taming nationalist waves (especially in Scotland). The architects thought that the creation of devolved institutions in Scotland and Wales would demonstrate that their distinctive aspirations and identities could be accommodated within the framework of the Union – and that, as a results, devolution would ‘kill nationalism stone dead’, by denying the oxygen of discontent that was generated by previous territorial governance arrangement (Curtice & Seyd, 2009: 145).

What is the Effect on the Union of the Asymmetry of the Devolution Settlement Across the UK? Is the Impact of Asymmetry an Issue that Needs to be Addressed? If so, how?
9. The current, asymmetric settlement is not the result of a coherent process with a clear end point – instead, it is piecemeal, ad hoc and, crucially, unstable in that it has weakened, rather than strengthened the Union. Far from settling turbulences within the Union, devolution has brought in new challenges – as clearly demonstrated by the aftermath of the Scottish independence referendum held in 2014, bringing territorial politics and devolution to the UK nations on top of the political agenda, after a long absence (Willett and Giovannini, 2014). The so-called ‘English Question’ has also gained new political traction – pushing the government to reflect on the role and place that England, too, should have in the context of an increasingly decentralised Union. Both at political and public level, England is now looking north of the border, and increasingly sees itself as ‘the hole in the middle’ of the devolution settlement. The devolution process that has been in place in the UK since 1998 has not only been asymmetrical, but it has been accompanied by conflicting and often unequal flows of power if we consider the UK as a whole. Whilst Scotland and Wales have had more powers available to attend to local needs, within England, localities have seen their powers steadily eroded and concentrated in central government (Buser 2013; Lawton and Macaulay 2014). This is creating new, profound fractures within England, which are likely to impact on the future of the union, and can be examined in perspective.

10. Firstly, the paradox of ‘centralised decentralisation’ that has characterised the English case has its roots in the first round of ‘devolution’ measures that were implemented from 1990s onwards. These were underpinned by a greater attention to the layer of regional governance which acted as a bridge between central government and local authorities (through the Government Offices of the regions), and as a strategic regional planning body (through the Regional Development Agencies). The major criticism of this was that local planning and decision-making was often made at a level which was removed from the immediate concerns of localities. The abolition of RDAs in 2010 meant that over a period of twelve years, much strategic decision-making has shifted from local areas to central government, decimating the capacity of localities to shape their communities. Whilst this can be a valuable resource in terms of national planning and UK PLC as a whole, it risks fundamentally altering, in a negative manner, the relationship between the citizens and the state. The Localism Act in 2011 was intended to help active citizens to be able to better shape their communities and neighbourhoods, providing the powers to implement their ideas for improving their local area. In practice however, it has not yet been successful in decentralising actual powers.
On the one hand, centralised strategic political decision-making has the advantage of being able to deal with the UK (and England in particular) as a dedicated whole. This enables central policy to consider what the country needs as a social and economic unit, and develop policy, which is cascaded to the regions (however we might conceive them – either as city regions, county regions, or administrative regions as in the old governance structures). This model, towards which the UK has now moved, represents the local implementation of national policy, with localism and more recent ‘devolution’ being, allegedly, about communities and devolved English regions having the ‘freedoms and flexibilities’ to implement national policy in the way that they feel is most sympathetic to their locality. Whilst this may be an efficient mechanism on a national level, its benefits are less clear on a local basis.

The UK is already one of the most unequal nations in the European Union (as well as one of the most highly centralised (Hepburn and Elias 2011), containing both one of the EU’s richest regions (London) and some of the poorest (Cornwall and the Isles of Scilly, and West Wales and the Valleys). Policies such as the Northern Powerhouse HS2, HS3 are designed to counter the much talked about North/South divide, whereby national policy is imagined to neglect the North to the benefit of the South. However, according to research from the Federation of Small Businesses (2014) the disparity of investment per capita between London and other parts of the UK – particularly the North and the far South West, is striking, running into often many hundreds of pounds per head. Further, neither Cornwall and the Isles of Scilly, or West Wales and the Valleys, are in the North of England, indicating that the disparity of government attention towards the non-metropolitan core is great.

These points shed light on the problem of an over-centralised strategic decision-making process in England – whereby peripheral areas become increasingly peripheralised as their strategic priorities lag behind either high-growth regions, or localities that are assumed to have the potential to lead to high-growth. Whilst there is an economic logic to this with regards to the UK PLC, the entrenched regional deprivation that it facilitates and the lack of popular input to decision-making on devolution becomes a political as well as an economic and democratic problem.

In the current context, the asymmetric and piecemeal nature of the devolution settlement across the UK is shedding light with renewed emphasis on the over-centralisation of powers experienced within England. This, in turn, has highlighted the extent to which regional political and economic inequality has become entrenched within England, requiring a system of political decentralisation whereby regions and localities can have a real direct impact on policy making in an English strategic context. This begs an urgent reconsideration the way in which territorial governance is conceived by the centre, and also of the relationship between the citizens and the state.

This leads us to reflect on the most recent plans for English devolution implemented by the Conservative government since its election in May 2015. In essence, their strategy consists of two elements: English Votes for English Laws (so as to address the West Lothian Question); and the Northern Powerhouse agenda, combined with the City Deals supported through the Cities and Local Government Devolution Bill (aimed, chiefly, at addressing economic disparities across England).
16. Whilst seeing the government trying to address issues of devolution in England could seem in itself to be a positive move, there are a number of idiosyncracies implicit to this approach. In the first place, neither of the two strategies described above answers the English Question in full. On the one hand, Evel has the potential to bring in a number of technical and political issues, and could create further frictions within Westminster, and across the UK nations (see Hazel, 2014; Kenny and Gover, 2015). On the other hand, the Northern Powerhouse and City Deals are ultimately focused more on economic regeneration than on opening a process of real political devolution for England. In the narrative underpinning the government’s plans, devolution seems to be portrayed as a sort of ‘gift from the centre’ that will fix regional economies and create development. However, such claim is far from being necessarily true (Karel, 2015) and, in practice, with very little powers to be devolved, no real fiscal autonomy and more cuts to come, the endgame could be much more problematic, and change very little in practice. Once again, this approach has the potential to further destabilise the already fragile architecture of English governance, creating frictions within English regions, and towards the centre.

17. In particular, rather than empowering and strengthening localities and local authorities, the current plans implemented by the government have set them to compete against each other in a race for City Deals agreements, following the blueprint of the Manchester deal struck earlier this year. Strikingly, on 4th September 38 local areas across England submitted their proposals for devolution to be examined by the government. In the end, however, only a handful of significant deals will be agreed (with big cities like London, Leeds, Sheffield, Liverpool and Birmingham being the main contenders), and perhaps also a number of county deals will be accepted, following the example of Cornwall. The other runners will get much less – and certainly nothing on the scale of ‘Devo-Manc’ or London. From this perspective, the main issue with this approach is that it is likely to spur further rivalries and to widen the gap between ‘deals haves and have nots’, creating de facto a market-type of competition among localities, which may see some rise, but also many others fall – widening, rather than bridging, the divide between English regions (however these are conceived). This is particularly true in the case of Northern regions such as Yorkshire, where City Deals are set to create further divisions and conflicts between big metropolitan areas such as Leeds and Sheffield city-regions, which are expected to get significant deals, and more peripheral and rural areas such as the East Ridings, which will be inevitably excluded, and will continue to ‘lag behind’ and grow a sense of resentment towards other ‘deal haves’ in the region, as well as towards the centre. If we think that the Northern Powerhouse scheme was presented to the public as a joining up of local enterprise in a coordinated economic area across the Pennines and from coast to coast, it is easy to see how its rhetoric does not seem live up to reality. In fact, both the Northern Powerhouse and City Deals seem to be based on a ‘divide and rule’ strategy that, in practice, will do very little to empower and strengthen the North or its cities – further fragmenting, rather than improving, territorial governance.

18. Finally, it should be noted that the whole debate on English devolution has been an elite-to-elite one. Whilst making occasional reference to how Evel, City Deals and the Northern Powerhouse agenda would help improving democracy, in practice so far the government has paid very little attention to what the people really want from devolution in England (or if they have any appetite for it at all). Not only was the public given no voice in the discussions; but their views, as expressed in the referendums on elected mayors held in 2012, have also been overtly overturned – as the City Deals will be tightened to directly elected mayors. Furthermore, within the current plans no reference is made to the presence of regional
distinctiveness, identity, culture and history that does exist not only in Scotland and Wales, but also within the English borders – e.g. in areas like Cornwall, and the regions of the North of England (Willett and Giovannini, 2014).

19. Overall, in England, the government has embarked on a project of economic devolution that is set and driven from the centre, at its own terms and conditions and with no real democratic input or scope. This largely ignores the fact that devolution is not only about reviving economies, but is also about revitalising localities from the bottom, engendering participation in the debate about their future, passing down real powers and bringing political decision-making closer to the people. Such centripetal approach runs the risk of creating a system of governance in England that is piecemeal, economically unsustainable, unaccountable and strongly biased towards London and other big cities. This could have very profound effects on the political economy of England (bringing in more inequalities and widening rather than bridging gaps between regions), but also on the wider UK political system, creating further alienation of the public from politics, and disenchantment towards political institutions at large. In the long term, this approach could engender feeling of detachment from mainstream politics not too dissimilar from those we have seem emerging in Scotland over the past few years, that could have strong impacts on the future of the Union.

What practical steps, both legislative and non-legislative can be taken to stabilise or reinforce the Union? How should these be implemented?

20. Reflecting on the case of England helps us both to put into perspective some of the key challenges that the Union is facing, and also to think about the key principles that should be implemented to strengthen the Union. Crucially, for the Union to continue to develop in a stable manner, there needs to be a clear, negotiated strategy for dealing with the political imbalances within England. In practical terms, this requires a profound rethinking on the part of the centre of the way in which it conceives and deals with territorial politics – not only for Scotland, Wales and Northern Ireland, but also for England. In particular, it seems to us that a new vision of territorial governance should pay more attention to the fact that England is profoundly diverse, and contains within its border many ‘territorial entities’ with their specific needs, aspirations and capacities – being these ‘small nations’ (i.e. Cornwall), regions with strong sense of distinctiveness (like the North East and Yorkshire), or areas that are more comfortable to remain under an administrative border/banner (e.g. most of the areas in the South East).

21. Furthermore, this needs to be combined with a clear understanding about the relationship between the citizens, the ‘regions’, and the State. In practical terms, meaningful, sustainable and real devolution of powers needs to happen within the English regions in a manner tailored around their needs, alongside the devolved governments of Wales and Scotland.

22. This also means that as a country, in the UK we need to have a serious national conversation about what the nature of government is for, and what is the relationship between the citizen and the state. For instance, do we elect local politicians to implement national policy, or do we think that we elect local politicians to set the strategic priorities for our region (however it is conceived), and create policy that addresses specific local needs? In an ESRC Festival of Social Science event in November 2015, (the ‘Citizens Takeover of Cornwall Council’), the political activists involved assumed the latter, and this was the source of their frustration. They were expecting to be active citizens developing the policy agenda for their locality, but found that their role was one of delivery and management (See also Griggs and Roberts 2012). This links
the question of the relationship between the citizen and the State. Do we conceive of British democracy to be one that is mainly engaged at the ballot box on Parliamentary elections, or do we imagine a democratic relationship whereby active citizens help to shape the UK as a part of their daily lives?

Conclusion

23. In conclusion, there seem to be two key principles that should underlie the existence of and the governance of the Union so as to strengthen:

- The first one is **sustainable governance**, based on a revision of the way in which territorial politics is envisioned by the centre, which should be based on an open recognition of the UK as a profoundly diverse country, not only across but also within its nations. In this sense, territorial politics and devolution strategies should start to be conceived not as something that is managed univocally by the centre, but as an on-going dialogue with all the levels of governance below the state so as to address their needs and create the synergies necessary to develop a sustainable project of asymmetrical devolution that can offer an alternative to the current, over-fragment and unstable one. Imposing an agenda creates divisions and this threatens the union; if you create synergies, you develop mutual trust, respect and improve the state of politics – strengthening the union.

- The second one is **democracy**, indented as an institution that can give more voice, and hence power, to ordinary citizens in deciding the constitutional future of their localities, regions, nations and, in turn, the whole country – bringing them closer to politics, and making them feel that their views do matter. If we accept that one of the main challenge underpinning the Union concerns its current status of constitutional flux, and the UK is confronting ‘constitutional moment’ (Ackerman, 1991), i.e. a period in which the basic questions of how we are ruled are on the table and stand to be resolved, then the capacity to decide how to address these should not be put only in the hands of legislators and politicians – but the people, too, should have their say. In this sense, reviving and improving the relationship between citizens and the state in a more democratic direction should be seen as the bonding agent that can keep the Union together, even in the most turbulent times.

Dr Joanie Willett and Dr Arianna Giovanni, for and on behalf of the Political Studies Association

References


1st October 2015
Dr Hugh Rawlings, Constitution Affairs and Inter-Governmental Relations, Welsh Government—Oral evidence (QQ 242-254)

Transcript to be found under Rt Hon. Carwyn Jones AM, First Minister of Wales
Introduction

1. The United Kingdom continues to undergo a rapid process of constitutional change, with an ongoing redistribution of law-making and governmental powers to different parts of the Union under an expanded rubric of ‘devolution’. But more than this, there is today a pervasive sense of crisis in the territorial constitution, as conceived in terms of the distribution of powers and resources across the different nations and regions, and the relations between them, inside the UK. Indeed, looking at the ‘Union’ through contemporary eyes as the UK’s voluntary association of four home countries, it is, in the words of the Oxford dictionary definition, ‘a time of intense difficulty or danger’. The fact of sudden multiple efforts at rendering the Union framework more robust further highlights this.

2. The current constitutional and political situation in the UK offers many opportunities, not just for those who in properly democratic fashion promote the cause of independence (in Scotland), but also for reform of the UK’s territorial constitution in terms of, in federal-type language, shared rule and self-rule. From a unionist perspective, I see a need for principles of mutual benefit, comity and parity of esteem to inform constructive and flexible federal-type responses at UK level inside our uncodified constitution. I am not sanguine however. Indeed, I recall the Constitution Committee in the previous Parliament heavily criticising the unionist parties at Westminster for no coherent vision for the future shape of the UK. Nor, from what has happened to-date, do I have much confidence in the readiness of Whitehall sufficiently to adapt to the exigencies of the situation.

3. The following remarks chiefly concern two related aspects: (a) the argument for constitutional principles contained in an Act or Charter of the Union, and (b) the unsatisfactory nature of the framework of intergovernmental relations. They serve to illustrate a broader theme, namely the case for constitutional renewal irrespective of whether reforms serve, in the Committee’s words, ‘to stabilise or reinforce the Union’. Indeed, the more constitutional change is presented as being in defence of the Union, the more difficult it may be to deliver on the ground.

Act/Charter of the Union

4. According to the call for evidence, the Committee aims ‘to identify and articulate the principles that should underlie the existence and governance of the Union’. The recent proposal from the Bingham Centre for the Rule of Law for a set of ‘principles of union...
constitutionalism’ grounded in a statutory charter is an obvious reference point.\(^{142}\) I agree with some but not all of the Centre’s arguments and proposals.

5. To put this in context, the Royal Commission on the Constitution 1969-1973 suggested a number of general principles for reform of the territorial constitution.\(^{143}\) The Report thus spoke of ‘the need to preserve unity’, desirable ‘flexibility’ and ‘good communication between government and people’. The Commission also emphasised a major element of legitimacy – ‘constitutional arrangements cannot be imposed against the will of the people’ – and constitutional fundamentals such as representative democracy and the liberty of the individual.

6. The Bingham Centre would go much further, for example by enacting precepts of social solidarity and a common economic framework.\(^{144}\) In my view, such principles could have a valuable role to play in guiding legislative and executive processes at UK level. But I am not in favour of turning substantive principles of this kind into statutory principles of interpretation, hence further invading the domestic political space, as the Bingham Centre explicitly advocates. Howsoever attractively packaged, this a recipe for excessive judicialisation and – yes – too much power for the UK Supreme Court.

7. Instead, Bingham’s list of principles could usefully be unpacked on the basis that, in statutory form, some such principles are better-suited to our political system than others. Familiar from the EU context in the guise of ‘sincere cooperation’,\(^{145}\) an overarching principle of comity, trust and fair dealing is my preferred candidate. It would reflect and reinforce many fine sentiments expressed in the official documentation of UK intergovernmental relations (see below). And who, one is tempted to add, could possibly object?

### Intergovernmental relations

8. At the beginning of the century, I characterised the intergovernmental system centred on the Joint Ministerial Committee as a ‘black hole’ at the heart of the UK’s new constitutional architecture.\(^{146}\) Although precepts of co-operation, communication and consultation were contained in the official documentation,\(^{147}\) relevant processes were unstable and disjointed, discretionary and closed, and overly dependent on political and administrative goodwill. Highlighting the potential for central domination, but also an important role for the system as part of the ‘glue’ of a reinvented Union, I made a series of recommendations such as statutory underpinning for the JMC, transparency as a guiding principle, and proper parliamentary scrutiny.\(^{148}\)

9. Nothing has happened to change my view. Indeed, testimony to Whitehall inertia during a period of territoral political movement from cosy Labour hegemony to wrangling


\(^{144}\) Bingham Centre, *A Constitutional Crossroads*, at 21-22.

\(^{145}\) Treaty on European Union, Articles 4(3) and 13(2).


\(^{147}\) Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers, and the Northern Ireland Executive Committee (1999 version).

cohabitation and possible break-up, a series of recent reports, including one from the Constitution Committee,\(^ {149}\) rehearses complaints about fragmentation, too little democratic oversight, and, not least in the EU context, organisational skews in favour of London. Today, an additional premium is placed on an efficient and effective system of intergovernmental relations in view of a looser Union characterised by more exclusive territorial authority and much shared interest.\(^ {150}\) Meanwhile, a reference in the Queen’s Speech documentation to a revised Memorandum of Understanding on intergovernmental relations\(^ {151}\) points up the opportunity.

**Going on**

10. Looking forwards, much constitutional and political wisdom will be required if – and it is a big if – the Union is to survive and prosper. There is no quick fix, and in this particular multinational democracy that includes the type of full-form federalism famously rejected by the Royal Commission on the Constitution.\(^ {152}\) To overlook the broader reach of federal-type ideas of shared rule and self-rule in a flexible system of multi-level governance\(^ {153}\) would, however, be a cardinal error. Likewise, the chimera of heavy doses of law calming the storm should not obscure the many areas for territorial constitutional improvement by both legislative and non-legislative means.

11. Let me conclude with a modest suggestion. The failure of Whitehall properly to come to terms with the new constitutional climes, especially in joined-up fashion, is an increasingly familiar refrain.\(^ {154}\) Current examples extend to ‘English votes for English laws’, where messy proposals point up the importance of careful constitutional process,\(^ {155}\) and the sadly pedantic approach to a reserved powers model for Wales.\(^ {156}\) Evidently, UK ministers and officials need chivvying along in this most fundamental sphere of constitutional development. With the remit ‘to keep under review the operation of the constitution’, the Constitution Committee is excellently placed to do so. Once the present inquiry is complete, why not institute periodic reviews of the state of the Union?

1 September 2015

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\(^ {151}\) Prime Minister’s Office, *Queen’s Speech 2015 – Background Briefing*, at 58. The current version of the MoU dates from 2013.

\(^ {152}\) Royal Commission on the Constitution, para. 498.

\(^ {153}\) Best articulated in official circles by First Minister of Wales Carwyn Jones, speech to the Institute for Government, 15 October 2014.


\(^ {156}\) HM Government, *Powers for a Purpose: Towards a lasting devolution settlement for Wales* (2015, Cm. 9020), especially Annexes B-D; Rawlings, ‘Riders on the Storm’.
Introduction

1. In my memorandum of 1 September 2015 on ‘The Union and Devolution’, I drew the attention of the Committee to four key aspects: (a) the case for constitutional renewal not only in terms of ‘strengthening the Union’; (b) the importance of principles of mutual benefit, comity and parity of esteem in a reworked Union; (c) the chimera of heavy doses of law calming an ongoing territorial constitutional crisis; and (d) the failure of Whitehall properly to come to terms with the changing territorial constitution. In turn, given the evident need for profound institutional – cultural - change at the centre, I identified an important role for the Committee in holding Whitehall to account through periodic – annual – reviews of the state of the Union.

Parity of Esteem

2. In this further memorandum, I emphasise the importance of greater parity of esteem between the various legislatures and governments/executives in the United Kingdom. To speak, as UK ministers and officials continue to do, of ‘devolved administrations’ is in this regard singularly lacking in constitutional sensibility. To push home the point, it is important when thinking about the principles which should ‘underlie the existence and governance of the Union’157 to look beyond the allocation of legal and financial responsibilities among the several democratically legitimated centres of authority. The general temper of relations among the UK’s proverbial ‘family of nations’ must also be considered. Corrosive attitudes and practices associated with what I have elsewhere called ‘constitutional patriarchy’158 need to be carefully guarded against if the Union is to survive and prosper.

3. Reference must be made to the Asbestos Diseases case,159 where a Welsh legislative scheme for the recovery from employers/insurers of NHS treatment costs was blocked in the UK Supreme Court. The two different ways in which the judges approached the issue of compatibility with the fundamental - Convention - right to peaceful enjoyment of possessions, or more precisely the question of proportionality and hence the degree of deference or respect accorded the legislative choice, go directly to the constitutional status of the several parliaments and assemblies in the UK. Elaborated in the minority judgment of Lord Thomas of Cwmgiedd, and there combined with a strong defence of democratic legislative space, one approach is determinedly non-hierarchical in character. Alongside contextual sensitivity to the matter in issue, this is the stuff of each parliament or assembly being ‘entitled to form its own judgement about public interest … no logical justification for treating the views of one such body in a different way to the others … great weight … attached to the legislative choice made by the Welsh Assembly’.160 Put simply, parity of esteem.

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157 The Union and devolution - call for evidence 24 July 2015.
159 Recovery of Medical Costs for Asbestos Diseases (Wales) Bill – Reference by the Counsel General for Wales [2015] UKSC 3.
160 id., paras 118-124.
4. Coupled with the according of ‘weight’ – not ‘great weight’ - to the Welsh Assembly’s legislative choice, the other approach appears in the majority judgment of Lord Mance. Referencing Article 9 of the Bill of Rights 1689, Lord Mance suggests ‘a relevant distinction between cases concerning primary legislation by the United Kingdom Parliament and other legislative and executive decisions’.161 For which read, cutting to the chase, greater judicial esteem for legislation affecting England and little differentiation between the devolved legislatures and other public bodies such as local authorities. Going directly against the constitutional direction of travel, not least in Scotland, this is a backward-looking approach in more ways than one. The sooner it is authoritatively rejected, the better for the Union.

30 September 2015

161 id., paras 56, 67.
Professor Richard Rawlings, University College London—Oral evidence (QQ 264-273)

Evidence Session No. 20 Heard in Public Questions 264 - 273

THURSDAY 21 JANUARY 2016

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 Fein 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 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 joint 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
Professor Richard Rawlings, University College London—Oral evidence (QQ 264-273)

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 consequentials, yet it went through. William Hague when pushing it through was asked about the Barnett consequentials 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.
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.
1. Constitutional changes, an increasingly frequent phenomenon, are becoming a device employed for partisan purposes and it appears that such changes have been poorly designed. The outcome may be a de-legitimisation of public authority and of the constitution itself. It is important, therefore, to ensure that constitutional changes are executed in an inclusive fashion. It would be simplistic to say that the approval by the Chamber of Deputies of the government’s reform of the Constitution is a victory for Prime Minister Matteo Renzi. First and foremost, the process is still long and difficult before the law takes effect. Secondly, such a delicate reform cannot be reduced to a wrestling match between the prime minister and his varied opposition. The reform brings much more than the reform of the two-chamber system. In addition to the transformation and the downsizing of the Senate, the bill includes among other issues the long-awaited reform of Title V of the Constitution that disciplines regional powers.

2. In a comparative perspective with the ongoing constitutional reform in Italy (d.d.l. cost. n. 2613), the principles able to maintain a coherent territorial systems are: the principle of responsibility and a clear coordination role for the State. The first principle in the Italian system is strongly interconnected with how the art.117 Cost is drafted. It contain the list of the legislative powers allocated between the State and the Regions. Not only this list lack of a good constitutional drafting, generating an increase of the State-Regions conflicts in front of the Constitutional Court, but also the so-called concurrent competence has been poorly implemented at the central level. Always concerning the responsibility principle the Italian case shows how is important to balance legislative powers with fiscal powers allocates at the sub-state level. One of the most relevant reasons why the system is not working and requires a reform is because is based on a model of representation without taxation: after the decree law n.42/2009 on the fiscal federalism no more acts have been adopted).

3. On the other hand, the Italian case shows in different ways how much is important having in some areas a strong State coordination. The Constitutional Court, in the decision n. 273/2013 has condemned the State on the base of not implementing the Lea (essential level of services) in the local social transports. In second place, a coordination would be required in designing the local authorities map and in the application of the principles of subsidiarity, differentiation and proportion ex art. 118 cost. Thinking of the perspective of English devolution, Italy can be assumes as a case study to not be followed: the administrative dimension of local government has been badly drafted and even more badly implemented. After the 2001 reform, in combination with the ordinary law n.46/2014, the model lack of transparency and accountability, there several overlapping in terms of competences and is not clear at all “who is responsible for what”.

4. The UK system presents in its dna a strong level of de facto asymmetry that has been, during the years, transformed in a de jure asymmetry. In the debate on the Wales reserved powers model is possible to see a new phase of “symmetry” between devolved territorial levels.
Instead, looking at England, the possible evolution of the devolved areas would increase the asymmetry within England itself. The complex UK devolved system, as a continental observer, looks constantly shifting from asymmetry to symmetry in a very unstable way. Probably that is possible because of the unwritten nature of the UK Constitution, allowing “politics” be more free respect other continental countries.

5. What a comparative analysis can teach is also that sub-state entities have to be studied not only in terms of the “powers” they have according with the constitutional framework, but also looking at the “functions”. As many scholars have pointed out it is a matter to rethink the “reasons of the regions”. In this light which is the territorial optimal size to allocate a certain function become a big issue to be taken in consideration.

6. The comparative study of composed States teach also that a very important element for the cohesion of the system is having a Second Chamber to represent the territorial dimension and bring to the centre their requests. The design of second chambers is very difficult to get right. They may be criticised for having too little power, or on the other hand for having too much; for being too democratic, or not democratic enough; for being side lined and irrelevant, or for being a carbon copy of the lower house. When considering why upper house reform has not happened, one of the first answers has to be a lack of clarity over the purpose of the upper house. From an institutional perspective, second chambers are generally considered as providing stability. Hence, they are frequently endowed with constitutional powers and intervene in constitutional revisions. In certain cases, the establishment of second chambers has responded to requests for more democracy and better representation of minorities or territorial entities.

7. The ongoing reform of the Italian Senate. The 31st march the Constitutional reform bill was approved in the second reading by the Lower Chamber. The positive vote came seven months after the first approval by the Senate in August 2014. In terms of contents, the bill approved yesterday by the Lower Chamber confirmed the guidelines already entailed in the first reading. The milestone of the reform is the end of the perfect bicameralism, with the Chamber of Deputies gaining the exclusive right to exert the legislative power in all but very specific topics (on which it will share responsibility with the new Senate composed by regional and local representatives). A more rapid procedure to approve laws, in particular the ones proposed by the government, will overcome one of the key problems of Italian legislative power, which is the extreme slowness in passing laws (given the need to have each bill approved exactly in the same way by the two chambers of the parliament, often in presence of difference majorities). The bill was approved with 357 votes, with 125 deputies opposing the text and 7 abstaining. The 5Star Movement did not take part in the voting session in order to express the deep discontent with the contents of the reform. The government coalition supported the bill, while Mr. Berlusconi’s Forza Italia, the Northern League, the left-wing party SEL and other smaller parties voted against it. PM Renzi’s Democratic Party was broadly compact in supporting the Constitutional reform bill, with only a dozen of deputies manifestly opposing it. The Constitutional reform bill will now move back to the Senate for the third reading. A final vote (the fourth) is then needed in the Lower Chamber. The two chambers need to approve exactly the same text in order to conclude the parliamentary process. While the two-third qualified
majority required to enforce immediately the reform is unlikely to be reached, PM Renzi has already announced that he will seek a confirmation referendum on the Constitutional reform bill. In terms of timing, the third and fourth reading can be completed within the summer and by year-end respectively, while the confirmation referendum will likely take place in 2016.

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3. On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

I. ResPublica believes strongly in the principle of subsidiarity – the devolution of power to the lowest appropriate level. We believe local rather than national government structures are best-placed to take decisions in a number of areas of public policy, including the provision of the majority of public services and driving economic growth. It is also vital to recognise however that in many cases local government will not be the most appropriate recipient of devolved power. Drawing communities into local decision-making will often be appropriate not only because of the knowledge and enthusiasm they can bring but also because it represents a way to encourage genuinely joined-up thinking and integrated solutions. Our work encourages community involvement in areas including planning, housebuilding, and energy generation.

II. A further vital principle is the recognition of the unique cultural identities of sub-Union units – including not only the devolved nations but also regions with a strong unitary identity such as Cornwall or Yorkshire. It is critical that the success or otherwise of the devolution agenda is not measured simply in terms of higher living standards or the number of jobs created – important though these factors are. Successful cities and regions are also powerhouses for new ideas and cultural creativity. Devolution must utilise the underpinning senses of local identity prevalent in many areas of the country in order to forge a cultural and intellectual renaissance across the UK, with collaboration and dialogue between regional businesses, educational establishments, intellectual and artistic figureheads, communities and political leaders fostered and encouraged in order to achieve this end.

5. How might the principles of subsidiarity and reciprocity be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

III. Communities and individuals have the enthusiasm, expertise and local knowledge to be real agents for change in their local area. Subsidiarity allows these resources to be brought to bear in delivering the public good. We believe public services and neighbourhoods should be governed and shaped from the ‘bottom up’, and tailored to the specific needs of areas and individuals. Civil society and intermediary institutions, such as schools, faith groups, local clubs and businesses, are crucial means to achieving this outcome, and thought should be given as to how best to incorporate their potential contribution into the work of government at a local level. Moreover, proactively passing responsibility to extra-state actors of this kind represents an important safeguard against bureaucratic municipalism – a recreation of national departmental silos at a local level. Bringing together the most appropriate local groups and organisations in this way is the best possible route to enable neighbourhoods to flourish.

IV. Community and locally integrated budgets should be used to deliver the best outcomes to people and their places. As argued below, we believe local authorities should be
ResPublica—Written evidence (UDE0039)

granted not only fiscal devolution – allowing for integration at the local level of this kind – but also the authority to devolve further to the neighbourhood level, creating neighbourhood councils where necessary to receive such powers. These should then be responsible for the allocation of budgets to community groups and other extra-state actors to assist in local public service provision.

V. Government should formally codify the relationship between local and central government, granting constitutional and legal protection to councils so that powers devolved to the local level cannot easily be taken back. This codification should also make clear that greater powers for local government should not mean the creation of a state where regions and cities are detached from a common national identity. Devolution should mean the creation of a participative democracy, rather than a federal or regional system where local autonomy diminishes the social connections between the constituent parts of the nation as a whole.

VI. We advocate the idea of a ‘Right to Challenge’, which would enable local government to ‘yellow’ and ‘red card’ ineffective central public agencies and directly intervene in the direction, commissioning, and where appropriate, the delivery of these services. This measure would allow local authorities to take responsibility for local outcomes where they believe they can operate more effectively than bodies which remain ultimately accountable to national figures or structures, and where their input would be more appropriate – a true embedding of subsidiarity into the UK’s legal framework.

9. Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

VII. Government should set up an independent body – a ‘Devolution Agency’ – to oversee city devolution in the UK and inform or direct other activity relevant to this agenda. This body would provide a single open channel for communication between government and local authorities, facilitating negotiations between cities and individual departments or administrations to agree deals, and would enable an even-handed control of the devolution process. As part of its remit, it should define the parameters of devolution to cities and places, assess the readiness of individual propositions from cities for new devolved powers, and inform and direct any other government commissions relevant to this agenda, such as the implementation of fiscal devolution, new models for local accountability, and cross-boundary working.

VIII. At present, cities have no way to win devolved powers for themselves except by a long process of negotiation with central government, with each city’s deal being ratified individually. The Cities and Local Government Devolution Bill serves only to reinforce this model of negotiated autonomy, implicitly preserving the onus on local government to prove that it is sufficiently competent to take on new powers and allowing central government to retain an exacting control over the devolution process which will only create frictions in the long-run. Government should instead introduce a statutory presumption in favour of decentralisation via a ‘Devolution Enabling Bill’, to introduce new legal rights for local authorities and city regions to demand powers – including powers to amend national primary legislation and to create new local primary legislation. This Bill should also give local authorities the power to devolve
responsibilities to the neighbourhood level, including the authority to create
eighbourhood councils to which these powers could be devolved.

IX. Just as the asymmetry of the devolution settlement across the UK has resulted in an
increasing focus being given to ‘strengthening the voice’ of England via proposals such as
English Votes for English Laws, it is likely that the present proposals for city-based
devolution, as detailed in the Cities and Local Government Bill currently passing through
Parliament and focusing exclusively on England, will lead to a clamour for individual
cities within the devolved nations to receive greater autonomy from their devolved
governments. The devolved nations should therefore commit to a legislative process,
equivalent to that undertaken for England, to enable city-based devolution in those
nations.

X. Devolution of responsibilities over public services in particular means little without
complementary fiscal powers. Government should review central-local funding and set
up a commission (led by our proposed Devolution Agency) to deliver fiscal devolution –
establishing conditions, timescales and a legislative path. Local Public Accounts
Committees should be used to maintain financial accountability at a local level within a
context of fiscal devolution.

XI. The Cities and Local Government Devolution Bill should be sure to allow the flexibility for
devolution on varying geographic scales and footprints, but should not link the extent of
devolved autonomy to the size of recipient. ResPublica’s work with the Key Cities group
in particular has highlighted that the relationship between the geographic (and
economic) scale of the devolved authority and the economic benefits of devolved
government is not unambiguous. Larger cities and city regions do not automatically have
the potential to realise greater economic benefits from enhanced local control, and so
smaller areas should not see their potential autonomy under devolution reduced on this
basis. Failure to recognise this will lead only to further demands for additional
devolution from areas which feel they have been treated unfairly.

XII. Government should allow cities and city regions the facility to fashion alternate
governance models responsive to local needs and demands, relaxing the requirement
for a ‘Metro Mayor’ to be implemented as a necessary condition for the devolution of
responsibilities. While the mayoral model offers a clear point of accountability for local
voters and service users, it is the geography of cities, rather than administrative regions
often with little local historical rationale underpinning them, with which citizens identify.
The model is appropriate where a clear metro region is already in existence, but there
exist too clearly and logically defined regions where local factors – such as the lack of a
single dominant conurbation – make it inappropriate. Citizens expect democracy and
governance to function at a city level, and this makes the regional mayoral model
unsuited to local circumstances in many places. The Cities and Local Government
Devolution Bill should be amended to reflect this.

2 October 2015
Transcript to be found under Brendan Donnelly, Federal Trust for Education and Research
Lord Salisbury, Constitution Reform Group—Oral evidence (QQ 202-210)

Transcript to be found under the Constitution Reform Group
Scotland in Union—Written evidence (UDE0017)

HOW CAN WE STRENGTHEN AND STABILISE THE UNION?

“We look to Scotland for all our ideas of civilisation.” Voltaire.

Introduction to Scotland In Union

1. Scotland In Union is a non-party movement united around a positive view of Scotland within the United Kingdom. It is a not-for-profit organisation, with supporters from all shades of moderate political opinion. Its membership hold a diverse range of views, but we are united in believing that staying together, and working together, with our neighbours in the rest of the UK is in the best interests of Scotland and the wider British people. Since it was launched in March 2015 Scotland In Union has grown progressively in both membership and organisational structure. Its activities are all aimed at informing debate on the question of unity in the UK: letters to newspapers, contributions to consultation papers, advertising campaigns, and publishing material on our website and in print. Scotland In Union aspires to make a positive and helpful contribution to civic society and to the development of the UK.

2. Scotland In Union looks forward to a day when political debate in Scotland is about the pressing and important political concerns of our day: for example, prosperity, equality, and justice. To revive a 17th century border and divide a state on ancient notions of nationality is regressive, and incongruous in today’s connected world. By contrast, the case for unity in Britain is one of morality and principle. The Union is a progressive institution: peaceful, enduring, and prosperous.

3. Scotland In Union notes that there is majority support for the continuation of the Union in all parts of the United Kingdom. This support was most recently demonstrated in the Scottish Referendum of 18 September 2014 when, despite the poll being held with question, answer, franchise and timing determined by those favouring separation, a healthy majority voted in favour of unity. The UK endures as a united polity despite what might be charitably described as ‘benign neglect’ by successive UK governments. That nations united by language, geography and history should share a common legislature and government is a modest and rational proposal, but it would be a mistake to assume that its continued success is assured. For this reason, Scotland In Union welcomes the Committee’s Inquiry and wishes it success.

4. The questions suggested in the Committee’s Call for Evidence are addressed below.

What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

5. If there is to be further devolution, the UK needs to have a clear vision of what is, and will remain, common to the whole UK within a stable constitution. It is suggested that the matters which are the sole prerogative of the nation state, or sovereign state, should include:

- borders, immigration, and citizenship
- the rights and duties of the citizen
- common defence of territory, people and interests
• the constitution
• large infrastructure projects (for example, high-speed rail, research facilities)
• macro-economic policy
• currency
• foreign policy and international aid
• membership of supra-national organisations
• distribution of the fruits of natural resources
  • broadcasting and media regulation
  • industrial and financial regulation, and consumer protection
• international trade policy
• fiscal policy to support the above

What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

6. The key principles underlying the Union are our common defence; social solidarity within the Union; common rights and duties of all British citizens; and a shared opportunity to benefit from the UK’s natural resources. Importantly, these are underpinned by shared cultural elements, while still recognising diversity within the Union. Whether any aspects our Union are unique, we are not in a position to say, but it is noted that the British Union was multinational and multicultural from its inception and this must be regarded as a fundamental strength.

7. However the UK is unusual in that one part, England, is larger than all the other parts combined, and it is often taken as pars pro toto for the United Kingdom itself. Perhaps only the relationship between Holland and the Netherlands is comparable today, with the relationship between Russia and the Soviet Union providing an historical example.

On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

8. We note that devolution in the UK has been largely developed as a pragmatic response to events, and devolved legislatures and administrations have been put in place as a matter of expediency rather than principle. There is an argument for establishing a principle of subsidiarity, whereby government decisions are made at a level closest to the individual citizen as is possible without losing the benefits of common defence and national solidarity. We note that there are some virtues in the principle of appropriate subsidiarity, but it is important to preserve the sovereignty of Parliament, the Rule of Law, and equal rights for all citizens on a UK-wide basis. It is also important that the principle of subsidiarity does not stop at the UK’s devolved parliaments and assemblies, and that power is further devolved to local authorities where possible.

Are there applicable examples from other countries with multi-level governance structures?

9. Scotland In Union offers no expertise in the governance of other countries. However, it is noted that some countries offer a large measure of local autonomy to sub-national entities, and can do so securely where there is no threat to national unity as a whole. Australia, for example, is able to have many functions exercised at state level but, because there are no significant separatist movements, those functions are unlikely to be misused to further the cause of separation. Similarly,
Scotland in Union—Written evidence (UDE0017)

Germany has Lander with highly developed local identities, but no serious threat to the territorial integrity of Germany itself. States in the United States enjoy a large measure of autonomy, to the extent of states having widely differing legal systems but do not enjoy the right to secede, and are committed to a single currency, national defence and a common system of rights and duties. By contrast, the powers exercised at Provincial level in Canada are open to abuse by a strong separatist movement in Quebec.

10. Scotland, Wales and Northern Ireland each have separatist political parties with sufficient support to form governments within their individual areas, and any devolved functions are always in danger of being misused to exaggerate regional differences, stoke grievances, and further separatist agendas.

**How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?**

11. British citizens living in Scotland would be in a more secure position if they knew that their rights as British citizens could not be diminished or changed by the devolved governments. A common statement of rights and duties throughout the UK would assist this process. If there is to be any legislation to replace or complement the Human Rights Act 1998 (for example, a “British Bill of Rights”) then it is essential that it extends to all part of the UK and ensures a common British rights culture.

**What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?**

12. Asymmetric devolution is flawed in that it does not ensure equal rights within the UK. As one example, a student in Scotland whose parents live in England, Wales or Northern Ireland does not enjoy the same access to student funding as a student whose parents live in Scotland or in any other EU country. To be clear, at present equal treatment of EU citizens within the EU is guaranteed by EU law, but equal treatment of British citizens within the UK does not enjoy equivalent legal status. This appears to be an area in which the UK could act, ensuring that all parts of the UK treat all British citizens as equals.

13. More generally, asymmetric devolution may have been acceptable where its effect was fairly minimal, but where there is further substantial devolution it is no longer feasible in the long term as it creates an unstable constitutional arrangement. We note in particular the eventual outcome (although it took somewhere between 50 and 150 years) of interminable wrangling over Irish Home Rule. Such a period of drift must not be repeated. A new vision for our islands is required.

**What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?**

14. The devolution of tax and welfare powers presents a threat to the UK’s social solidarity. The prospect of significantly different tax rates in different parts of the country is divisive. At present it
cannot be said that one part of the country “subsidises” another because each individual taxpayer is charged on the same basis. Similarly, the prospect of different welfare budgets for different parts of the UK undermines the sense in which all citizens of the UK should benefit from the prosperity of any one part of it. The UK’s long history of constitutional stability, which has created an environment for commerce to thrive, is the result of the efforts of citizens from all parts of the UK. If aspects of taxation and welfare are to be devolved then the Government must take steps to offset the risk of weakening the UK’s social solidarity.

**What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?**

15. The UK should establish a policy of seeking “ever closer union” (similar to the aspiration set out for the European Union in the Treaty of Rome). All agencies of the UK Government and bodies funded by the UK taxpayer (including the Civil Service) should be under a duty of mutual co-operation, and UK funding should never be used to undermine the unity and solidarity of the UK. The UK Government should protect British national symbols and defend the right to display them in appropriate contexts. UK Government projects, and UK-funded projects, in all parts of the UK, should be clearly marked and branded so that shared activities are transparent throughout the country and, indeed, around the world. In short, the UK should recognise its own legitimacy, celebrate its achievements, assert itself where required and, fundamentally, stop apologising for its own existence. Further ideas for strengthening the Union are listed in the Annex to this document.

16. The Government should also recognise that the continued existence of areas of extreme poverty in Scotland (and other parts of the UK) will remain a threat to national unity until addressed. In the midst of an increasingly prosperous society, such poverty is a reproach to the British Government whatever its political complexion, and is a cause of social unrest which can be exploited by separatists. This observation arises from the experience of Scotland In Union members, who canvassed in the cause of unity during the referendum campaign and found many “Yes” voters to be of the opinion that they had nothing to lose. It is important that everyone in the UK has an investment in the future of our country. Those without a stake in the future are less easily persuaded of the benefits of unity and stability.

17. The Government should monitor the effect of devolved government closely and assess the extent to which it does, or does not, deliver better outcomes for its citizens who live in parts of the UK with devolved administrations. Voters throughout the UK should be able to assess whether the services they receive in areas such as education, health and policing, are improving or worsening by comparison with other parts of the UK. It is, therefore, essential that government data produced by devolved administrations and central government is compatible so that meaningful comparisons can be made. Devolved government should not be able to change the parameters by which its success is measured so as to obscure comparison with services in other areas. It is particularly important that a consistent standard of financial reporting is maintained.

**Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?**

18. Although, as noted above, all parts of the UK support the continued existence of the Union, there is no room for complacency. Further devolution within the UK’s current constitutional
arrangements is only possible if the UK Government is clear that there are central nation-state functions which must remain the prerogative of the UK Government. The UK Government must not cede any power on a permanent basis and must retain, at the last resort, the right to use devolved powers if necessary. Above all, the United Kingdom must never again fund those who seek its destruction.

ANNEX

PROPOSALS TO STABILISE AND REINFORCE UNITY IN THE UNITED KINGDOM

I. The UK Government and Parliament must continue to retain reserve powers to exercise any devolved function or legislate in any devolved area if necessary.

II. If a devolved function is not exercised by a devolved administration for a significant period (for example, five years), the power should revert to the UK Government. Subsidiarity is important, but its value should be measured by the judicious use of powers, not the ability to use them at some unspecified future date. If a devolved administration needs a power that it does not possess, it could make an appropriate, relevant, and timely case for the right to legislate accordingly.

III. The UK Government should take steps to increase public understanding of the correct names for the United Kingdom and its constituent parts (that is, the terms “United Kingdom”, “Great Britain”, “England”, “British Isles” etc). The UK Government should encourage correct usage at all times.

IV. The UK Government should introduce a scheme to encourage students in any part of the UK to study at university or college in another part of the UK, in pursuit of greater cohesion across the country as a whole. Financial incentives should be considered. The Government should encourage exchanges and events between schools and other organisations across the UK, in order to build shared understanding and reduce parochialism.

V. Although distinctive legal traditions are an important part of the UK’s diversity, it is not in the public interest to encourage unnecessary and unhelpful differences in the law within the UK. The UK Government should introduce a long term project to work towards greater integration of UK’s legal systems, and all law reform projects should include consideration of the advantages of any reformed area of law having UK-wide territorial extent.

VI. The UK Government should take active steps to discourage the Balkanisation of institutions and organisations in the UK. It is not necessary for public bodies, charities, sporting groups, and arts administration organisations to divide into separate administrations for different parts of the UK. Insofar as the Government has influence over the future direction of the BBC, it should discourage further devolution within that organisation. BBC Scotland, for example, should remain a regional part of the national institution, not become an increasingly autonomous body.

VII. The UK Government should consider encouraging the Bank of England to change the design of banknotes (and coins) so that it is clear that they are the common currency of the UK. A
new design would emphasis “United Kingdom Pounds Sterling” rather than “Bank of England”.

VIII. The UK government should support and encourage national sporting endeavours through Team GB training and competition. The achievements of British sportspeople should be recognised throughout the UK, and the unnecessary duplication of the institutes for sporting excellence should be stopped or wound back.

IX. The UK Government should take more active steps to promote understanding of UK institutions within the parts of the UK. For example the armed forces, the Bank of England and the Department for International Development should expand their campaigns to raise awareness of what they do and how they do it for the UK as a whole.

X. Although it is recognised that education is a devolved matter, the UK Government retains an interest in the quality of education and its role in promoting harmony within the UK. It should be mindful of the risk of devolved governments narrowing the curriculum in pursuit of nationalist aims. The Government should consider the possibility of a minimum curriculum on citizenship, common to all schools in the UK, which would prepare all school students for life as a British citizen.

XI. The UK government should encourage its agencies to use the Union flag (and Scotland In Union welcomes the recent addition of the flag on driving licences). It is not intended that we enter into conflict the nationalists in different parts of the UK (including England), but it would help people to recognise when a service is shared across the whole UK.

XII. UK Government ministers should take steps to be visible in all parts of the UK. Cabinet meetings have been held in different cities around the UK, and despite some public scepticism, this move toward greater visibility could, with persistence, become a permanent feature of governance in the UK.

XIII. All information and data collected by government bodies, including devolved government, should be presented in a form which allows comparisons to be made across the UK. It should be possible for citizens to compare the performance of schools, outcomes from hospitals and crime rates in different parts of the UK in order to assess the performance of government ministers in the areas in which they live. It should not be possible for devolved administrations to obscure their performance issues by presenting data which does not allow for cross-border comparisons. Common standards should apply to financial data published by devolved and central government so that relative performance can be scrutinised by auditing bodies and by the general public.

XIV. Civil servants working for the devolved administrations should remain British civil servants. For example, in Scotland they should (naturally) assist Scottish Ministers in carrying out the devolved functions of those Ministers within terms of the Scotland Act 1998, but the UK Government should also take steps to ensure that civil servants working for devolved government do not carry out work which relates to reserved matters unless it is in support of UK Government departments. In particular, they should not be employed to undermine the unity of the United Kingdom.
XV. The UK Government should consider marking of birth of every child in the UK, celebrating the birth of every new British citizen. The occasion could be marked with a letter or a gift. Suggested gifts could be items of practical use for supporting newborn babies, or something symbolic, such as a proof set of British coinage from the Royal Mint as a token of investment in a new life. Scotland In Union understands that a similar scheme is in operation in Denmark.

26 September 2015
1. In this note, I comment on some of the issues raised by the call for evidence put out by the House of Lords Select Committee on the Constitution on the topic of ‘The Union and Devolution’. I research and teach public law at the University of Southampton and include amongst my research interest certain aspects of the Union and the devolution settlements. Though I currently live and work in England I have previously studied and taught law in Scotland.

The Union and devolution

2. The call for evidence asks about the essential characteristics of a nation state and any difference between those principles and the principles which apply in a state in which power is devolved. It seems to me necessary to clarify that the United Kingdom was never a nation state – that is, one in which the state is co-extensive with the nation and in which the internal territorial distribution of power must therefore reflect some consideration other than that of nationhood. In the United Kingdom, both demand for and supply of devolution has from the beginning reflected the identity of Scotland and Wales as historic and ongoing nations (I leave aside here Northern Ireland). Though politically irresistible, the implicit recognition in 1998 of their nationhood and of its central relevance to the location of political power within the state has coloured everything that has followed – the Scottish independence referendum of 2014 was merely the extension of the same idea to its logical end. The key implication of the United Kingdom’s status as a multi-national state is, for present purposes, that the status of the nations qua nations must be reflected by their enjoying some degree of legislative and executive autonomy and, conversely, that territorial divisions of power which cut across national lines cannot easily be countenanced. Though these are contingent political constraints rather than inherent to the logic of the United Kingdom’s existence, when combined with the unbalanced size of the nations and the existence of a legally unfettered Parliament at Westminster they act to significantly limit the freedom of manoeuvre of anyone seeking to produce an ‘enduring’ devolution settlement.

3. The identification of ‘key principles’ underlying the Union is a fraught task. It risks treating what is historically and politically contingent as somehow rationally determined, and in turn requiring
future development to take place in accordance with those arbitrary historical facts. The process of devolution – like the very existence of the Union – is a function of the balance of political opinion and convenience at the relevant point in history. This primacy of politics is of the upmost importance, for it strongly suggests that any principles which we might identify to govern the territorial constitution will do so successfully only to the extent that they are compatible with, and preferably reflect, prevailing political attitudes. That is equally true whether the relevant principles are identified inductively, by reference to the Union and devolution as they currently exist, or are imposed upon the constitution from outside of it, in the hope of achieving a stability which it currently lacks. This is not to say that there are no overarching principles that we might identify and which do in fact transcend the temporary political mood – the obvious one is that of democracy – but two points must be made about such principles. The first is that we would do well to clarify that such principles are in no sense unique to the United Kingdom: this exercise must not be allowed to lapse into chauvinism. The second is that, given that broad agreement on these principles is possible only because they are general enough to hide disagreements about their specific content and their implications in particular contexts, it is unlikely that any such overarching principle will be sufficiently precise as to usefully determine the content, or constrain the evolution, of the constitution.

4. Again, to identify principles underlying the various devolution settlements which exist is to ignore that the devolution settlements are responses to political claims. Any principles which can be read into them are by definition retrospective rationalisations of settlements which look so different precisely because the political contexts out of which they emerged and within which they were implemented were very different one from the other. There are important principles about the operation of devolution which have emerged – the most significant being that reflected in the evolving use of Legislative Consent Motions, which has influenced the development of proposals on ‘English Votes for English Laws’ – but even here there remain important variations in practice (why, for example, will further devolution sometimes require popular ratification and other times not?) and these principles are very unlikely to be sufficiently specific or fundamental as to be able to do significant work in bringing stability to an unstable territorial constitution.
5. As the preceding paragraphs suggest, there is little scope for identifying principles which could be embedded in the constitution or entrenched in the work of the various governments or legislatures in order to bring stability to the territorial constitution. The instability which exists is a political phenomenon: though it might be managed to some degree by constitutional change (including the writing into the devolution settlement of certain principles), it is just as likely that rushed or careless changes (such as, potentially, the implementation of ‘English votes for English laws’ and the principles it reflects) will provoke greater instability by provoking political upset along nationalist lines. This is a particular danger when nationalist sentiment is inflamed for narrow partisan ends, as has happened with increasing (and worrying) frequency in recent years. And, in the end, if political sentiment moves in a particular direction (by, say, demanding greater devolution), there is no reason to believe that the reaffirmation in response of some previously-articulated principle of territorial constitutionalism will suffice to quiet it.

Asymmetry

6. The current asymmetry in the constitutional settlement is a significant source of instability in that it directly contributes to a devolutionary arms race: there is always a model of further devolution within easy reach for those minded to argue for it and there is no obvious principle which can be cited in arguing in favour of the asymmetry. Indirectly, but more importantly, the asymmetry is a source of frustration for those who perceive themselves to be disadvantaged by it and so it contributes to the sort of political dissatisfaction with the current arrangements which renders those arrangements unstable. But it must be remembered that the current (asymmetrical) settlement was not put in place arbitrarily. It reflects various attempts to address political dissatisfaction with the more outwardly rational and more symmetrical arrangements pre- and even post-1998. There is no a priori reason to believe that a symmetrical system is more attractive than an asymmetric one from the point of view of the public at large. Indeed, it is almost certainly the case that for some section of the British electorate the system as it currently exists is acceptable precisely because of the asymmetry.

Taxation and welfare

7. The devolution of powers on taxation and welfare will not only undermine the economic and social union but is also liable to provoke further political dissatisfaction with the constitutional status quo by encouraging the divergence of policy throughout the United Kingdom in a manner
which is perceived not only as substantively unfair, but as in fact resulting from the underlying constitutional unfairness. This will become more obvious once the interaction of the devolution of taxation with the principle underlying ‘English votes for English laws’ is better understood. As it stands, it is clear that insufficient thought has been given to this point and it can be said with some confidence that it will be the source of significant political grievance in years to come. That grievance, and the need to address it, will further destabilise the devolution settlement which is being constructed at the present time. As things stand, therefore, it is not clear that there exists any natural end point for the devolution process.

Final comment

8. The call for evidence notes the Committee’s concern that devolution has “been the result of ad hoc, piecemeal change, rather than the result of a considered and coherent process that takes into account the needs of the Union as a whole.” This seems to me to be undeniably correct, though it is not at all clear that it would have been politically realistic to do otherwise, either by resisting the demand for devolution as it has emerged in different times and in different places, or by carrying out a more rational and thorough-going process of devolution. It is to the credit of the Committee that it now seeks to consider devolution both in the round and in the context of the continued existence of the Union. Nevertheless, I would note the potential here for a related error to be made. Just as it is eventually unsustainable to consider the different devolution processes in isolation from each other and from the Union, so too is it unsustainable to consider these things in isolation from the broader constitution, including (but by no means limited to) the process of upper chamber reform, questions about the electoral system etc. These broader issues should be borne in mind by those who seek to understand the present instability of the Union and to give it the strength which it currently lacks. In particular, it may be necessary to consider whether the sort of stable, (semi-)permanent solution the Committee seeks is impossible: not because of the devolution itself, but because to achieve it would require changes elsewhere in the constitutional order which are themselves politically impossible to implement.

1 October 2015
1. What impact have recent debates about Scottish and Welsh devolution and the Scottish independence referendum had on English attitudes towards devolution?

As the research conducted by scholars at Cardiff and Edinburgh Universities has shown (see notably our three previous reports, *The Dog that Finally Barked*, *England and its Two Unions*, and *Taking England Seriously: the New English Politics*) after apparent indifference to devolution during its early years, there have been some important shifts in attitudes. Drawing on the most detailed surveys conducted on political attitudes in England, these reports have demonstrated two broad and important phenomena:

- What we have termed ‘devo-anxiety’: a concern that devolution had led to the other nations of the UK – and particularly Scotland – gaining unfair political and financial advantages at England’s expense; and

- A dissatisfaction with how the structures of the UK currently deal with (or, rather, fail to deal with) England. There is considerable unhappiness with how England is treated: a widespread feeling that while the concerns of other nations are being addressed, England is being neglected and (financially) taken advantage of.

These points are illustrated in our most recent survey (conducted in September 2015). For instance, we asked respondents in England whether they thought the different nations of the UK got more or less of ‘their fair share’ of UK government spending. Only 8% thought that England got more than its fair share and almost five times as many (37% though that it got less than its fair share). For Scotland the picture was very different: only a mere 3% thought that Scotland got less than its fair share, while 52% thought that it got more than its fair share.

2. Is there any clear preference among English citizens over how England should be governed? How has this changed over the last few years?

All of our four detailed surveys of the English population (conducted in the last five years) have shown considerable discontent with how England is treated. While there is a clear majority consensus on this, there is much less consensus on how the problem should be addressed. When various potential solutions (a Secretary of State for England in the UK Cabinet; UK government ministers for the regions of England; an English Parliament) are put to the public one at a time, one can get substantial support for all of them. When several possible ways of governing England are offered to people simultaneously, and they are asked to select their most favoured option, then there is usually no clear majority for any particular option. That said, some form of English Votes for English Laws (EVEL) in the House of Commons does appear to be the proposal that commands the most widespread and consistent support, however we ask people about the issue. More radical proposals, like an English Parliament, tend to command less support.

In our 2015 survey, options of a Secretary of State for England in the UK Cabinet; UK government ministers for the regions of England and an English Parliament all won plurality support when offered individually. However, there was clear majority support (65% of all respondents) for the idea that “only English MPs can vote on laws that would apply in England”. Similarly, when several constitutional options were offered together, in various formulations, EVEL always emerged as the most popular single option even if winning only plurality, rather than outright majority, support.
3. Has there been a change in recent years in people’s preferences for whether particular policies should be decided at an England-wide or local level? If so, what factors do you think have influenced that change?

We have detected no great change in this respect in our research over recent years. What we have found consistently in our research is strong antipathy to local variation in standards of policy delivery. In the abstract, localism is attractive: when asked, 41% of our 2015 survey respondents supported the idea that ‘Local councils in England should have more powers’, compared with only 12% who believed that ‘Local councils in England should have fewer powers’. At the same time, few people want to risk being on the wrong end of a variation in standards, and there is very strong and consistent support for the idea that most policies should be delivered in a uniform manner. Our surveys have asked about a range of policies and “whether you think each policy should be uniform across the whole of England, or whether it should be a matter for each local council to decide”. The only policies on which there is clear support for localism are refuse collection and planning approvals. On many other matters – including nursery provision, schooling at both primary and secondary levels, and social services – there is strong majority support for policy uniformity.

4. Is there a clear desire for either changes that treat England as a single entity or for a more regional approach (e.g. combined authorities or regional assemblies)? Does opinion on this vary significantly by region?

Our research strongly indicates a desire for the recognition of England as England within the structures of the United Kingdom, and a very limited public support for any form of English regionalism. We tend to find very limited support for the constitutional status quo in our various survey questions; however, the one thing that is clearly less supported than the status quo is some form of regional governance. In our 2015 survey, when we offered the constitutional option of “each region of England hav[ing] its own assembly”, alongside the status quo, EVEL and an English parliament, regional assemblies won the support of only 9% of all respondents and was the least popular of all the four options. This was not a one-off finding; we have consistently found very little support for regionalism in England, however we phrase the question. On this, and more generally, there is surprisingly little regional variation in attitudes, with the exception of London. London is the single consistent outlier on a range of attitudes: its population tend to evince somewhat lower levels of devo-anxiety and lower levels on unhappiness with how England is treated within the UK. But this is not to say that Londoners are exactly contented – they are merely less discontented than others. These are differences of degree, not of kind.

5. Do the city and regional decentralisation deals negotiated by the Government so far offer an answer to public dissatisfaction with how England is governed?

This is possible – if the new structures are seen to work after being established then they may well build public support. But there is little evidence of great support for them at present. We would also note the considerable public concerns about local variation in service delivery that we have already commented upon.
6. Does ‘English votes for English laws’ have the potential to address the English Question and discontent in England over the territorial constitution, as well as the West Lothian Question?

This is also possible. The reform has the advantage of ‘going with the grain’ of public attitudes in England: there is support for the basic principle, and EVEL does appear to be, as we have stated, the most widely-supported option for addressing public dissatisfaction with England’s place in the UK.

7. Given that the ‘English votes for English laws’ procedure introduced into Commons standing orders in 2015 does not prevent Scottish MPs from voting on ‘English-only’ matters, do you think that it will address English concerns about the West Lothian Question?

There are two important but distinct issues to address here. One is public concern. But there is also the issue of constitutional coherence and practical workability. The form of EVEL as it has actually been adopted is a fairly minimalist version, broadly in line with the McKay Commission recommendations. If this proves to be workable, and if the adoption of this mechanism persuades sufficient people in England that their interests are being adequately protected, then it may prove to be an effective solution.

2 February 2015
Introduction
I wish to put forward a specific proposal within the remit of the current very broad inquiry being made by the Constitution Committee. I think consideration should be given to adjusting the electoral quota for Scottish constituencies at Westminster. With the advent of the Scottish Parliament the electoral quota was altered by the Scotland Act 1998 to parity with the remainder of the UK, thus reducing the number of Scottish constituencies from 71 to 59. The current boundary review reducing the size of the House of Commons from 650 to 600 involves proposed proportionate reductions in Scotland from 59 to 52, retaining parity within the UK. I would suggest that because Scotland has its own Parliament with considerable and increasing responsibilities the number of MPs from Scotland should be further reduced, perhaps to around 30. In support of this view I would draw attention to the following points:

1. This follows the precedent adopted for Northern Ireland in 1922 and sustained throughout the period when the Parliament at Stormont existed. After the imposition of direct rule Northern Ireland’s representation was eventually adjusted to be in line with the general UK quota. This proposal for Scotland therefore has precedent within the British Parliamentary system.

2. Solutions to the problem of EVEL seem elusive. The suggestions made give rise to excessive complexities, anomalies and probable unintended side effects. The potential introduction of differentiation in the rights and privileges of members from different parts of the UK is fraught with danger. The proposal made above may seem crude by comparison, but it should help to provide some reassurance to the electorate in other parts of the UK that Scotland is not in a position to exert unreasonable influence within the UK parliament.

3. There is a natural justice about this proposal, both from the point of view of the electorates concerned and MPs. It seems strange that MPs who represent a part of the UK which has its own Parliament with substantial and increasing powers should have the same electoral quota as other MPs. The normal constituency role of MPs for seats in Scotland is shared with MSPs. Electors resident in Scotland (such as myself) have this additional layer of representation through our MSPs, which we ought to use in relation to all matters where responsibility rests primarily with the Scottish Parliament.

4. In so far as one reason for the yet to be implemented sixth boundary review was to “reduce the cost of politics” by reducing the number of MPs, it seems curious to leave this double and undiluted representation in place. Taxpayers pay for 129 MSPs as well as for 59 MPs from Scotland.

Conclusion
Though the current Scottish Government would no doubt oppose any diminution in the number of MPs from Scotland, it would seem to me that in principle the case for doing this is very strong.
Furthermore, this does seem the most practical step to take in the face of the problems posed by Evel. And I would suggest it is a solution more in conformity with the nature of British Constitutional development than elaborate procedural mechanisms. In the context of proposals for considerable further devolution, it seems extraordinary not to establish the principle that adjustments to the level of representation at Westminster where devolved Parliaments exist should take place.

1 October 2015
Sir Paul Silk, former Chairman of the Commission on Devolution in Wales—Oral evidence (QQ 18-31)

Transcript to be found under Sir Kenneth Calman, former Chairman of the Commission on Scottish Devolution
FRIDAY 11 DECEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan

Examination of Witness

Martin Sime, Chief Executive, Scottish Council for Voluntary Organisations

Q175 The Chairman: Thank you very much for coming, Mr Sime. We are very grateful and I will start straight off with the first question. I would just like to ask you how and to what extent the difference in government policy between the United Kingdom and Scotland might affect the voluntary sector or does affect the voluntary sector.

Martin Sime: As you know from the past, the voluntary sector is a very diverse and complex set of organisations, some 50,000 organisations. They work across virtually every area of public policy. They have an interest in all kinds of things because of the diverse activities that they undertake. It would be fair to say that voluntary organisations work across and between both levels of government, and on issues that are devolved, semi-devolved and reserved. Therefore, they have a great interest in how government is organised, and how to access and influence government and acquire resources for their public benefit purposes.

The Chairman: At present, it sounds as though you are not finding any difficulties negotiating as between the United Kingdom and the devolved Parliament.

Martin Sime: I do not think I meant to imply that. In fact, the complexity of the devolution settlement as it is, never mind the additional layers of complexity that are about to be added, creates additional challenges for voluntary organisations. Those can be partly described as administrative. They might be, to a certain extent, geographical. There is a psychological aspect to it as well, because certainly in my professional lifetime before devolution I found Westminster and Whitehall much easier to influence and to access than since devolution, and I do not think that has all been from lack of trying. I feel voluntary organisations have to engage with all this complexity, and the more there is of it the more the challenges. I would say that, particularly in the current situation, where we have two Governments of quite distinct and different ideological and political purposes, then that challenge is ever more severe.
The Chairman: Are there any specific proposals in the Scotland Bill that is before Parliament at the moment that cause you alarm or concern?

Martin Sime: Oh, I think just about all of it. We will look back on this as a great example of a poor process leading to poor outcomes. If you put a bunch of politicians in a room—if you will excuse me—and ask them to resolve this matter, then they treat it as a game of chess, with the different pieces, the reserved and devolved pieces, being deployed according to short-term political advantage. What was conspicuous by its absence in the Smith process was the interest and voice of a citizen who has to experience the services that come out of the far end of these agreements. Where we have landed, particularly on welfare and employability, but also in other areas too, ill serves the delivery of public services to support citizens.

The Chairman: Instead of a politician, let me bring in a judge, Lord Judge.

Q176 Lord Judge: We have had different definitions given to us of the social union. One definition we have been given is that it “provides the social solidarity”—I am reading—“which binds the UK together, by redistributing revenue and pooling and sharing risk through welfare benefits” and through the pension system. First of all, is that a definition that you would recognise? Would you like to add to, alter or amend it?

Martin Sime: I would recognise it but not accept it. That is almost a political definition. I think the man on the street would understand a social union as being something that was not a political creation but was about the ties and societal connections that join us together in this island or set of islands.

Lord Judge: Exemplified in what sort of way?

Martin Sime: Exemplified in the human relationships and the connectivity that we all have with people who live on either side of these borders. It is a societal union in that sense. The social union as a political concept I have never entirely understood, because I think it is deployed as a political weapon to try to prevent the devolution of particular powers. The argument about not devolving welfare because it would undermine the social union is an alien concept to me. It prevents a rational discussion about which powers are best deployed at which level to support citizens.

Lord Judge: In the context of welfare, which powers should be devolved?

Martin Sime: I would prefer all welfare powers to be devolved, and I think we will end up there, whether it is in 10 years’ time or 20 years’ time. That is inevitable because, when you devolve significant other areas of public life, health in particular, as an act of public policy, you need to be able to align the different powers and levers at your disposal. The interface between health and welfare is absolutely critical for the health of public finances and the delivery of public services. Therefore, to draw a line that says we will not devolve welfare because of this concoction of social union, but health is already devolved, is going to cause us trouble in the future.

Actually, I refer to the Chancellor’s recent announcement of the 2% precept on social care in England as an example of a decision that is going to have quite profound impact in the longer term in Scotland. Similarly, if the UK Government decided that health insurance was part of the way forward to meet the health situation in England, that would have a profound impact on public expenditure in Scotland and cause us to think about how our health service was organised. Once you have set down on the road of devolution, as we have done in health, there is an inevitable divergence of practice. We can either try to compress that and reduce it, or we can celebrate it and
learn from it. It seems to me that the idea of trying to contain devolution in that way is unhelpful and unrealistic.

**Lord Hunt of Wirral:** My Government in Wales have expressed serious concern about welfare devolution as undermining the concept of common social citizenship across the union, because they worry about the effect of service delivery and policies diverging around the UK. Does it not worry you?

**Martin Sime:** They are not worried about that in terms of health and education, but they are worried about it in terms of welfare.

**Lord Hunt of Wirral:** Social security benefits.

**Martin Sime:** My organisation has argued for decades that employability services ought to be devolved to align with the responsibilities that the Scottish Government currently have on skills and support to the voluntary sector, and other areas that impact on services to unemployed people. We are reaching the situation, which I think is unhelpful, where an unemployed person gets a bus into the high street, and if he turns left there is the Jobcentre Plus and the benefits service; if he turns right there is Skills Development Scotland and the college network. The citizen is completely unsighted as to which way he should turn and which service would best meet his needs to get back to work. That complexity is enhanced by the failure to devolve benefits.

I can think of many examples that my members face of the benefits regime, the introduction of universal credit and the sanctions that have been imposed on many of the people whom voluntary organisations work with, which have undermined their ability to help those individuals properly establish themselves as independent citizens and move forward with their lives. As to the idea that there are some powers that can be devolved in this sense and other powers that ought to be retained for the notion of some sort of integrated, cross-UK positioning, that boat sailed when devolution was first established.

**The Chairman:** Lord MacGregor may not want to ask his next question, but let us encourage him to do so.

**Q177 Lord MacGregor of Pulham Market:** Should there be a minimum level of welfare benefits set across the UK, which devolved Governments can supplement but not reduce?

**Martin Sime:** At the start of this process, maybe two years before the referendum, having discussed this matter widely with our members, we set out that all welfare and employability should be devolved. We undertook a little public opinion sampling on this matter in the run-up to decisions about how the referendum was going to be organised. We discovered that some 70% of the public favoured what was called devo-max at the time. Devo-max has had various incarnations, but devo-max broadly means everything except defence and foreign policy to be devolved, on the principle that Government should raise the funds that they spend. It seemed to me that, although that concept enjoyed strong public support, and in terms of political affiliation there was very little to choose between the major parties in Scotland in terms of their supporters also supporting this, it is a political orphan. In other words, it was not supported by the current Scottish Government and it was not supported by the UK Government or indeed by the Labour Party.

You have had John Curtice here. If you read your opinion polls you will find almost exactly the same situation now. The public still support a version of devo-max that involves the devolution of all welfare powers. I am not answering your question, in the sense that your question is based on a premise that there ought to be some powers that are reserved. I have not heard an argument that I
would recognise about the value of that, in terms of the ability of politicians to deploy these powers to support citizens.

Just now, you have the UK Government with its positioning on welfare, which has been received in an entirely hostile way in Scotland, and for good reason, and further cuts in welfare budgets to come and an austerity approach to welfare. Many of my members have to pick up the pieces from those decisions, and there is some really terrible hardship in terms of poverty and deprivation. The growth of food banks is but an example of that in Scotland. They would see no case for continuing with that regime in Scotland, and, indeed, the Scottish Government positioning on these matters is almost diametrically opposed to the UK Government, so we have two welfare regimes with completely different purposes. They do not really speak to each other and a citizen has to navigate both. That is a direct result of how the Smith proposals have come to pass and just a complete absence of putting a citizen at the centre of those processes.

Lord MacGregor of Pulham Market: If you move to that position of devo-max as far as welfare benefits are concerned, presumably it is accepted that, if it happened in Scotland, the Scottish Government would have to raise the finance to provide them?

Martin Sime: Yes. Devo-max assumed that all the responsibilities of the Scottish Government would be backed with sufficient tax-raising powers to cover those responsibilities. That is a position that resonates with an individual on the street who thinks that Government should raise what they spend. Similarly, local government should raise what it spends. This business of the higher level of government determining what the lower level of government spends is not rational or helpful. That may take us to a degree of federalism, whatever the word is, but I think the public would recognise that accordingly.

The Chairman: All the parties to the Smith Commission agreement accepted the proposal to go for a minimum level of welfare benefits and the option to supplement from their own resources if they wished. If your policy was pursued, is it not the case that richer devolved areas in the United Kingdom would be better able to afford welfare benefits than poorer devolved areas, and that therefore you might get discrepancies in the welfare payments, which would be regarded across the country as rather unfair?

Martin Sime: There is discrepancy in all kinds of areas of public life that is similarly unfair. As your previous two panellists confirmed, the further you devolve, the more you create divergence, and the more you create divergence, the more you may need to consider ways to equalise those arrangements. It just depends where you start from. I think we would all, certainly from voluntary organisations, like to see a level playing field in terms of Scottish citizens and their access to support and assistance from the Government. To isolate welfare in this matter without thinking about health and education seems to me to be an arbitrary line. Why should welfare be any different from those other public services?

Q178 Lord Morgan: You were just mentioning access to government for ordinary citizens and I wondered how this applied in terms of your membership. It has been said that individual citizens find great difficulty in seeing what the line of accountability is to the devolved Government in Edinburgh and to the Government in Westminster and Whitehall. There is a further problem of asymmetry between the devolved Governments. Is this a particular problem of finding out the facts for your membership?

Martin Sime: It is, and it has always been the case that citizens tend not to have a very detailed understanding about which level of government is responsible for which. An MP’s or an MSP’s postbox will tell you that they just go to the first representative they know and leave it to them to
sort out. Of course, the more complex these matters become, the further divorced citizens get from an understanding about how government works, the more alienation you get from the political process. That is to be regretted. I feel that government needs to be rational and simple and straightforward, and needs to spend more time actually explaining itself to the public about how it works, so that the public are able to access government and exert influence over government when they need to as citizens.

Can I just use as an example the fiscal framework that is currently being negotiated between the two Governments? It has been done in such an obscure way, lacking any transparency, there are no opportunities for citizens to engage, let alone even understand the notions that are being discussed. Yet everybody would recognise that the fiscal framework could have a fundamental impact on the quality and resources available to government in the future. We cannot conduct our 21st century government in this kind of secret way and expect citizens to have respect for the political process. It is simply not good enough.

The Chairman: We are completely at one with you on that point.

Lord Morgan: What alternative are you suggesting? In what way could they make their impact? Should it be a sort of social convention, as some people have suggested, or constitutional convention?

Martin Sime: I think you will find that the Scottish Parliament is very porous and open to influence and engagement from citizens and voluntary organisations. My members queue up to give evidence to its committees.

Lord Morgan: To parliamentary committees?

Martin Sime: To parliamentary committees. Every day of the week, there is a reception that engages citizens in the work of the Parliament, with them meeting MSPs. I compare that openness and accessibility to the situation at Westminster with a certain amount of dismay. The two are not the same, because there are issues about scale and distance and things like that, but the way in which the Parliament goes about its business is to be commended and has brought a real sense of commitment and engagement from many walks of public life in Scotland, which was absent before. That is still in its infancy, but it has been one of the more positive aspects of the regime.

Q179 Lord Cullen of Whitekirk: I come to an issue that you may have heard being put to the two previous witnesses, which is this: should powers be devolved to a lower level than the UK Government and lower than the devolved national Governments? If there is a case for that, have you any view as to what powers should be devolved to that lower level?

Martin Sime: There is a very healthy debate going on just now in Scotland about local government and how local it is, and how to establish a level of government where citizens are able to engage and be involved at a scale that is appropriate. It transpires that Scottish local government has the largest number of citizens per local government unit of any local government in western Europe, which is unhelpful. If you take Norway, for example, I might get this wrong but it is something like 160 local government units in Norway compared to Scotland’s 32 on a similar population size. Making local government local is part of a healthy discussion that is going on in Scotland.

I have to add a little caveat to this, which is that I do not think it is for central powers to decide which powers are allocated beyond the Scottish Parliament. That is the sort of mendacious approach that will not be well received in Scotland. It is a matter for the Scottish Government to work out how to devolve powers beyond the Scottish Parliament.
There is a broad support for the proposition that more powers should be exercised more locally, but I would not want this debate about where powers are exercised to be simply one about which layer of government. There is a very important set of developments around rights-based approaches to services and around personalisation in health and care, which may and should, in my view, be extended to welfare and employability, so citizens get the power to make choices about the services that best meet their needs. That plays a very important role in any discussion about where future power in our system lies.

**Lord Cullen of Whitekirk:** Do you see scope for deals dealing with particular areas to stimulate economic growth?

**Martin Sime:** Those are not anything to do with political devolution. In my mind, they are contracts to deliver public services. Therefore, the city deals as experienced in England, and as proposed in Glasgow and elsewhere, are not political instruments, to my mind, and nor should they be. I am not in favour of the UK Government trying to bypass the Scottish Government, as has been done in Canada with Quebec, and go straight to local government with ways of undermining the authority of the Scottish Government. It would be a misjudgement of the mood of Scotland for that to happen. You may get some willing local councillors and officials, but I think that is about as far as the public enthusiasm for that will go.

**The Chairman:** That was very interesting, Mr Sime. I absolutely agree with you that it is not for us at the Westminster Parliament to get involved in further decentralisation, although the principle of decentralisation is one that we warmly support. I had a hand myself in the change from a two-tier local authority structure with the regions, Strathclyde and Lothian, to the all-purpose local authorities that we still have today. That is only the halfway house. That is what we did when we were in office. We could not do more then. It is not for us to do more now, but I was interested in your views, which are very interesting. We shall see what happens, shall we not? Thank you very much for coming.

**Martin Sime:** You are very welcome.

**The Chairman:** It was much appreciated. We hope you enjoyed listening to the earlier parties.

**Martin Sime:** I did, yes.

**The Chairman:** We are very sorry that Mr David Moxham could not join us.

**Martin Sime:** So am I. He could have told you all about the Trade Union Bill and how he hopes that the STUC would have the opportunity to exempt themselves from such legislation. Thank you very much.

**The Chairman:** Thank you.
EXECUTIVE SUMMARY

The Union between England and Scotland is today in serious danger. The most obvious danger lies in the strong, and possibly still growing, support in Scotland for complete separation. A second danger lurks in latent resentment among Englishmen at what appear to be special privileges for, or unjustified obstruction from, Scotland.

The institutional changes of the Scotland Act 1998 emphasised the distinctness of Scotland without appearing to place it on a par with England. Therefore, they emphasised Scotland’s separate identity without, as many Scots perceived things, respecting it. Therefore, the prime requirement in a more satisfactory devolution settlement is that it facilitates the popular understanding of the concept that there are layers of government.

The powers of the Scottish Parliament following the implementation of the Smith Commission should form the basis for a concept of United Kingdom standard devolved functions. The Welsh Assembly should be able to call down any legislative competence, if it chooses to do so, within such United Kingdom standard devolved functions.

The substance of the devolution arrangements for each part of the Kingdom should be brought together in a single statute, called the Statute of Union. This would provide a coherent structure for the whole of the UK and thus move beyond the ad hoc devolutionary initiatives which have taken place to date. Inconsistencies of language between different existing devolution statutes should be reconciled.

This statute should begin: ‘The United Kingdom is a quasi-federal, voluntary union of England, Scotland, Wales and Northern Ireland.’ The other suggestions in the Bingham Centre’s proposed Charter of Union should be incorporated.

Following the trial period of ‘English Votes for English Laws’ by House of Commons standing orders, a role for the English Grand Committee should be enacted in the Statute of Union. Whilst in legal terms the English Grand Committee would not have power to veto legislating by the United Kingdom Parliament, a convention that the Parliament would not normally enact on English matters without its consent should be given the same statutory recognition proposed for the existing Sewel Conventions.

Public perception of the distinction between United Kingdom-wide functions and devolved functions should be promoted by adopting a practice of adding ‘(England)’ to the short title of Acts affecting only England, in the same way as the word ‘(Scotland)’ and so on is already part of the title of enactments of the devolved legislatures.

With the same aim, there should be a modest realignment of departmental responsibilities so that the
Departments of Education, Health and Communities and Local Government, which are already 99 percent English, become 100 percent England in their functions. The word ‘English’ should then be added to their names, whilst ‘UK’ could be added to the names of some other departments.

INTRODUCTION

We welcome the broad perspective which the House of Lords Constitution Committee is bringing to the nature of the United Kingdom. We agree with the Committee’s earlier conclusion that the lack of a coherent vision for the Union was a serious weakness in the 1998 devolution arrangements. We are pleased to see the readiness of the Select Committee to take a holistic approach to the arrangements for government at different levels in the United Kingdom as a whole.

Applauding, as we do, the taking of a fresh and open approach to government of the Union we are concerned that sometimes the solution to the constitutional problems of the United Kingdom is said to lie in vague ideas which are more labels than meaningful policies. Expressions such as ‘constitutional convention’, ‘written constitution’ and ‘federal UK’ could mean a range of different things. They may, or may not, be suitable labels for a sound and carefully formulated policy, but they are certainly not a substitute for serious thinking as to the real nature of today’s challenges.

THE NATURE OF THE CHALLENGE: THE DANGER TO THE UNION

1. We start from a firm conviction that the Union of the three nations of Britain is in the mutual interest of all three, and that Northern Ireland is a very welcome fourth member territory of the Kingdom for as long as its people wish it so be. We start also, however, from a judgment that the Union between England and Scotland is in serious danger. We are not sure that the present Government or many Parliamentarians perceive this danger to be quite as acute as we do.

2. The most obvious danger to the Union lies in the strong, and possibly still growing, support in Scotland for complete separation. A second danger lurks in the possibility of latent resentment among Englishmen at what appear to be special privileges for, or unjustified obstruction from, Scotland. The policy which we advocate in this evidence seeks to address both those dangers. It remains in large part the policy we proposed in September 2014 in ‘Our Quasi-Federal Kingdom’ — but there have been significant developments over the last 12 months, and our ideas have developed in response.

WHY HAS SUPPORT FOR SEPARATION GROWN IN SCOTLAND?

3. The formation of the right policy to address the grave danger of the break-up of the Union should be founded on a diagnosis of why the idea of an independent Scotland is currently so attractive to many Scots. The explanation will not necessarily lie in the reasons people express: the

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true explanation may be something deeper, of which, perhaps, Scots are only partly conscious. We do not, for instance, find it plausible that the enthusiasm for independence is the result of the so-called ‘bedroom tax’ — a detail of social security policy affecting only a small proportion of the population. Nor that it is the result of Mrs Thatcher’s poll tax — an event in history which was reversed nearly a quarter of a century ago. As Lord Sumption has said of Scottish nationalism:

‘It is important not to confuse the symptoms with the cause... this interesting phenomenon is likely to have far more profound causes than the ephemeral issues which have preoccupied British politicians for the last 30 years’.

4. The ‘ephemeral’ political issues from the past play into a current political narrative which is that Scots never wanted or supported such initiatives — in other words, the Scots are politically distinct from the rest of the United Kingdom. These irritations have been able to assume a dimension of constitutional significance only because, as policies from a government in London, they have reminded Scots that London is not the only capital in their consciousness.

5. In our judgment, what underlies the mood for independence is a submerged pride and sense of nationhood which new circumstances have allowed to push up through layers of subsoil and grow into the daylight. In one sense it matters not whether Scots are right or wrong to feel that their nation has received insufficient respect: what is important to political reality is that the feeling does exist. But, in fact, a feeling by Scots that their position in the Kingdom has been taken too much for granted is understandable. There is not, or, at any rate, has not been until recently, much awareness among the English that at the beginning of the century of the Enlightenment, that is to say in modern history, Scotland was an independent kingdom with its own Parliament. The English have tended to regard Scotland being part of Britain to be as much part of the inevitable order of things as the once independent kingdom of Wessex being part of England.

6. That feeling of detachment in Scotland is not restricted to constitutional arrangements. Scotland has long been referred to in United Kingdom broadcasting and print media, primarily London-based, as if it were already a separate country and certainly not as a fully-functioning and equal part of the United Kingdom. The creation of the Scottish Parliament has added to that because Scottish domestic issues no longer feature on the Westminster agenda. Unless some very significant event has occurred in Scotland, the politics of Scotland do not feature in the United Kingdom media. The result is that the extensive reporting of Parliament at Westminster, which is seen by the media as the parliament for the United Kingdom, has no relevance on domestic issues for the populace of Scotland. This perception of separateness is a part of the increasing feeling of actual separation between many in Scotland and the remainder of the United Kingdom.

7. The 1998 devolution arrangements played a role in nurturing the emergence into daylight of

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164 “The Disunited Kingdom: England, Ireland and Scotland” Lecture to the Denning Society 5th November 2013. The changing circumstances which Lord Sumption identifies include the decline of Britain’s sense of its own historic destiny, and the loss of relevance of the British army and protestantism which he sees as ‘engines of Scottish unionism’.
Scottish nationalist sentiment. The institutional changes of the Scotland Act 1998 emphasised the distinctness of Scotland without appearing to place it on a par with England. Therefore, they emphasised Scotland’s separate identity without, as many Scots perceived things, respecting it. This in our judgment has been the crucial failing of devolution\textsuperscript{165}.

**PLACING SCOTLAND ON A PAR WITH ENGLAND**

8. It follows that placing Scotland on an apparent par with England has been a leitmotif of the constitutional proposals which we have made. This involves recognising that some form of devolution to England has an importance not only to meet legitimate English aspirations but also as part of the an architecture of appropriate parity in terms of competence.

9. Because under the asymmetrical character of the 1998 devolution there has been no distinction between the United Kingdom government and the government of England, decisions taken in London on genuinely ‘Union’ government matters, such as macroeconomic fiscal strategy, have been able to be presented as impositions by England. The assertion by the SNP Government that it ought to be able to organise and hold a referendum on independence, when constitutional change is so clearly a matter reserved to the United Kingdom institutions, was one example of the lack of any general appreciation of the concept of layers of competence. Another example of difficulty in grasping the idea of layers of government was the resonance in the closing stages of the 2014 referendum campaign of the claim that the NHS in Scotland was threatened with privatisation by London, when anybody with an elementary understanding of the legal structure would realize that the Scottish institutions had complete legislative and executive power over health. By contrast, in a country with a well understood federal system, such as Germany or the United States, the inhabitants of, for instance, Bavaria or Texas do not see injustice in their state political institutions’ lack of power over, say, the national budget, nor fail to appreciate their total control of, say, education.

**THE CONCEPT OF A UNITED KINGDOM RESERVED FUNCTION**

10. Therefore, we see it as a vital component of any satisfactory devolution settlement that it facilitates the popular understanding of the concept that there are layers of government. If, for example, the Scots really can come to perceive a list running from education to income tax as things which they, and they alone, run in their own Parliament, then the concept of appropriate parity between Scotland and England is easier to achieve. This requires the sharpening of the concept of the devolved function, which, in turn, will be easier if the concept is more uniform across the Kingdom.

11. The boundary of competences between the United Kingdom level and the Scottish

\textsuperscript{165} In ‘Our Quasi-Federal Kingdom’ we wrote: ‘The devolution arrangements ... emphasised in the minds of Scots the separateness of Scotland, whilst allowing the Scottish National Party to imply that Scottish dignity was not respected’ (p.17).
institutions which will be established by the Scotland Bill 2015 reflects an all-party agreement secured in the Smith Commission. Whilst one could debate almost endlessly where a theoretically ideal line might be drawn in the sand, we would be reluctant to see the Smith settlement disturbed. Whatever new devolution might be proposed, it would not be long before the Scottish National Party would be saying that it needed one more thing. We suggest that the Smith settlement not only demarcate the powers of the Scottish institutions, but also that it form the starting point for the concept of what might be called the standard devolved functions. The powers reserved to the United Kingdom Parliament following the Scotland Bill should be regarded as the fundamental United Kingdom reserved powers.

WALES

12. The concept of standard devolved functions leads conveniently to consideration of Wales. The greater the extent to which functions devolved to Scotland are the same as those devolved to Wales, the smoother the emerging concept of standard devolved functions. Wales, of course, started far behind Scotland in the nature of its devolution, as well as its list of devolved executive competences. It has recently been catching up, only for Scotland to leap ahead again with the implementation of the Smith Commission report. That there should be a further step for Wales has received cross-party agreement in principle with the St David’s Day Agreement. That agreement stopped short in some respects of proposals which had previously been received from another all-party forum, the Silk Commission, notably in respect of policing.

13. Wales ought not to have thrust upon it the devolution of competences which it does not want. But we believe that there is a good case for the reconsideration of the exact extent of the next phase of Wales’ devolution in the light of the Scotland Bill 2015. Wales should have the opportunity to take note of the competences which will be exercised in Scotland by the Scottish Parliament, and to be asked whether it wants the same. The Silk Commission, whose Second Report was published in March 2014, did not have, or has not yet had, the opportunity to do that. We do not envisage that Wales will want devolution quite as extensive as that of Scotland in the near future. Whether Wales ever does should be a matter for Wales itself to decide. We see attraction in the concept which has sometimes been referred to as a ‘drop-down menu’: this envisages that the powers of the Scottish Parliament should be available to the Welsh Assembly, if it wishes to call them down, without the need for further primary legislation. The United Kingdom’s constitution has never been logical, and is always likely to be asymmetric. But the emerging picture should be one in which for the most part the functions devolved in the case of Scotland and Wales are the same.

14. One of the most important features of Scotland’s political life is the distinct Scottish legal jurisdiction. The Silk II report recommended that the question of a separate Welsh legal jurisdiction should be considered in 10 years time. More recently, the legal profession in Wales has demonstrated strengthening support for a distinct Welsh jurisdiction. On 23 September 2015, a distinguished group of lawyers published ‘Justice for Wales’, drawing attention to the fact that it
was not until 1830 that the court system in Wales was harmonised with that of England: previously, it had its own Court of Great Sessions. It remains to be seen whether Wales will ultimately want some, or all, of its own judiciary, its own distinct courts and its own separate legal profession. But it seems to us no more than realistic for thinking about constitutional development in the United Kingdom to begin to recognise that such innovations are a possibility. The existence of a distinct legal jurisdiction is customary in truly federal constitutions, and there is no reason why it should not be one of the more obvious characteristics of each devolved jurisdiction in the United Kingdom.

NORTHERN IRELAND

15. The emergence of a general concept of the United Kingdom devolved functions ought to be assisted by the fact that there is great similarity between the competences exercised by the Scottish Parliament and those exercised by the Northern Ireland Assembly. At the time of drafting there are new clouds in Northern Ireland, and the journey of that province towards political harmony is one which its inhabitants must find in their own way. Nothing we suggest is intended to connote the slightest imposition from outside. All we say is that where there are, in fact, real similarities, language ought not to be used in such a manner as to disguise it, or to make Northern Ireland appear different to an unnecessary degree.

16. One respect in which Northern Ireland has been made unnecessarily different is in the terminology adopted in the 1998 suite of devolution statutes. Matters which can only be determined at United Kingdom level are in the Scotland Act called ‘reserved’, whilst in the Northern Ireland Act they are called ‘excepted’. The Northern Ireland Act does have a category of ‘reserved’ matters, but the expression means matters initially allocated to United Kingdom level, but capable of delegation to Northern Ireland.

A SINGLE STATUTE OF UNION

17. Smoothing out such inconsistencies of terminology should be one feature of the enactment which is at the heart of our proposals. We propose that the substance of the devolution arrangements for each part of the Kingdom, as they exist at the time of the enactment, be brought together in a single statute. We propose that this be called the Statute of Union. It could, of course, be amended from time to time. In one sense the statute would be little more than a consolidating Act. But it would readily assume an altogether greater significance. The enactment of such a Statute of Union would by itself demonstrate that the United Kingdom Government and Parliament had acknowledged the need to provide a coherent structure for the whole of the United Kingdom and thus to move beyond the ad hoc devolutionary initiatives which have taken place both before and since 1998.

18. A good illustration of what can be accomplished by a single statute bringing together distinct, but related law, is the Equality Act 2010. This replaced existing statutes on discrimination on grounds of race, sex, disability and sexual orientation. As well as consolidating existing law, it made
certain extensions, and, importantly, harmonised concepts. By doing so it simplified the law, and also gave greater prominence to equality as a unifying theme.

19. There are already serious reasons for legislative tidying up. The Scotland Act 1998 will look a slight mess after the changes effected by the Scotland Bill with numerous awkwardly inserted new provisions. Moreover, the decision embodied in the St David’s Day Agreement to change Welsh devolution from a conferred powers to a reserved powers basis requires major legislative new drafting in any event. We propose that the reserved powers of the United Kingdom Parliament as they will stand in relation to Scotland after the Scotland Bill be enacted as the reserved powers of the United Kingdom Parliament generally. To these should be added in relation to Wales such further reserved powers as, after the reconsideration mentioned above, it is determined should not pass, at any rate for the moment, to the Welsh institutions.

20. The Bingham Centre Report’s proposal of a Charter of the Union would fit with our proposal very well. The Charter is a set of political principles. The proposal is that these principles be enacted as a guide to interpretation. They would sit nicely as the opening chapter of the single statute.

21. In one respect there is a direct overlap between the Bingham Charter and our proposal. That is in a very first sentence stating what the UK is. The two proposals are almost identical. We suggested:

‘The United Kingdom is a quasi-federal, voluntary union of England, Scotland, Wales and Northern Ireland.’

The charter’s text, published eight months later, is:

‘The United Kingdom is a voluntary union of four component nations.’

IS ENGLAND ONE UNIT OR SEVERAL REGIONS?

22. This leaves the most difficult question in the formulation of a coherent constitutional architecture for the United Kingdom, namely devolution within England. Whilst it is self-evident that Scotland, Wales and Northern Ireland will each be elements in the architecture, it can be debated whether the remaining 85 percent of the population should constitute one unit or several.

23. At one time regional assemblies were the preferred solution of the Labour Party: in 2002 the Labour Government published a white paper ‘Your Region, Your Choice’ outlining plans for assemblies in the English regions. The Regional Assemblies (Preparations) Act 2003 made provision for referendums in three regions. The first was held in the north-east, which was chosen by the Government as the region most likely to vote in favour. However, it did not do so. The proposal was

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166 In ‘Our Quasi-Federal Kingdom’ page 51.
rejected by 696,519 votes to 197,310. This crushing rejection of a regional assembly has been seen by the great majority of commentators as an insurmountable obstacle to proceeding with the idea, even if it were desirable.

24. The McKay Commission cited the Future of England Survey \(^{167}\) opinion research which showed that in 2012 only 8 percent of the English favoured regional assemblies, with 21 percent for the status quo, and a total of 56 percent for laws to be made either by English MPs or by a separate English Parliament \(^{168}\):

> ‘We are conscious too of the obvious and continuing lack of appetite for regionalisation in England.... More broadly, we note again the England-wide sense of disadvantage evident in public opinion (table 9): it is not clear that establishing a set of regional assemblies would address this England-wide sense of disadvantage.’

The Bingham Centre expert commission was of the same view this year \(^{169}\):

> ‘For as long as England shows no appetite to be broken into regions this should not happen. Devolution in Scotland, Wales and Northern Ireland has been demand-led: governance in England should be according to the same principle.’

25. There is, moreover, an even more profound reason why we reject English regions as suitable units in a holistic United Kingdom architecture. That is that it would do nothing to confer proper respect on Scotland to place it on the same plane as, say, the East Midlands. The only units within Britain south of the border which can be placed on the same footing as the once independent nation of Scotland are Wales and England.

26. This is not to decry growing localism within England. There is much to be said in favour of the creation of further urban ‘powerhouses’, the conferring of additional powers on the Greater London Assembly and its Mayor, and the idea advocated by academics such as Dr. Andrew Blick of menus of competences from which local authorities could choose to draw down new roles if they wished. But none of these enhancements of local government is any substitute for a clear recognition that the unit in the Union which corresponds to Scotland and Wales, and which has the identity and clear demarcation to operate as a focus of English identification, is England, and England as a whole.

**WHAT INSTITUTION SHOULD REPRESENT ENGLAND?**

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\(^{167}\) Institute of Public Policy Research, Cardiff University and the University of Edinburgh.  
27. In one sense the logical political institution for England in a four-part Kingdom would be some form of English legislative assembly. But the idea of the creation of a fresh and separate institution for England faces obvious drawbacks. The popular dislike of politicians in general would generate hostility to the invention of a whole new cast of paid parliamentarians. There is also the grain of history running back to the 13th century. The likely reaction of many of the English would be likely to be: ‘We already have a parliament and it is at Westminster’.

28. Both the McKay Commission and the Bingham Centre Commission concluded that the least unsatisfactory approach was a procedure whereby legislation with a separate and distinct effect for England be enacted by English MPs operating still within the House of Commons. In ‘Our Quasi-Federal Kingdom’ we outlined a role for an English Grand Committee. The Conservative Party manifesto for the 2015 general election contained an unusually detailed proposal for such ‘English Votes for English Laws’ (‘EVEL’). The proposal currently before the House of Commons is closely in line with that scheme.

ENGLISH VOTES FOR ENGLISH LAWS

29. The main issues currently discussed are (i) whether any Bill which affects the scale of government in England should be deemed to affect Scotland by virtue of the Barnett formula; (ii) whether lack of approval by English MPs should constitute a veto, or merely an expression of politically significant advice; and (iii) whether the arrangements should be effected by standing orders or primary legislation.

30. We have a clear position on issue (i) which we see as a matter of law. It is quite simply incorrect to say that a Bill which may reduce the scale of government in England has, by virtue thereof, an effect on Scotland by reason of the Barnett formula. The formula, which has no legal standing, is merely a departmental practice within the Treasury by which the size of block grant to the devolved governments is calculated. It operates by reference to changes in planned and approved spending in England on devolved matters. The principle of law is that Government ministers cannot spend money unless and until Parliament has voted the necessary supply. The established practice is for Parliament to authorise spending by two annual supply statutes, known as the Supply and Appropriation Act (Main Estimates) Act and the Supply and Appropriation Act (Anticipation and Adjustments) Act. It is not the practice for Parliament to increase or decrease spending authority by individual statutes on particular topics during the course of a year. The supply statutes contain only overall figures for a government department, although they follow Treasury Estimates which have previously been presented to Parliament. It follows that so long as MPs from all parts of the United Kingdom participate in the enactment of the Supply and Appropriation Acts — and there is no proposal whatever to change that — the enactment of a particular statute on a solely English matter cannot alter the size of the block grant to any of the devolved governments.

31. The same view has been argued forcefully from the perspective of a civil servant with
outstanding experience of devolution and its financial implications. Professor J Gallagher has said\(^{170}\) that there are no such things as ‘Barnett consequentials’ from a measure such as the Health and Social Care Act 2012 which reformed aspects of the Health Service in England. This, he says, does not change the budget provision controlled by appropriation procedures voted on by all MPs.

32. Nonetheless, we recognise that the procedure for the approval of expenditure is not widely understood. Accordingly, it could assist if over the next few years Parliament were to adopt the practice of adding in all normal legislation a section near the end, stating,

“For the avoidance of doubt, nothing in this Act affects the size of approved Government spending or the provisions in any Supply and Appropriation Act.”

Another practice which could assist the wider world to grasp the distinction between United Kingdom and English matters would be for ‘(England)’ to be added to the short title of Acts which deal with a subject which would be devolved in the case of at least one other part of the United Kingdom. This would parallel the existing practice whereby ‘(Scotland)’, ‘(Wales)’ and ‘(Northern Ireland)’ appears in the short titles of Acts of the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly’.

33. So long as the EVEL procedure is effected by Standing Orders, the difference between English MPs having a veto, as currently proposed by the Leader of the House of Commons, or merely expressing an opinion, for which there may be a political price to be paid by a Government which ignores it, is more apparent than real. That is because a standing order procedure can be changed as easily as it is introduced, and any Standing Order change is voted on by all MPs, not merely English MPs. Therefore, it is incorrect for opponents of the present Government to contend that its plans will enable the will of the United Kingdom’s MPs as a whole to be thwarted by the English MPs. The United Kingdom’s MPs as a whole will be able, if they feel strongly enough, to override English MPs at any time by a change to standing orders. The situation would be different if the EVEL procedure were ever to be embodied in primary legislation. It would then be a more complicated exercise for the United Kingdom’s MPs as a whole to override English MPs blocking some statute, involving, as it would, the passage through both Houses of an amending constitutional Act. We see a substantial argument for the embodiment of EVEL in primary legislation on the basis that EVEL will be an important constitutional arrangement. However, if and when that happens, a case could be made out that there should be retained to Parliament as a whole the same power to legislate for England contrary to the wishes of England as exists for Parliament to legislate for Scotland, Wales or Northern Ireland on devolved matters without a consent motion from the devolved legislature.

34. There may be merit in the circumstances in which the United Kingdom Parliament will override the wishes of the English Grand Committee being circumscribed by convention rather than legal fetter. That, after all, maintains parity with the devolved legislatures. The latest development

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\(^{170}\) ‘England and the Union: How and Why to Answer the West Lothian Question’ J Gallagher, IPPR 2012.
in what has in the past been called the ‘Sewel Convention’ is that statute will recognise that it exists in respect of Scotland, although the recognition is only of a convention, without any binding legal effect. The St David’s Day Agreement proposed a similar recognition in respect of Wales. We see no reason why the Northern Ireland Assembly should be excluded: the formulation of the convention in the Memorandum of Understanding between the Governments already covers Northern Ireland. The idea of a similar convention in respect of England has been proposed by the McKay Commission, and endorsed by the Bingham Centre Report. Thus what is currently in cl.2 of the Scotland Bill could be expanded into a provision in the Statute of Union stating:

‘It is recognised that the Parliament of the United Kingdom will not normally enact,

(1) bills or provisions in bills on matters within the competence of the Scottish Parliament without the consent of the Scottish Parliament;
(2) bills or provisions in bills on matters within the competence of the National Assembly for Wales without the consent of the National Assembly for Wales;
(3) bills or provisions in bills on matters within the competence of the Northern Ireland Assembly without the consent of the Northern Ireland Assembly;
(4) bills or provisions in bills having a separate and distinct effect for England without the consent of the English Grand Committee; or
(5) bills or provisions in bills having a separate and distinct effect for England and Wales without the consent of the English and Welsh Grand Committee.’

35. As a further discouragement to the United Kingdom Parliament from legislating contrary to the wishes of a devolved legislature or Grand Committee we previously proposed a modification of the Salisbury Convention so that the House of Lords should feel constrained from voting on second or third reading against a bill which had appeared in a party’s manifesto only if the manifesto had expressly proposed that the measure be enacted in defiance of the expanded Sewel Convention.

36. We believe that if EVEL were introduced in the manner described above, all the objections which are currently raised against EVEL would be met. In one sense the English Grand Committee would begin to constitute a form of English mini-legislature. But it would not yet be fully on a par with the Scottish Parliament, since it would not yet have a competence to enact its own legislation, only to block. Developing the English Grand Committee into a body with an effective proactive legislative function might be a future step for another day. For the moment the recognition of a consultative role for an English Grand Committee, such as is described above, could not justify complaints of ‘second-class MPs’, but would constitute a significant step towards a more coherent constitutional architecture in which the concept of levels of government, and the distinction between reserved United Kingdom matters and devolved matters, would become increasingly clear.

171 The lack of legal effect is made clear in the current Scotland Bill by the retention of s.28(7) Scotland Act 1998 which states: ‘This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.’

172 Memorandum of Understanding between the UK Government and the devolved executives October 2013 paragraph 14.
AN ENGLISH EXECUTIVE

37. There would remain one huge difference between the political arrangements for England on the one hand and for the other territories of the Kingdom on the other. The others have distinct executives; England would not. The prevailing wisdom of those with experience within Whitehall is that if there were to be designated a separate executive handling for England the matters which are devolved to the other parts of the Kingdom, its budget would be so large that it would become a rival power centre to the United Kingdom government, and would thereby destabilise the United Kingdom. Without necessarily accepting that inevitability, there is far short of the degree of support which would be needed for the institution of a distinct English Executive reporting to an English legislature. To this extent, a coherent United Kingdom constitutional architecture consensus will for the foreseeable future be asymmetrical. For the same reason, we do not propose a fully federal UK: we regard ‘quasi-federal’ as a more accurate and useful characterisation of our model.

38. There are, however, measures which can quite simply be taken to promote a sense of England having a voice on England’s government. We have proposed that the English Grand Committee form sub-committees of English MPs to scrutinise the activities of the three Whitehall departments which are concerned almost exclusively with England173. These are the Departments of Education, Health and Communities and Local Government. Such sub-committees would in practice replace the existing Select Committees studying those areas. We envisage they would call before the Sub-Committee departmental ministers and the like.

39. To facilitate this concept of an English voice on English government, we have also proposed modest realignments of departmental responsibilities so that these three departments become 100 percent England in their functions. The only non-England responsibility of the Department of Education is research councils, but they are already normally dealt with by the Department for Business, Innovation and Skills. The Department of Communities and Local Government is over 99 percent an England-only ministry: its only wider responsibilities are the regulation of architects and the Ordnance Survey, which are non-core topics which could easily be dealt with by another Whitehall department. The Department of Health is also 99 percent an England-only ministry: its only wider responsibilities are in respect of embryology, abortion and genetics, which again could well be dealt with by another Department.

40. Public understanding of the fact that Whitehall controls only England’s health, and that Scotland’s health is governed from Edinburgh, could be further advanced by a modest adjustment of the ministry’s titles to, for example The English Department of Health; and so on for the other England-only ministries. Understanding of who does what could also be some departments assuming ‘UK’ in their title: for instance, HM Treasury could become the ‘UK Treasury’ without disrespect to Her Majesty.

173 This proposal is set out at greater length in ‘Our Quasi-Federal Kingdom’ at pp. 46-48.
41. The creation of such titles might be said to be unnecessary because the functions of the Departments in question are clear in any event. But that would be to miss the point. The perception of a clear distinction between functions which are United Kingdom-wide and functions which are related to an individual jurisdiction (including England) ought to be demonstrated to all. The use of such titles would show that when Parliament at Westminster was deliberating upon, say, education, it was doing so only for the population of England. This would both overcome perceptions derived from the media that the United Kingdom Parliament is deliberating for all and enhance the public perception that in the devolved jurisdictions such matters are regulated by their own assemblies.

CONSTITUTIONAL CONVENTION

42. Some informed observers are today arguing that the threat to the Union is so severe that the only card left is to call a Constitutional Convention. There may at some future stage be a place for an exercise under such a banner, especially if it constituted a forum in which Scottish representatives could embrace a new model of the United Kingdom. On the other hand, the present dangers could become even greater if the Scottish representatives took the same stance as the politicians of the SNP. So the idea, if to be adopted at all, may have a more constructive role at a future moment when a clear new constitutional framework can be offered for approval. The unionist parties should not appear to throw up their hands and be saying, ‘We have no idea what to do to save the situation, so we are hoping that somebody else can come up with a plan’. Most suggestions for a constitutional convention are vague as to how such a body would work, or why members of the general public should find a way through tricky legal and political problems better than those with great expertise.

WRITTEN CONSTITUTION

43. To a small extent the Statute of Union which we propose could be regarded as a written constitution. For some commentators, however, the expression ‘written constitution’ connotes not merely pulling together into one document what today is in many documents, but rather an enhanced role for the courts at the expense of the sovereignty of Parliament. Whatever the arguments in favour of such a shift in power between judges and legislators, we are unconvinced that it would address the cause which we have diagnosed as at the root of the present threats to the union.

The Society of Conservative Lawyers is an association of lawyers who support or are sympathetic to the aims of the Conservative Party. Members hold a range of different views within those parameters and the views expressed in this paper are not necessarily held by all members of the Society or by the Conservative Party.

The Society is grateful to all those who contributed to the preparation of this paper and in particular
to Anthony Speaigh QC the principal author and to Peter Moran the Chairman of the Working Party.

1 October 2015
Willie Sullivan, Electoral Reform Society (Scotland)—Oral evidence (QQ 160-167)

Evidence Session No. 12  Heard in Public  Questions 160 - 167

FRIDAY 11 DECEMBER 2015

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Lord Hunt of Wirral
Lord Judge
Lord MacGregor of Pulham Market
Lord Morgan

Examination of Witness

Willie Sullivan, Director of ERS Scotland

Q160  The Chairman: Mr Sullivan, can I welcome you? You have the floor to yourself. We had three professors last time, but you are a specialist in a particular aspect of the whole subject matter that is of interest to us, which is electoral reform and how it might relate to the sorts of things that we are looking at. Our questions may roam a little wider than that, and I hope you will feel free to give us the benefit of your views on whatever crops up. I will ask you the first question, which is: is it possible in a future campaign, if there is one, to project a more positive view and image of the union than happened in the referendum campaign and, if so, what would it consist of?

Willie Sullivan: In answering that question, you first have to decide what the union is. I guess, if it is a set of institutions, including yours in Westminster and many other ones, the difficulty is that those institutions seem to be in a bit of both. It is what I call helicopter politics. These institutions are pretty hierarchical with all these people at the top looking down on everything. That seems to be inconsistent with some of the big social and economic changes going on in society, where things are much flatter, more networked and faster moving. All institutions that are designed in those ways are in trouble. That ties into all the problems with distrust of elites, from FIFA to the athletics organisations. In having a positive view of that, it must be a future model, not a past or a present model. That is the possibility of projecting a positive image of the union.

The Chairman: Do you think the model is seen differently in Scotland from elsewhere in the United Kingdom?

Willie Sullivan: In some ways, it is, but it is as much because of the constitutional debate. I will get my electoral reform argument in here. I am not one of these electoral reformers who think that electoral reform is the answer to every problem and I am not going to try to shoehorn it into that. I am not sure that electoral reform is necessarily the whole answer, but I would suggest that first past the post has been part of the problem.

If you think of the 1980s in Scotland, despite the fact that the Conservatives were polling a quarter of the vote sometimes and other parties were getting significant votes, just because of the way that the electoral system worked, it looked like Scotland was not being represented at Westminster.
Willie Sullivan, Electoral Reform Society (Scotland)—Oral evidence (QQ 160-167)

That gave rise to the whole devolution movement. The electoral system fired it off and that has been continued in the last election, with it looking like Scotland thinks it is completely different from the rest of the UK but, actually, it is a product of an electoral system that gives around 90% representation on 50% of the vote. First past the post is part of the problem. That horse may have bolted now.

The Chairman: When electoral reform was first set up in the Scottish Parliament, it did not seem to have resolved the problem later on.

Willie Sullivan: The system change did not resolve the problem of Scots thinking that they did not have any representation at Westminster.

The Chairman: No, but it anticipated that no single party would ever have an overall majority.

Willie Sullivan: Some people say that. It was designed to be proportional so, if the majority of voters voted for a majority Government, then it would deliver one. We have had majority Governments on less than that, but it was close enough.

Q161 Lord Morgan: We have heard many commentaries, notably from Professor John Curtice, that Scottish politics has become quite separate from the politics of the rest of the United Kingdom. I am thinking not only in terms of the party balance being quite different, but also differentiation within the parties. The Scottish Labour Party is trying to claim much more autonomy from the Labour Party centrally. How far would you go with that argument?

Willie Sullivan: It makes sense from some perspectives, but then I guess the politics of London are probably different from the politics of Cornwall and from different perspectives.

Lord Morgan: They are not very different, are they? There are no Cornish nationalist MPs.

Willie Sullivan: That is part of this way of thinking about politics from this helicopter view: that it is all about the ones at the top of the hierarchy, all about parties and stuff like that. That is one way to think about it. It looks remarkably different from other perspective. If you do not think that the politics of London are different from the politics of Cornwall, then you need to look a bit closer, I think.

I would explain it like this: there is an anti-establishment vote all over the country. The anti-establishment vote in England went towards UKIP. A big bit of the anti-establishment vote in Scotland went towards the SNP and they have managed to cultivate that anti-establishment position quite cleverly, despite being in Government. That, for me, is a big difference. As I said, there is a kind of anti-establishment feeling. Where does that go? In some ways, the problem with the union is a bigger problem of institutions, representative democracy and all these things, which manifests itself in lots of different ways in lots of different countries.

Q162 Lord Cullen of Whitekirk: One of the respects in which there is a union is the so-called social union, which has been described as providing “the social solidarity that binds the union together, by redistributing revenue and pooling and sharing risk through welfare benefits and through the pension system”. Is there a limit, in your view, of what can be devolved while maintaining the benefits of that union?

Willie Sullivan: In the current system, yes. All the points I have been making have come from a view that perhaps, instead of power being seen as concentrated in the centre and then devolved out, there is an idea of power coming from much smaller groups of people and then being shared into the centre. If you have a top-down model, when everything goes into the centre and is shared out, simply on taxation it is quite difficult to see how that can survive, unless it is particularly well
thought through, very carefully examined for unintended consequences and taken a lot of time over. I would suggest involving citizens in that as well to see how it goes.

The current Scotland Bill that we have nearly completed is quite risky and has a number of possible unintended consequences. Scottish devolution took a long time and a lot of consideration with civil society, all the parties coming together, the constitutional convention and a long debate and discourse in the public arena. Post the referendum, we went back to a system where you get the parties in a room for a few weeks to come up with what some think is a much bigger change, although it is probably not, politically and symbolically. It looks like a much bigger change in terms of devolution than the initial setting-up of the Parliament. That is risky: it is risky for devolution, but it is also risky for the union.

The Chairman: Can you tell us what changes you would like to see under the “social union” heading?

Willie Sullivan: We will probably come on to this. I think that devolution across the UK would be a more sustainable model, and then a pooling and sharing from those units. It would be a pooling and sharing of power as much as a pooling and sharing of resources and decision-making.

Lord Cullen of Whitekirk: Did you mean devolution to England?

Willie Sullivan: Yes.

Lord Cullen of Whitekirk: In what sense?

Willie Sullivan: More regional devolution, or whichever way devolution fits for England. I know that there are moves currently but, again, these are done very quickly and are not done with the particular involvement of citizens or civil society. There have been agreements between central government and the elites within local authorities.

Q163 Lord Hunt of Wirral: The power of local communities and local citizens is quite an interesting idea around the doctrine of what is called, at European level, subsidiarity. I wondered, to deal with Scotland first of all, to what extent you believe there should be greater devolution from within Scotland to empower decision-making much more at local level.

Willie Sullivan: Our views on this are formed by a process that we went through three years ago, called Democracy Max. We carried out an investigation into what a good democracy was, what would make democracy better and what a good Scottish democracy might look like in 2030. We had a people’s gathering, which was a kind of a citizens’ assembly, and worked with the university in trying to make it reasonably representative. We took the ideas from that and took it to roundtables of experts, people who had written and thought about these things. There is no doubt that people are interested in having more power locally, those people who were involved in it anyway.

There is always a reaction against more elected representatives but, when deliberated on, people would go down on the side of having more power over their own local place. Even the local authorities in Scotland are too big at the moment. If you look across Europe, by representative per head of population, they are the biggest.

Lord Hunt of Wirral: This is very interesting, because there was an experiment to try to produce regional government in the north of England. That rather floundered on the very argument that you are now putting forward, which is that there were already too many elected representatives. Local people did not want more; they wanted more devolution, but they did not want it in structures.
Can Scotland set an example to England in devolving more power without all the drawbacks of increasing the number of elected officials?

**Willie Sullivan:** It could. On subsidiarity, I will come back to your point. It is always about devolving power to the place where it is most possible for it to operate but, actually, maybe it is a case of giving power up to the place where it is most efficient and best to be operated from. It is turning that around a little. I have never thought that referendums were particularly good ways to make decisions, apart from there being massive benefits in the last one because people were engaged in it and it became a way of growing citizens. People self-educated, educated each other and became really involved in a political debate. I have not seen any referendums like that before. It might be a product of technology that referendums have changed because people can share, communicate and get their information from more sources. I am not sure about that, but I do not think the north-east referendum was like that.

To come to an informed view about whether politicians are, on balance, worth having if you have more power over your own place, people need to be involved in real deliberation, thinking and discussion, and take real evidence on that. I used to work for a political party. The framing and presentation of information by political campaigns does not always bring citizens to the most informed positions.

**Q164 Lord Cullen of Whitekirk:** Can I ask you about the public understanding of what is done by various levels of government, the UK Government on the one hand and the devolved Government on the other? Is there more that needs to be done to make clear to the public who does what, from the point of view of whom they can hold responsible for what happens?

**Willie Sullivan:** It would always be better for people to know more about how their Government works, but there is only so much they have time to think and focus on, and there is probably only so far that those who want to communicate that stuff are able to do so. It would be more important that they felt they were involved in some way and had some sort of influence and power, within the way they are governed. Elections are when you go into a ballot box and post a ballot on your own. It is quite an individual act but, actually, that is not really where democracy happens. Democracy happens in spaces where people get together. This is my experience from the referendum: they get together and have discussions and arguments, and are able to form their opinions before they go in to cast their ballot. We are missing those spaces a little bit. They are online, for sure, and were online during the referendum, but that was not enough. After people found out that they wanted that stuff online, they actually wanted real, physical spaces, where they could go to meet each other and have these discussions and debates. That is the precursor to democracy working properly: people have to be able to have those informed discussions.

**Q165 Lord Judge:** We have heard mixed views on the subject of English votes for English laws. As elections are your speciality, can I ask you what you make of the impact that English votes for English laws would have on the union? Alternatively, is there a better answer, and, if so, what is it, to what I am going to call the English question? Let us assume for the moment that the announcement, three seconds after the election, that there were going to be English votes for English laws was a daft idea politically; let us just go to the principle of it.

**Willie Sullivan:** I cannot see how it strengthens the union. Part of the problem with devolution in the UK is that it is done unilaterally in different places, at different speeds. Some people might say that that is a kind of advantage.
Lord Judge: It addresses the question that appears to arise in England: that people in England think, “Well, if Scotland has all this autonomy and Wales has this increasing level of autonomy, why should England not have it?”. That is the issue it addresses.

Willie Sullivan: For sure, but are English voters really a challenge to the union? I do not know that they are. I agree entirely with you that that asymmetry feels undemocratic and there needs to be a way to address it, but that is a different problem from whether it is shoring up the union. Politically, it gives argument to the people who want the union to break up. How might it be done differently? A rebalancing of devolution across the whole of the UK would be the ideal. How do you get from here to there?

Lord Judge: How do you do the rebalancing?

Willie Sullivan: You need to do English regional devolution in some way. As you know, when you start to play about with the constitution, as we have found out, it has all these unintended consequences. Bits bubble up here that you have to fix and bits bubble up here. That is why we are in favour of a long look through some sort of constitutional convention to see how different changes might impact upon others.

Lord Judge: As things stand at present, your view is that the introduction of English votes for English laws would be detrimental to the union.

Willie Sullivan: Yes. If your criterion was whether it was going to strengthen the union or not, I would suggest that it is most likely to weaken it.

Q166 The Chairman: How do you think that the Scotland Act will bed down? What problems do you think might flow from it when the new regime is introduced?

Willie Sullivan: It covers a lot of stuff and I am not an expert on taxation and benefits.

The Chairman: Without the fiscal framework, I know it is quite difficult to answer the question.

Willie Sullivan: That is one of the key things: nobody knows what the financial arrangements are and how they are going to work. It seems to me to be quite inconsistent in how it fits together with previous bits of devolution. There are bits of government activity devolved from one bit and bits of government activity devolved from another bit. It does not seem very coherent in how it all fits together.

The Chairman: No, it is the product of negotiation between four different parties, under the chairmanship of an outside businessman. It is a rather strange way of doing constitutional change, but that is where we are.

Willie Sullivan: If that is where we are, it is probably quite a difficult position for the union to be in, and for Scotland as well.

Q167 The Chairman: What would be your vision of the United Kingdom in future, at the end point of devolution? You hinted at the fact that you would like to see more devolution within England as a way of balancing things, but do you see a stopping point or a final stability that would make sense and work?

Willie Sullivan: I am not sure that states stay as stable as they might have done at one time and that these arrangements stay as stable. Society does not stay as stable, so the social and economic changes, driven by technology a lot of the time, mean that states will have to evolve into something that is a lot more flexible, and not as monolithic and hierarchical as they have been in the past. I
know that the German federal system is a long way from where we are. I do not know if there is a way to get from here to there, but that would look like a better way of organising a state.

**The Chairman:** Yes, it is called federalism, is it not? England is a very big part of what would be a federal Government in that situation.

**Willie Sullivan:** Yes, and that is why there needs to be an attempt at building some sort of regional identity and regional government. You know, if you polled Scots in the 1970s and 1980s, they would predominantly feel more British than Scottish. It is not like this is a long-time feeling. It is not that identity is always the key issue in these things, but it helps if you want to build up some sort of regional government.

**The Chairman:** That has been extremely interesting. Thank you very much. You have answered all our questions very helpfully and we are most grateful. You have done it concisely, which is even better.
Personally I believe that smaller countries like Belgium, Switzerland, Holland, Liechtenstein and others in the world work better in terms of a democracy, culturally and economically too. So I’m in favour of Scotland splitting up from England and even Wales and Ireland too. Maybe we could compose a federal type of get together for the purposes of defence and trade. Large organisations seem to be clumsy by their nature and slow to react to the vicissitudes of life on earth. I feel that England has played its last role in its empire building ethos and it’s about time we let go of the bullying reins of power over our neighbours and set aside our differences and renew our relationships on a more wholesome and creative basis of justice and friendship.

October 2015
Professor Robert Thomas, University of Manchester—Oral evidence (QQ 264-273)

Transcript to be found under Professor Richard Rawlings, University College London
Transcript to be found under Ben Cottam, Federation of Small Businesses in Wales
Ken Thomson, Director-General Strategy and External Affairs, Scottish Government—Oral evidence (QQ 123-133)

Transcript to be found under Fiona Hyslop MSP, Cabinet Secretary for Culture, Europe and External Affairs, Scottish National Party
What are the essential characteristics of a nation state?¹

1. The United Kingdom is not a nation state. It is a union state: that is to say, it is a state comprised of four nations. France is a nation state. The USA is a single nation comprised of 50 states. England, Scotland, Wales and Northern Ireland are nations within a single state (although some would hold that Northern Ireland is only one part of the nation of Ireland – in this evidence I take no view on that particular matter).

2. Union states such as the UK are rare. Other possible examples include the Netherlands, Belgium, and South Africa. As this short list suggests, union states may be either federal in design or unitary. The United Kingdom is neither. For more than a century English-based public lawyers, under the influence of such figures as Professor Dicey, understood the UK as a unitary state. Scots saw both the limitations and the inaccuracies of this portrayal long before the English.¹ The twenty-first century United Kingdom constitution is neither fully federal nor fully unitary in character: rather, it has aspects of each character, held in uneasy tension with one another.

3. In the UK matters are made more complicated by the fact that underscoring the constitution is not one union but three. The union of England and Wales was an incorporating union, in which English rule – and English law – was extended to Wales. The reinvention of Wales as a separate jurisdiction is recent, nascent and ongoing. In the twentieth century Welsh identity had much more to do with culture and language than with law and politics. The union of England-and-Wales and Scotland has never been understood as such: it has always been understood as the union of England and Scotland. Scotland has no particular constitutional relationship with Wales at all. The Anglo-Scottish union was not an incorporating one: rather, Scots law, the Scottish legal system (and profession), and the Kirk were left intact even after the 1707 union. The union of Britain and Ireland was different again. For the purposes of this evidence I will focus on constitutional relations within Great Britain and will not focus on Northern Ireland.

The principles of union

4. The Anglo-Scottish union has – and has always had – two values at its core: security and trade. The union gives both England and Scotland greater security than either would possess on her own. By this I mean not only defence from external threats but also economic and economic...
social security for the people who live and work here. The “pooling and sharing of risks and resources,” which the Better Together campaign in 2013-14 rightly understood as lying at the heart of the case for a No vote in the 2014 independence referendum, is an expression of this. Economic and social security are enhanced and protected by the union. Likewise trade: the union gives to Scots a domestic market ten times the size of Scotland to live in, to trade with, to retire to, etc, wholly without legal impediment. Unlike the European Union, this is a genuinely and fully single market.

5. When thinking about what the union is for – and when considering proposals for further devolution within the union – I have found it helpful to rely on the ideas of security and trade as a benchmark.

**Principles of devolution?**

6. The central constitutional principle on which devolution in the UK has been based is that it is demand-led, not imposed from Westminster. Thus, there is a Scottish Parliament with powers of taxation only because the Scottish electorate voted for that in the 1997 devolution referendum. Likewise, the Welsh Assembly will not be able to exercise the powers of taxation legislated for in the Wales Act 2014 unless the electorate in Wales first signals its approval (by referendum) that Cardiff Bay should have tax powers. Similar principles of consent are written into the Belfast Agreement and underpin the Northern Ireland Act 1998.

7. Demand alone, however, cannot supply devolution with authority. The devolved institutions operate within a single state, and the Parliament of that state must agree before legislative or executive power can be devolved – hence the constitutional importance of the Scotland Acts 1998 and 2012, of the Government of Wales Act 2006 and of the various Northern Ireland Acts.

8. Thus, devolution can be seen as the result of “popular sovereignty” (or a desire for a form of home rule) sitting alongside “parliamentary sovereignty” (the willingness of the state to recognise and to act upon legitimate claims for home rule). That devolution has been made and fashioned through this combination of popular and parliamentary sovereignty makes it all the more robust. (It is to be noted that other instances of constitutional reform, such as the Human Rights Act 1998, have not enjoyed the force of this combination of popular and parliamentary sovereignty, which has served to undermine that Act’s authority, in my view.)

9. Is there a constitutional principle that tells us what can – and what cannot – be devolved? In my view the clear answer is Yes. Bearing in mind what I wrote above about security and trade, a proposal to devolve a power that would undercut the values of security and trade should be resisted. Perhaps I could seek to illustrate this with an example. In the Smith Commission it was clear to all participants that welfare devolution would be a major topic. The Yes campaign had enjoyed considerable success in the referendum in what they had said about social justice and child poverty. But how to address these concerns without devolving so much of the UK’s social security that you start to cut away the “security”
threads that tie the union together was not – and is not – easy or straightforward. In the end the approach taken was as follows: first it was decided that the state pension would not be devolved. The moment of retirement is one of maximum mobility, and we did not want to break the principle that there should be no link between “where you work” and “where you retire”. The freedom of movement that is one of the core ingredients of union (it is a key aspect of free trade) would have been jeopardised by devolving to Holyrood responsibility for the state pension in Scotland. Secondly, it was decided that universal credit (“UC”) should, so far as possible, remain reserved. This was for several reasons, not least that there is a direct link between UC and the UK’s single employment market – one of the aims of UC as a policy is to lift hundreds of thousands of people out of welfare and into work. Thirdly, it was decided that most remaining (non-UC) working-age benefits would be devolved, as these would tear at the fabric of union the least, whilst honouring the fact that the referendum campaign had demonstrated a clear yearning in Scotland for at least aspects of social security to fall within Holyrood’s, and not Westminster’s, competence. A similar sort of thinking underpins the Smith Commission’s conclusions that the rates and bands of income tax should be devolved, but not national insurance.

10. The Smith Commission had to complete its work under extraordinary conditions, not least in terms of time. It has become fashionable in some quarters to rubbish the Smith Commission Agreement as little more than a cobbled together shoddy compromise, or as a rushed and ill-considered political agreement that is devoid of principle. I would reject these criticisms. Of course there was very little time – and one well-known consequence of that was that the Commission was not able to engage in effective public deliberation anything like as much as the members of the Commission would have wished. But it is unfair, in my judgement, to condemn the Agreement as unprincipled compromise. Whilst I am sure there are rough edges, the core of the Agreement is based firmly on principle: namely, that the union of pooling and sharing risks and resources, which a majority of Scots voted to maintain, should be upheld whilst, at the same time, conferring upon the Scottish Parliament the powers and the responsibilities that make it one of the world’s most powerful and effective sub-state legislatures.

11. Underneath this was another principle: that one of the mistakes of Scottish devolution in 1998 was to have created a parliament that is responsible for spending a great deal of money without making that parliament responsible for raising that money. The Scotland Act 2012 closed the “fiscal gap” to a modest degree but the Smith Commission was unanimous in understanding that more was required to make Holyrood fully a responsible legislature. No sub-state legislature in any federal system is responsible for raising all of the money it spends – there is always some sort of grant from the centre – but just as “no taxation without representation” is a constitutional principle dating back centuries, so too could “no representation without taxation” be seen, perhaps, as a more recent constitutional principle of devolution.
12. A final way to think about “principles of devolution” is to consider the relevant case law of the UK Supreme Court and other courts. We did this in the Appendix to the Bingham Centre report, *A Constitutional Crossroads* (May 2015), in which we sought to draw out from what is sometimes a rather messy case law a set of coherent constitutional principles. These are summarised by bullet point in the final paragraph of that Appendix, on page 66 of the report.

**Implementation**

13. Effective territorial governance in a multi-nation country such as the United Kingdom requires two things, aptly labelled by Daniel Elazar “self-rule” and “shared rule”. At least as far as Scotland is concerned I consider that we have gone about as far down the “self-rule” road as we can without beginning to tear away at the union itself. Full fiscal autonomy, for example, or “devo-max” as it used to be known, is simply not compatible with a union that pools and shares risks and resources. Those who advocate it, it seems to me, fail to honour the result of the 2014 referendum, in which two million Scots voted to maintain a union that pools and shares risks and resources.

14. Wales is in a different position. The journey towards self-rule for Wales is still underway and may take longer to complete than is the case for Scotland.

15. When it comes to the shared rule aspect of effective territorial governance, however, the United Kingdom still has a very great deal to learn. It is a truism that devolution has been delivered in the UK without either Westminster or Whitehall seeming to notice. There is still a Scotland Office, a Wales Office and a Northern Ireland Office, as there was before devolution. The Barnett formula remains, notwithstanding that it dates from an era long before devolution. Inter-governmental machinery in the UK leaves much to be desired, as the Committee found in its report on that matter in March 2015. And inter-parliamentary relations in the UK are more or less non-existent. All of this will have to change if the United Kingdom is to start taking seriously the proposition (which I would subscribe to) that, in the longer term, the union state will survive and thrive only if we address questions of shared rule as well as those of self-rule.

16. In Scotland there is an urgent need to go beyond Smith. But going beyond Smith does not mean even more devolution of power from London to Edinburgh. It means, rather, that twenty-first century unionism needs more than devolution. Again, it may be more useful to illustrate this with an example.

17. Thus far we have proceeded on the basis that a power is either devolved or it is reserved. If it’s the former it’s for Scottish Ministers, accountable to Holyrood; if it’s the latter it’s for Ministers of the Crown, accountable to Westminster. The result of the Smith Commission’s

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work, it seems to me, is that this rather starkly binary approach will no longer hold and that, as well as devolved and reserved powers, we are moving into a new area of shared powers. This was acknowledged by the Secretary of State for Scotland, the Rt Hon David Mundell MP, when he gave evidence on 26 June 2015 to the Scottish Parliament’s Devolution (Further Powers) Committee. The Secretary of State talked of “the environment that Smith envisaged, which involves having shared responsibilities and which must be based on a different type of relationship” [between the governments]. Welfare provision will be a shared power when the Smith Commission Agreement is implemented. Other areas of shared power will include energy and transport. Where there is shared power there needs to be provision for shared decision-making as well as for shared accountability. At the moment we have the architecture for neither of these. Our inter-governmental machinery does not appear to extend to shared decision-making and there are no established means of joint parliamentary accountability, in which members of the Westminster and Holyrood parliaments work together to hold UK and Scottish ministers to account.

**Asymmetry**

18. The asymmetry of the United Kingdom’s devolution arrangements is inevitable. It would be counter-productive to seek to iron out the differences and to impose a single, uniform model on all parts of the UK. Rather, we should be making a virtue of asymmetry. What is good for Scotland may well not be good policy for Wales. For one thing, the nature of the Anglo-Scottish border is very different from that of the Anglo-Welsh border. The latter is crossed about 130,000 times daily, whereas the former is crossed only about 30,000 times each day. Further, whereas 48% of the Welsh population lives within 25 miles of England, only 3.7% of Scots live within 25 miles of England. These differences could mean that differential income tax rates, for example, could have significantly different consequences for England/Wales than for England/Scotland. Considerations as to tax competition and (potentially) tax avoidance could arise in quite different ways as between England/Wales and England/Scotland. I worry that, even now, too much of the debate about the future of devolution in Wales is dominated by attempts to copy and paste from Scotland (compare the Wales Act 2014 with the Scotland Act 2012, for example).

19. Asymmetry is likewise a virtue *within* the nations of the United Kingdom. The city deal for Greater Manchester is and should be different from the city deal for Cambridge, for example. City regional devolution can and should be allowed to grow in a bespoke manner, with each city or city region negotiating with HM Government and other partners the deal that best suits it. If the days of Whitehall’s top-down reorganisations of local government are over, this is something to celebrate.

20. All of this said, however, there is also a note of concern to be sounded. Scottish, Welsh and Northern Irish devolution, and city regional devolution in England, have each been developed in silos, sometimes without great regard for each other and often – shamefully – with no regard at all for the United Kingdom as a whole. This has to stop. We cannot sensibly carry on developing devolution in one part of the country without considering the
future of the country as a whole. I would like to see no more Calman, Silk, or indeed Smith Commissions, each charged with considering only one of the nations of the UK. Were there to be any further devolution commissions, they should be pan-UK inquiries, not focused narrowly on only one of the UK’s four home nations.

The constitutional and legal structure of Union
21. The central recommendation of the Bingham Centre report, *A Constitutional Crossroads*, was that the United Kingdom needs a new Act of Union (or charter of union, as that report put it). I agree. That Act could usefully identify and articulate the constitutional principles upon which the UK’s territorial constitution is based; it could strengthen the Union by making new legal provision about solidarity, loyalty and comity; it could place currently non-legislative matters on a statutory footing (such as inter-governmental machinery); and it could bring clarity to what are currently rather opaque matters (such as the frequency with which secession referendums may lawfully be held in the UK). To be worthwhile, however, such an Act of Union would have to proceed on the basis of cross-party support and would have to enjoy legitimacy and support in all four home nations.

Practical steps to stabilise and reinforce the Union?
22. Whilst I consider that strengthening the constitutional and legal architecture of the union state is important, I recognise, at the same time, that it is nothing like enough, if the goal is to safeguard the United Kingdom from threats of secession in the longer term. In my opinion there is no single magic bullet here – no one thing that unionists should do now that is guaranteed to keep the country together. A series of little steps, many of them on their own perhaps quite minor, may be what is needed.

23. I do not pretend to have all the answers but one place to start would be to understand why four regions in Scotland voted Yes to independence last year. Glasgow, Dundee, Clydebank and North Lanarkshire did not vote Yes by mistake, or because they misunderstood the question, or because they were misled. They voted Yes because they could no longer see what the Union does for them, they felt they had no stake in it, that it was a Union for others and not for them, and that, for all the uncertainties and risks of independence, “things could only get better”, to rehash a slogan from the Blair era. Glasgow is the UK’s third-largest city, and Glasgow voted Yes by a margin of more than 25,000 votes (195,000 to 169,000) on what was, for Glasgow, a very high turnout. My question would be this: what efforts have UK parliamentarians gone to in the year since the referendum to understand why this happened and to address the reasons for it? What steps have been taken to make the people of Glasgow (and Dundee and Lanarkshire and Clydebank) understand and see the benefits that Union brings?

24. Here are two ideas: (1) Glasgow is full of schoolchildren for whom London is as much a foreign power as New York or Amsterdam. Why not twin every schoolchild in Scotland with one in England and pay for them to visit one another? (2) In Scotland there is only one airport connected to a city by train – and that’s Prestwick. Why not scrap HS2 and spend
some serious money on infrastructure north of the border? You could even call the new train links the Union Line and paint the new carriages red, white and blue.

25. Effective territorial governance – the internal management and security of the union state – cannot only be about devolution. Of course, enhanced devolution is a necessary component of the union state’s constitutional architecture, but taken alone it is far from sufficient. Bold and imaginative steps will have to be taken at the centre – in both Westminster and Whitehall – if the union state is to gather in strength and solidarity. It is not beyond repair, but people from across these islands need to feel they have a real and meaningful stake in central government. We are much nearer the beginning of addressing this in the United Kingdom than the end.

30 September 2015
Q1 The Chairman: Can I welcome our guests? Professor Adam Tomkins is well known to the Committee as a former legal adviser, but he is a professor of law at Glasgow University and was active in the Bingham report, which has very kindly been sent to us by the Bingham Centre. Sir Jeffrey Jowell is also very welcome as a director of the Bingham Centre and also deeply involved in that report. We are grateful for the copy that you sent us; we have now circulated the report to all Committee members.

I will fire straight off with some rather broad questions. I think today will be a rather broad day, because there are a lot of general issues that we are trying to bring into focus to see how they stand up and interact with each other. The first question I would like to ask is: what is the purpose today of a union between England, Scotland, Wales and Northern Ireland? Professor Tomkins, you mentioned trade and security as a starting point. Would you like to embellish that and spread it outwards?

Professor Tomkins: I will try. Good morning. I am Professor Adam Tomkins, John Millar Professor of Public Law at the University of Glasgow. I should just also say that I am a prospective parliamentary candidate for the Conservative Party in the Holyrood elections and I am constitutional adviser to the Scotland Office, but I am not wearing any of those hats this morning, as you can see, appearing before you in a strictly personal capacity.

The purpose of the union between the four nations of the United Kingdom—England, Wales, Scotland and Northern Ireland—is nicely encapsulated in the phrase that was used in the end by the Better Together campaign, as a core part of their message in Scotland as to why we should not vote yes and should vote no, which is to say that the union gives all four nations of the UK a pooling
and sharing of risks and resources. That is illustrated, in my view, in the two fields of trade and the economy, on the one hand, and security on the other, which means not only security and defence but social security. The union enriches all four of the nations that are part of it, and if any of the nations of the United Kingdom were to leave the union it would impoverish not only that nation but all the others as well, not only economically but culturally and spiritually. The purpose of the union is to make each of the nations of the United Kingdom richer and greater than any of them would be alone.

Professor Sir Jeffrey Jowell QC: I would support that. I would only agree that it enriches in other respects as well by emphasising common interests and allowing for common opportunities and for different identities but on the other hand for shared aspects of identity at the same time, which must enrich the whole more than the sum of the parts. That point was stressed time and again by Professor Linda Colley, the historian, who is a member of the Bingham committee, who stressed the linkages between the identity and the background of all parts of the United Kingdom. In the report, we mentioned that the system requires attention not only to self-rule but to shared rule. This is the issue: the purpose of the union is shared, as well as self-rule, and to emphasise that aspect of that particular partnership.

The Chairman: That is an area we will want to study as our inquiry proceeds. It is a very interesting one and it might easily yield some solutions. On the question of security, can we spread it a little into a sense of cultural, personal and familial security? People, when asked what the union means, tend to compile a list that starts with the monarchy, the BBC and not much more. It peters out pretty quickly. Do you feel that there is an area there that should be further clarified?

Professor Tomkins: If you go back 50 years to the 1950s—perhaps that is more than 50 years—as Colin Kidd put it in his book *Union and Unionisms*, unionism in Scotland was so much the default opinion that it never needed to be demonstrative. Nobody in Scotland ever needed to articulate why they were a unionist; it was just so much the default position. This is a thesis that Colin Kidd runs in his book and I think it is largely right.

If you look at the ingredients of union in the 1950s and, to throw another book at you, Michael Keating’s book *The Independence of Scotland*, in the opening chapters he identifies what he thinks the ingredients of union were in the 1950s. Top of the list are the two things that you just mentioned, Lord Lang: the monarchy, the BBC—the health service was also there. Empire was also an ingredient of union, and class—the idea that the class politics that was so important to the industrial north of England was identical to the west of Scotland. One’s loyalty, if one was a Glaswegian Labour voter, was to the idea of class, and that was one of the ingredients of union.

Keating argues in his book that all this has gone. The monarchy is no longer important in the way that it was 60 years ago. It is not unimportant, but it is no longer important in the same way that it was 60 years ago. Class politics has been replaced in Scotland by the politics of the flag and the politics of the nation, so that one’s loyalty is now not principally to one’s class but to one’s national identity. That has been the great triumph of the SNP in west-central Scotland. Empire is no longer. The BBC does not enjoy unanimous authority and support across the whole spectrum of Scottish political opinion just now, I am sad to say, and the NHS is of course fully devolved in Scotland. Health is one of the areas that is most fully devolved under the original Scotland Act, along with education of course. You look at those ingredients of union and they have all essentially dissolved through various different forces of change and whatnot.

If one were thinking of rebuilding that sense of what the pooling and sharing of risk and resources means practically to the lives of people in particularly the parts of Scotland that last year voted yes
to independence, one would not necessarily start with that list, but a substitute list needs to be found, in my view. I do not think there is any single magic bullet that one can identify and say, “If only we unionists were to do this, then the whole nationalist experiment would just go away or fall apart”. It is much more complicated than that. We have a chronic problem, rather than an acute one, and it will require long-term solutions. The territorial constitution of the United Kingdom is an issue that requires to be managed in a long-term view.

I do think that one of the questions that ought to be at the forefront of unionist politicians, whether they are in government, in parliament or in opposition north or south of the border, is: “What we are doing to try to rebuild that idea of union?”. What are we doing? What can we do? What contribution can we make to the rebuilding of a project that is, let us face it, terribly un-British? We are very uncomfortable about this. The Americans are great at nation-building; even the French are quite good at it. For all those reasons, we are not very good. We do not like it very much, but it is something that we have to embrace. That does not just mean flying a few more red, white and blue flags, although we could do that too, but thinking creatively about how we can use the idea of union to enrich and enhance, in a meaningful way, the lives of the people who live in the various nations of the United Kingdom, particularly in Scotland and particularly in those bits of Scotland that voted yes.

Lord Maclennan of Rogart: You have not so far referred to the relationship between Britain and external countries. It does seem to me that we will weaken ourselves if we are separate and that we have common interests with the European Union, with NATO and with the United States, and somehow that seems to me to be part of what needs to be strengthened.

Professor Tomkins: I do not disagree with you, but the way in which some of those ideas and labels play in Scotland is different from the way in which some of those ideas play in England. Britain’s rather tortured relationship with the European Union is not a very Scottish problem. It is a very English problem. There is a danger, in the forthcoming EU referendum, that Scotland gets essentially dragged into a fight that is not really its fight or an argument that is not really its argument. When you say “NATO”, in my city, Glasgow, people immediately think about Trident and the location of Britain’s nuclear deterrents. The idea that you can celebrate the great Atlantic western military alliance as a cause of union, rather than as a threat to union, is not one that would be universally shared in Glasgow or in west-central Scotland generally, but I think you are right.

This is one of the great forces of Linda Colley’s book that she wrote in conjunction with a Radio 4 series last year. We would be wise to see the UK’s problems of territorial management in some kind of comparative light. We are not the only country going through this. Belgium is another union that is struggling. Canada is another union, a federal union in that case, that has struggled in the past with its territorial management. It may very well be that there are lessons to be learnt from Belgium and/or from Canada in this. To see the problem of secession, the problem of separatism and the problem of nationalism as a uniquely British problem would certainly be a mistake.

Professor Sir Jeffrey Jowell QC: I do think the international aspect is important, not only in terms of British influence in the world but also the opportunities that are presented with a union of our kind and significance. I was tempted, in answer to your question, to refer to the improvement that there might be in the status of our rugby if it was a British Lions team, rather than simply a team from the different nations, but I recall that Scotland is still a player and Wales, to some extent. Perhaps I will not press that, but I would also mention civil liberties, human rights and the rule of law as binding factors.
The Chairman: Thank you very much. Let us move on and try to find some principles to back up a union, Lord Cullen.

Q2 Lord Cullen of Whitekirk: I refer to the set of principles set out in the Bingham Centre report. It might be said that, if we look at those principles as a whole, there are a number of threads running through those statements, perhaps three in number, the first being the shared values and benefits of the union, to which reference has been made already. The second is the relationship between individual member nations and the union, and that includes the working relationship between the Governments, and what I describe as simply the characteristics of devolution, whereby powers are devolved to a particular nation but at the same time that nation contributes to the functions discharged by the union. It seems to me there are at least those three threads. Are all the principles set out in the Bingham Centre report of equal importance and significance, or are some more fundamental than others? In other words, what is at the heart of the idea of a charter?

Professor Sir Jeffrey Jowell QC: The charter sets the compass that Lord Bingham always thought was lacking in our constitution, particularly evident in our devolution arrangements. What are the rules? What are the principles? What are the procedures even? These are fundamental constitutional requirements, and we seem to be at sea about them, uncertain about them and cannot quite define them. The charter will be an opportunity to define the fundamental principles and processes of our devolution settlement, which is very important: such as the notion of subsidiarity. Often one thinks that if there are going to be principles of unionism, that has a centralising effect, but it need not if one of the principles is that each nation should have a Government with the powers that enable it most effectively to respond to the needs of its people. Call that subsidiarity, call that the principle of autonomy if you like, but that is a principle and it is fundamental, as fundamental as the shared values and powers. Common security and defence, and a common economic framework, are clearly terribly important. The principle of social solidarity allows a kind of mediation between the different principles, so one need not necessarily have to choose between the most important if that principle, as in a number of federal constitutions—Germany, South Africa and so on—is incorporated. Finally, the core values such as I have just mentioned—democracy, rule of law, personal liberty and rights—ought to be uniform across the union, and then there ought to be some opportunities for the constitutional arrangements to be amended. You build in a permanence, but you also build in, as with all constitutions, a certain degree of flexibility allowing for change, if a significant number of the population wish it.

Q3 Lord Lester of Herne Hill: The fourth of the principles that is listed from your committee, which both of you were party to, is on shared commitment to personal liberty and human rights. As you both know better than I do, we are the only country in Europe, and almost alone in the Commonwealth and in the common law world, not to protect basic rights and freedoms through our own constitutional instrument. We use instead a European treaty, and we use the European treaty also to limit the powers of the devolved institutions, rather than a constitutional instrument of our own.

I just wonder whether, in trying to find how to give effect to that fourth principle, you think that having a charter or something else would be a way forward, because at the moment there are obvious disadvantages to using a European treaty, as no other country does, as a substitute for a constitutional instrument. An example that has given before by Lord Lexden, when he was on the Committee and beyond, is of course defamation—a very good example—where Parliament spent three years getting a statute on the books to reform the law; Northern Ireland says no; the result is the public is faced with no core principle of free speech that everyone can enjoy throughout the
United Kingdom but, instead, different standards because of a reluctance by one part of the United Kingdom to accept the principles that Parliament had accepted for the rest, or for England and Wales.

Professor Tomkins: For me, the value of thinking about what we call principles of union and constitutionalism, which you might or might not want to include in a charter, treaty or act of union, is that it responds to the way in which devolution has been developed in the United Kingdom. Devolution has been developed in the United Kingdom in silos, so the argument about Scottish devolution has happened over here, the argument about Welsh devolution has happened over there, there has been an altogether different argument about Northern Irish devolution, and there has not been very much argument about devolution in England at all, although we might turn to that in due course.

It was abundantly clear to Annabel Goldie and to me on the Smith commission that we really could not carry on like this. We really cannot carry on, in the United Kingdom, developing devolution or developing Britain’s territorial governance in silos. There is no understanding in Scotland of what is happening in Wales. There is very little understanding in Scotland of what is happening in Northern Ireland, and there is very little understanding in England of what is happening in any of the other nations of the United Kingdom, as far as this is all concerned. Really for me the value of thinking about principles of union constitutionalism is that it gets us, or might help to get us, out of those silos and into the space where we can start thinking about the things that we have in common. The things that we have in common might be values or they might be rights, or they might be institutions or principles. In answer to the question about whether some of these principles are more important than others, perhaps they are, but the order in which you would put them in importance might vary depending on what you were trying to do with them and where you were in the country. That, to me, is why we embarked upon this.

Also, I was challenged in an academic conference a few years ago by another professor of public law in Scotland, who said that in her view there was no such thing as principles of devolution and it was all just made up. It was all just the product of rather shabby political compromise. Here is a thing that you think you can devolve, so devolve it, and here is a thing that you think you should not devolve, so reserve it, and that was really all there was to it. I thought that was not true and it is not fair. There are principles that underscore what we have devolved, why we have devolved it, what we have recommended for further devolution and why we have resisted other issues.

It is to me principled, rather than shabby, to say that taxation of income should be a shared responsibility in Scotland between the Scottish Government and the United Kingdom Government, and what we have tried to do in the Smith commission is to find a way of sharing that out. National insurance is reserved, because it speaks directly to the pooling and sharing of risks and resources that, after all, 2 million Scots voted to maintain in the referendum last year, but control over the rates and bands of income tax on earned income is devolved in full to the Scottish Parliament in order to allow the Scottish Parliament to start thinking much more seriously than it currently does about how it is going to pay for all the money that it wants to spend. It is the same on the welfare piece. We did not want to devolve the state pension. We thought that the only coherent thing to do with universal credit was either to devolve it or to reserve it. You cannot really fiddle around with it. Those two issues between them, universal credit plus the state pension, take care of about £15 billion out of £18 billion spent annually on welfare in Scotland, so you are only left with about £3 billion. Devolve that in order to try to have some kind of shared responsibility about welfare, but at the same time confer on the Scottish Parliament the power to top up any welfare benefit, whether in a reserved area or a devolved area, if the Scottish Parliament thinks that welfare
provision at UK level is being unfairly, too aggressively or too quickly cut, so that the UK sets the floor and the Scottish Parliament can raise that, if it sees fit.

Yes, the context in which the Smith commission met was a very peculiar context, where we had to find common ground very quickly after a very divisive and difficult referendum campaign. Nonetheless, there are these principles that try to understand, as happens routinely in a federal country, where power is appropriately located, so that would be my answer to Lord Cullen’s question.

**Q4 Lord Morgan:** It seems to me we have been discussing how to articulate and express the idea of the union more effectively, and to me the answer in considerable measure is the remit of this Select Committee: namely, articulating the idea of the constitution. As everybody knows, in the United States, let us say, the constitution supremely embodies ideas of American citizenship, of Americaness. In France, particularly since the reform constitution of 1958, the constitution embodies the idea of republican virtues, sometimes not always happily so perhaps. These are accessible documents that people can turn to, and of course they are written down. I was wondering if that could be a possible way ahead for us.

**Professor Sir Jeffrey Jowell QC:** If I may address Lord Lester’s question first, I understood him to be referring particularly to fundamental rights being treated differently in different parts of the United Kingdom, as with our Defamation Act at the moment not applying to Northern Ireland. This creates great uncertainty. It is unacceptable that fundamental rights should be treated differently in different parts of the United Kingdom, as is possible at the moment. We also noticed, in doing this report, that there is increasing divergence between Welsh law on a different level, landlord and tenant, and English law, as devolution continues. These are questions we really have to grapple with. They may seem trivial, they may seem lawyers’ points, but they do apply. When you have this kind of uncertainty, when you have this kind of divergence, this is not good for commercial activity and it is unsettling for publishers to have a different rule about free expression in one part of the UK than the other. This is an important issue that should be grappled with. A by-product might well be to provide a kind of British bill of rights, with common agreement across the board, incorporating, one would hope as a minimum, the European Convention on Human Rights and perhaps even going further.

In relation to Lord Morgan’s question, I have probably cited this to too many committees over time, and you are very familiar with Lord Bingham’s statement that constitutionally speaking we are in a “trackless desert without map or compass”. One sees this as a teacher of constitutional law. Even students who come into law are at sea for a long time about what our constitution is. They are more informed than other people of their age, but some degree of gathering together of the rules that govern us, the procedures and, most importantly, the values that bind us could be a task certainly worth doing. One would hope that this Committee would lead on that with vigour.

**Professor Tomkins:** I have just one little caveat: you can have a new act, treaty or charter of union without having a written constitution. This is not something that would have to wait for the enactment or adoption of a written constitution. It may or may not accelerate or herald the need or perceived need for a written constitution. I see the two projects as distinguishable from one another and I certainly would not want anyone to think that my view was that this was all part of a back-door attempt to get a written constitution. It might lead to a written constitution, but it does not necessarily have to and it certainly does not have to wait for a written constitution.

**Lord Hunt of Wirral:** Just to Sir Jeffrey and a wonderful throwaway line on subsidiarity, I recall that the establishment of a Committee of the Regions within the European Union followed a wish to see
a decentralisation of more power to the regions from the Commission, but it has not been a great success. I am not really sure what powers were devolved down at all, so what is your view on subsidiarity within this wider context?

**Professor Sir Jeffrey Jowell QC:** There are many definitions of subsidiarity, almost as many as sustainability, another term one comes across frequently these days. My definition is that each nation, each region, perhaps even each city, although that may be going too far, ought to have a government, as I have said, with powers that enable it most effectively to be responsive—responsiveness is the key—to the needs of its population, of its people, however defined. I would think that with subsidiarity goes the notion of consent. There may be areas or regions in England in particular that have no wish for any further subsidiarity, and one can surely accommodate that. If there is a strong feeling that they should, then that should be provided and, if it is provided, it should be in an open way, not simply through deals between mayors and Chancellors of the Exchequer, if I may say, as was the case with the Manchester deal, but as is happening now through parliament and, if possible, with the consent of the people. If it is considered by them to be important for their own governance and they feel that government can be more responsive in that way, then yes, it is an important concept.

**Lord MacGregor of Pulham Market:** On the same issue of subsidiarity, I remember well when I was negotiating in the EU, way back in the 1980s, in education and particularly in agriculture, subsidiarity was a principle that I was applying very strongly. There, of course, you were dealing with a whole number of nations that had different practices, different backgrounds and different everything, and the temptation of the commission was clearly to try to centralise and get involved in the detail of food matters that really should have been settled at the national level. I had no difficulty in saying that subsidiarity should be a very strong element of the community.

I find it more difficult to define it exactly in practice in the United Kingdom, with the long record that we have had. I was going to ask you where you draw the line. How do you apply it in practice? It seemed to me that, from your answer to Lord Hunt, you were suggesting that if a local community wanted something that they thought they could better do at the local level, they should be able to run it themselves. Where do you decide whether it is right that they should do so or that, in fact, it is just too difficult and that, like so many areas of the other principles, it is necessary to have the national Government making the decisions? Do you see what I mean? You could get into a terrible muddle if you said that every local community that wanted to do such and such should be able to decide it for themselves.

**Professor Tomkins:** The idea of subsidiarity requires two things. We are only looking at one of them. It requires decision-making to be driven down, in the UK context, to national level, so below Westminster and Whitehall to national parliaments in Edinburgh, Cardiff and Belfast, and within the City Deals programme to city regions in England, but it also requires something else. It also requires those nations and regions of the United Kingdom to be effectively and robustly represented at the centre. This, to my mind, is the failure of the Committee of the Regions at EU level. Of course, it was an idea in the Labour Party manifesto in 2015—but just because it was in the Labour Party manifesto does not necessarily mean to say that it was wrong—that the representation at the centre for the nations and regions of the United Kingdom is one of the things that we have got wrong. I agree with that statement; it is one of the things that we have got wrong.

In the Supreme Court, for example, there are 12 justices. One quarter of those justices must come from jurisdictions other than England and Wales, and even then the Welsh think that they are underrepresented in the Supreme Court. Apply that sort of number to the House of Commons or
perhaps even more so to the House of Lords, or to the institutions of government rather than the institutions of parliament, and you might begin to see how an effective representation at the centre of Scotland, Wales, Northern Ireland and the north of England might look.

Q5 Baroness Taylor of Bolton: It is very interesting, because this is partly highlighting the difficulties of federalism where you have one participant so much larger than all the others. That is part of the problem that you are talking about. Can I just follow up a little on subsidiarity and your report? One of your recommendations is that there should be more fiscal devolution to follow with subsidiarity. I wonder to what extent you think that is realistic and to what extent you think you can have that in the present situation. We have a debate in the Commons today about fiscal responsibility. Central government will want to maintain some very tight overall control. How do you get a deal struck that is sustainable and makes a real difference, at that local level?

Just so as not to waste time, can I go to my second question, which is about the values that Lord Cullen was talking about in the context of the English question? When Professor Tomkins was talking about his list at the beginning and the need for a new list, surely the north of England, Cornwall or wherever needs its list as well. You have to be able to establish shared values there. Is not one of the problems that we have politically the fact that so many people feel alienated from current establishments that it is quite difficult to establish shared values or at least to articulate shared values?

Professor Tomkins: One of the reasons why people feel alienated, of course, is because there is neither sufficient local autonomy nor sufficient representation of localities at the centre.

Baroness Taylor of Bolton: Chicken and egg then.

Professor Tomkins: Perhaps so. On federalism, I am not in favour of a view that says that the United Kingdom can straightforwardly or needs straightforwardly to become a federal state. There is a lot in federalism that the United Kingdom can borrow from and learn from, but you are right that a country such as the United Kingdom, in which 85% of population and GDP is in one of the four components, cannot become a fully federal state, because that one part is too big. Why is that one part too big? If you had an English First Minister with the powers of the Scottish First Minister, that English First Minister would have a bigger budget than and would be more powerful and important than the United Kingdom Prime Minister. That is a recipe for collapsing the union rather than strengthening the union. Maybe that is your agenda. If your agenda is to collapse the union, then having an English First Minister with the powers of the Scottish First Minister would be a very good way of going about it, it seems to me. If your agenda is to try to strengthen the union, rather than to collapse it, moving in that direction is very dangerous, I would have thought. There is no desire in England for England to be broken up into regions. One of the absolute principles of devolution, which is common across all four nations of the United Kingdom, is that devolution is on demand. It is not imposed on parts of the United Kingdom that do not want it. England does not want to be divided up into regions, so Whitehall should not force England to be broken up into regions in order to deal with this problem of 85% of the UK being in England.

None of that is to say that there is nothing that can usefully be learnt from federal experience in terms of improving the governance arrangements of the United Kingdom, particularly when it comes to things like intergovernmental relations and fiscal federalism or the fiscal framework. One of the huge problems, it seems to me, with the way in which we do block grant transfers of money from the centre to the nations in the UK is that it all happens in a big black box that nobody from the outside understands. There is a complete lack of transparency about the fiscal framework, and that is an issue that needs urgently to be addressed.
Q6 Lord Lester of Herne Hill: We do not have time to go into your views about federalism in any detail, but I wonder whether I could just put this to you. If you want Scotland to remain part of the union, one intelligent way of thinking about it is in terms of home rule of a kind that would keep Scotland within the union and not lead to independence. I do not know what you mean by drawing on some kind of federal principle. If you oppose that, it seems to me to be more likely that you will encourage independence in Scotland.

Professor Tomkins: My view is that that is exactly what the Scotland Bill will deliver. The Scotland Bill currently in the Commons but shortly coming to the House of Lords delivers exactly the home rule that the Smith commission agreed, and this is home rule that is consistent with maintaining a union that pools and shares risks and resources. You cannot move from where we are to what the Scottish nationalists now call full fiscal autonomy, which might be what you mean by home rule or devo-max, as they used to call it, without disrespecting the result of last year’s referendum. The result of last year’s referendum was that a majority of Scots voted to maintain a union that pools and shares risks and resources. The whole point about full fiscal autonomy is that there is no longer any pooling or sharing of economic or social risks and resources across these nations, so you would have to have a referendum on it, it seems to me, because it would be disrespecting the result of last year’s referendum to impose it without going back to the people. It is also of course the case that there is no comparable country anywhere in the world that is run on anything like these terms, and it seems to me that it is not a version of devolution but a version of independence. Again, that is not what we voted for last year.

Professor Sir Jeffrey Jowell QC: Just very briefly, one of the recommendations of our report, the main thrust, was that we have been doing this helter-skelter, ad hoc, without considering some of the criteria for subsidiarity or anything else. Attention has to be turned to that. We have rested devolution largely on popular will, but insufficiently on criteria such as workability. Is this a matter on which we ought to have divergence? Are there common values that ought to be applied? Do we need economies of scale? There ought to be a number of different criteria by which we measure and evaluate, for example, devolution to further regions in England. They are nowhere available. One just does not see them. We looked for them; we could not find them. There is popular will, deals between here and there, a new statute in the light of a recent election. This is what needs to be dealt with.

We have great experience of this in this country. Look at our planning, for example. Terribly important questions about planning are done at a totally local level, but there are certain safeguards. If you are given permission, there is nothing much you can do about it. If you are refused permission, there are appeals, there is an inspectorate, there is centralisation. We have probably as much experience as any country in the world, at the local authority level, with balancing local powers and central powers. We normally enter into that exercise with a great degree of circumspection and analysis. We do not do that at all in the area of devolution to nations.

The Chairman: Thank you very much. We have spent quite a lot of time on the first three questions, because these are central and very important issues, and your answers have been extremely informative and helpful. However, there are a lot of other specific points we want to raise with you, so we must try to make a bit of progress. Lord Morgan, would you like to ask your question?

Q7 Lord Morgan: Thank you, Mr Chairman. With regard to having something like a charter of union or some similar document or statute setting out the principles and structure of the
United Kingdom, would parliamentary passage, so to speak, be sufficient? Alternatives might be also to have approval from the Assembly or Parliaments in Wales, Scotland or Northern Ireland, or possibly a referendum. Some people have suggested some kind of constitutional convention. Would you feel that something wider than merely parliamentary passage would be sufficient?

**Professor Tomkins:** I am nodding, which is not really useful for the record, is it? Yes, I do very strongly feel that. I do not think that a mere Act of Parliament will be enough, and we can see that in the context of the current political skirmishes around the future of the Human Rights Act. One of the reports that this Committee produced when I was your legal adviser was a report on the process of constitutional change, and that report set out the very great importance of trying to proceed with consensus, rather than in a party-political way.

One of the unfortunate aspects of where we find ourselves in British territorial governance is that there is very little cross-party agreement at the moment. There is no agreement between government and opposition about English votes. There is very little agreement—too little agreement—between the Scottish Government and the UK Government about the Scotland Bill. I suspect that there might be some disagreements not too far into the future between the Welsh Government and the UK Government about the next steps in the St David’s Day process. The only bit of the puzzle where we do have some cross-party agreement is on city regional devolution in England, at the moment, but it would be not only futile but dangerous in my view, if you are trying to secure and strengthen the union, to proceed without cross-party consensus and without bringing the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly into the process.

**Professor Sir Jeffrey Jowell QC:** I would agree.

**Lord Norton of Louth:** To follow up on that, if these principles were embodied in, as you say, a charter, treaty or Act—and you have mentioned that that could be independent of moving towards any form of codified constitution—absent a codified constitution, how could one protect that measure, given the potential changes in government or the political situation in any part of the United Kingdom? If they are embodied by giving consent elsewhere, would you have to make them subject to some sort of an agreement? Could one protect that charter?

**Professor Tomkins:** It is possible, is it not, to deliver successful constitutional change in the United Kingdom, even in circumstances where you do not have immediate cross-party support, that turns out to be, one, pretty smooth, two, pretty stable and, three, pretty successful? I would have thought that devolution is an example of that. Of course, it was resisted to start with by the Conservative Party, but the Conservative Party is now more enthusiastic devolutionists than the Labour Party, certainly north of the border. It has all the ingredients that you need in order to try to engender a degree of stability. It had popular support to start with in the referendums. It had enactment by primary legislation and it has been supported, enhanced and helped, in my view, by the jurisprudence of the United Kingdom Supreme Court on devolution, which we spend quite a lot of time analysing and summarising at the back of the Bingham Centre’s report. If and insofar as the Bingham Centre’s report makes any really useful contribution, amongst its most useful contributions might be to try to synthesise what the lessons are from a pretty chaotic and messy series of about eight or nine Supreme Court cases. You have all three ingredients. It is very interesting how the Conservative Party calls the Human Rights Act “Labour’s Human Rights Act”, but it does not call the Scotland Act “Labour’s Scotland Act”.

**Lord Norton of Louth:** As a follow-up to that, there is still the implication of still seeking to protect those values that may be shared. The question that flows from it is: what are the consequences to the doctrine of parliamentary sovereignty? In your evidence, Professor Tomkins, you follow Dicey
in distinguishing between political sovereignty and parliamentary sovereignty. If significant constitutional change is to be endorsed by referendum, if there is going to be further change, is that then going to be subject to the people having to give their agreement, or would it still be possible for Parliament to pass it?

**Professor Tomkins:** I think, Lord Norton, the answer is probably yes. With each passing year, I am less and less of a Diceyan. I hope that is a tolerable thing to say in this Committee, but I am increasingly coming to the view that real constitutional authority rests in the combination of parliamentary sovereignty and popular sovereignty.

Think about this from a Scottish perspective. Think about the Claim of Right—the extraordinary claim to constituent power that is in the opening words of the 1989 Claim of Right. It has never really been challenged by any Act of the United Kingdom Parliament. As I say in my written evidence, that mere demand, that mere assertion, is not enough to grant home rule, as it was then called, with legal authority. You need an Act of Parliament as well. It is that coming together of what you might very loosely call popular sovereignty through a referendum and parliamentary sovereignty through an Act of Parliament that really vests a change in full constitutional authority. If you wanted to do this for the longer term—if you wanted to ensure, if you wanted to insulate, these constitutional principles of the union constitution in a way that managed to withstand changes in political tides et cetera—you would need to have that combination of constitutional authority that comes from both parliament and popular ratification.

**Lord Norton of Louth:** You are suggesting that we are more or less there and that what is needed is this charter, this drawing together of the principles, rather than a significant change in our fundamental constitutional arrangements.

**Professor Tomkins:** We have arrived at the position in the United Kingdom where we are able to harness popular sovereignty through referendums alongside legislative supremacy in parliament. We see the same in the EU referendum. Referendums require Acts of Parliament in order to have legitimate status. There is no standing referendums Act that just means that a Minister can call a referendum when he or she wants. Each referendum has its own bespoke statutory authority that is an Act of Parliament. If “Are we already there?” is the question, then my answer is yes.

**Professor Sir Jeffrey Jowell QC:** I would just like to say that Professor Tomkins was a student of mine, which was a great challenge to me at the time. The greatest challenge was to move him away from the pure Dicey position. I am so pleased that, in this room today, we have finally succeeded in this.

Yes, ideally we should have a written constitution. If you want permanent devolution, as the Smith report suggests, you have to have that. Of course, it is never totally permanent, because every constitution provides for amendment, with support from the regions and nations perhaps as well. Even a constitution is not totally written in stone. Short of a written constitution, a constitutional convention towards a written constitution is a wonderful idea, for reasons I have already given, but in the meantime there is no reason not to act now, because it seems to me urgent to act now. Such a charter, which would try to elicit the support of the devolved nations (and would have to do so if it is to have any real legitimacy and effect), is required. Of course, the great virtue of it again is that the provisions for amendment and change would be written into the charter itself, and we would know what the ground rules are.

**Q8 Lord Lester of Herne Hill:** In your written evidence, Professor Tomkins, you wrote that, “The asymmetry of the UK’s devolution arrangements is inevitable. It would be counter-productive to seek to iron out the differences and impose a single uniform model on all parts of the UK”. Just two
questions, if I may. First of all, I take it that you are not saying that we should not try to have core values that apply throughout the United Kingdom. You are not talking about ironing out those kinds of differences. Is that right?

Professor Tomkins: Correct, yes.

Lord Lester of Herne Hill: I thought it would be. The second thing is: who is to decide, judges, Parliament or through popular sovereignty, the allocation of powers between the centre and states, as it were? As you know as well as I do, in written constitutional federal systems, the courts ultimately draw the boundaries and decide to what extent a policing function should be federal or state, but we have tended to use Parliament on an ad hoc basis to make those distinctions. Is it your view, either of you, that those are questions best left to Parliament on an ad hoc basis, because whatever the constitutional charter they will still have to be decided, or do you think it is better as a judicial function?

Professor Tomkins: I think it is both. It is the function of the United Kingdom Parliament to legislate for the allocation of powers between the UK level and all sub-state levels in the United Kingdom, whether you are talking about local government, city region devolution or national devolution in Scotland, Wales and Northern Ireland, and the United Kingdom Parliament does that, at least with regards to devolution, by consent, with the relevant part of the United Kingdom, rather than by imposing it coercively. Local government in England is still treated differently.

It is then for the courts to adjudicate on disputes arising between private parties and Governments or between Governments and each other about whether a particularly ministerial action or parliamentary enactment is or is not within the competence. The United Kingdom Supreme Court does that as well or as badly as other constitutional courts do around the world. What we did in the appendix to the Bingham Centre report was to try to analyse the UK Supreme Court’s contribution to that task, and some of the judgments are more congenial than others. What we tried to do was to draw out the common principles in those judgments and to suggest, rather gently, to the Supreme Court and to others reading the report that some approaches are perhaps preferable to others. This is an issue that has divided the Supreme Court in the United Kingdom on a number of occasions now. Not all the judgments have been unanimous or anything like that. That is not uncommon; federal questions divide the US Supreme Court and indeed the Canadian Supreme Court quite frequently, and it is not a problem that the courts are divided, but it is something that the court will obviously want to take into account. My answer is that it is for Parliament to legislate with consent what the appropriate boundaries are, and for the courts to adjudicate on disputes arising thereunder.

Q9 Baroness Dean of Thornton-le-Fylde: Good morning. With devolution, it seems to me there are so many bids within the nations for different levels of economic policy. You have the SNP saying full fiscal devolution outside of defence and possibly monetary policy and foreign policy. You have Professor Gallagher saying that at least 50% of the resources needed for the devolved bodies should come from national taxation. I do not know how he has arrived at 50%. It just seems to me that figures are often almost just plucked out of the air and do not necessarily help the principles of the debate.

In Scotland, you have the NHS fully devolved and yet the permission or the provision within the devolution document of being able to raise taxation to meet whatever—perhaps you want 3% in Scotland—has never been acted upon, and yet it was a big issue in the referendum vote last year. At what point do you get to what I would call the tipping point of fundamentally moving away from
the union and the basic economic and welfare provisions of the nation as a union, but with the
devolved powers within it, to having complete separation or not?

**Professor Tomkins:** That is the $6 million question, is it not? In a sense, it is the same as the
question that Lord Lester asked. This is the act of British statesmanship, is it not? How much home
rule do we need to accommodate within the looser fabric of the new union state in order to keep
Scotland within the United Kingdom? Now, there are some places that you can look for help with
that question, and one place that you can look for help with that question is the range of successful,
prosperous federal countries in the western world, in Europe and in the Commonwealth.

People like Jim Gallagher get to the 50% figure by looking at what happens in places like Germany,
Australia, the US, Canada, Switzerland and the rest. There is no federal country anywhere in the
world where the sub-state legislature raises all the money that it spends. It is very difficult to get
above 60% without destabilising the centre. In the UK, it is difficult to get even as high as 60%,
because one of the taxes that makes sense to devolve you cannot devolve consistently with EU law,
for as long as the UK continues to be a member state of the European Union, which is VAT. It would
make sense, in addition to income tax, to devolve VAT, but you cannot devolve VAT, because EU
law requires each member state to have only one rate of VAT, so what we decided to do instead of
devolving it was to assign a share of it, which is the next best thing. It is not the same as
devolution, but it is the next best thing. To have a parliament, such as the Scottish Parliament,
which is responsible for spending like £35 billion without being responsible for raising very much of
that money is unsustainable. One of the tasks of all the parties that campaigned for a no vote in
the Scottish referendum was to think about how you could enhance devolution to close that fiscal
gap—to close the gap between what the Parliament is responsible for spending and what it is
responsible for raising. All three parties—the Liberal Democrats, the Labour Party and the
Conservative Party—focused on that question in their various proposals for further devolution,
which came to a head, of course, in the Smith commission. That is where we have landed. These
figures are not quite plucked out of the air, as you put it. They are thought about with reference to
successful comparative experience.

Beyond that, this is art, not a science, and this is a question of judgment and of statesmanship.
What is the appropriate balance of power? Given the craving for a substantial degree of home rule
that there is in Scotland, what is the appropriate balance of power between the Scottish Parliament
and the United Kingdom Parliament that is fair and just, not only to the 2 million Scots who voted
no but to the 1.6 million who voted yes, but also not so much devolution that it amounts to
independence by the back door? I think that Smith landed in a pretty good place. I think that the
Scotland Bill delivers Smith in full and on time, and I hope it has an easy passage through this
House, in due course. Others take different views. Others think that Smith went far too far and will
destabilise the union, and of course some think that Smith did not go far enough. As I say, this is a
question of judgment, and my judgment is that Smith gets it about right.

**Professor Sir Jeffrey Jowell QC:** I would just add to that that it is the $6 million question, but there
are some answers in a number of different countries. Germany, Australia, Canada, the United
States and others would be able to provide some of the replies or answers to your question. I have
no idea whether your inquiry will seek comparative evidence from other countries that have
embarked on this route and deal with these issues every day.

**The Chairman:** I feel sure we will. I wish we could go on for very much longer this morning with
these two distinguished witnesses, but you have been extraordinarily helpful to us. There are three
further questions I would have liked us to be able to ask, but sadly we are not going to have time.
One relates to the position of England within any new development, and English votes for English
laws, and other related matters. Secondly, there was the House of Lords and whether it should have a territorial role or some other role in a reform arrangement, and thirdly to give you an opportunity to give a wind-up comment on anything you think we have not asked you about but you wish we had. I hope it is not too much of an imposition if I asked you to think about putting pen to paper to us on those three issues, which would be enormously helpful and would embellish what you have already touched on in your extremely good answers. Thank you very much indeed for coming.
1. Is a settlement that does not include legislative devolution to or within England sustainable in the long term?

- Can a parliamentary mechanism such as ‘English votes for English laws’ or an English Grand Committee answer the ‘English Question’?
- Does decentralisation under the Cities and Local Government Devolution Bill and City Deals provide a long-term solution?

I am not in favour of an English Parliament; nor am I in favour of England being broken into regions with elected regional assemblies. I am in favour of a two-pronged answer to the English question, the first prong being to recognise that the UK Parliament is both the legislature for the United Kingdom and England’s legislature. This is what “English votes for English laws” does, by making it clearer which of these two roles the House of Commons is playing at any one time. I have voiced some concerns about the detail and delivery of “EVEL” in my written and oral evidence to the House of Commons Procedure Committee (published on that committee’s webpages), and I need not rehearse those concerns again here, but as I stated in my evidence to that committee, I support the principle of EVEL. The second prong is to seek devolution within England along the lines of the Government’s city deals and growth deals programmes, both of which I strongly support. We wrote about this in Chapter 5 of the Bingham Centre report, A Constitutional Crossroads, and, again, I need not repeat here what we wrote there.

2. A ‘territorial’ role for the House of Lords is widely advocated. In the absence of any proposals for large-scale reform of the House, are there ways in which it can adapt to fulfil such a role?

I am in favour of exploring ways in which this may occur. But I would suggest that we should not underestimate how big a change this would be. At the moment the constitutional function of the Upper House is to act as a revising chamber. Legislative scrutiny is what the House of Lords does best (aided, of course, by its scrutiny committees!). It is not at the moment the constitutional function of the Upper House to represent the nations and regions of the United Kingdom. I do not know if the two functions could be effectively melded together, but I rather doubt it. To “bolt on” a regional representation role to the House’s existing legislative scrutiny role would likely do more harm than good, I should have thought. House of Lords reform has become stuck, as an item on the menu of constitutional reform, because far too much attention has been paid its composition and far too little attention has been paid to its functions. To begin a new campaign for Lords reform by reversing this – and focusing on functions rather than composition – may well be more profitable and has a lot to commend it.

November 2015
The Chairman: Can I welcome Paul Nowak, the assistant general secretary of the TUC, and Tony Armstrong, the chief executive of Locality? In the case of Mr Armstrong, thank you very much for providing copies of the recently published paper by Locality, on Devolution for People and Communities. We would be very interested to hear what you, from your individual perspectives, have to say about the subject of our own inquiry. Perhaps I could begin by asking you about the sharing of risks and benefits, which is often referred to in terms of being a social union, or creating social solidarity. It has been described as binding the union together by redistributing revenue and pooling and sharing risk, through welfare benefits and through the pensions system. That is the context I am talking about. How important do you think this is, and to what extent is it put under pressure by devolution or the extent of devolution?

Paul Nowak: Lord Cullen, first of all thank you for the opportunity to give evidence to the Committee. The TUC represents just short of 6 million working people, right across all the regions and nations of the UK, and that description of the union in terms of pooling the benefits and risks is one that we would recognise. It is fair to say—our members see this very much, and our unions see this—that there are huge variations between the regions and nations of the UK, not just in terms of economic variations and differences in GDP but also measured by some of the key socio-economic indicators, whether that be health or whatever. Therefore, there is a value in thinking about how you pool risks and benefits.

Politicians across the political spectrum have recognised that. People are talking about the need to rebalance our economy, not just in terms of the balance between services and manufacturing but
between the regions and nations of the UK. We think it is vital that the benefits of the union are expressed and maintained.

**Tony Armstrong:** From Locality’s perspective, we cover England. We are an England-only organisation, but we have sister organisations in each of the three other parts of the UK. Certainly talking to our sister organisations regularly, as we do, the thing that springs to mind when thinking about this question is that sharing of information and resources is something that is incredibly valuable. As the devolution settlement has unfolded over the past couple of decades, we have found that sharing of information and solidarity across borders is more important—to learn from each other and to share. Things like welfare are where it is particularly important, because they are mostly reserved matters, so it is something on which we work together, as four organisations across the UK.

The other thing about risk that is very important to our members is that they own assets, buildings and land. If you think about the whole context of the rise of social investment, particularly over recent years, and financial instruments and models, risk becomes a very important thing that is shared across borders. When you think about communities taking on quite difficult and challenging assets or liabilities, or perhaps they are liabilities that they want to turn into assets, risk becomes very important. Some of that work is done on a scale that is appropriate at the UK level, rather than at the level of each nation.

**Q212 Lord Morgan:** The social union and the idea of the social solidarity of the different parts of the United Kingdom is something that has been widely stressed. Different views are taken of it, of course, are they not? Between Scotland and Wales, for example, in terms of the way policy is currently going, there might be a feeling that social provision would be different and less robust in some parts of the country. The Scotland Bill appears to provide for additional assistance from the Scottish Government, through fiscal autonomy, compared with what might be received in other parts of the country—in Wales or, indeed, the poorer areas of England. Do you feel this kind of consideration is a risk for the idea of a social union?

**Tony Armstrong:** We do not take a particular view on the advantage or disadvantage or whether or not it is desirable to have further devolution or separation. The principle that really guides us is that decisions should be taken at the closest possible level—the subsidiarity principle. We know that currently at a UK level, or indeed any of the other levels of governance, decisions are taken at a level that is inappropriately distant from local communities. It is certainly something that we have been concerned about with the moves for English devolution: the danger is that, in using the rhetoric of pushing powers down closer to local people and communities, we will end up centralising some powers at a sub-regional level. For us it is not so much about the governance at the UK level and between the individual nations and regions; it is between local neighbourhoods and local community decision-making, and then the various decision-making powers above that.

**Paul Nowak:** The comment that I would make, Lord Morgan, is that we are very acutely aware, representing people across all of the regions and nations, that there is no value in having regions and nations pitted against each other and in some sort of competitive situation. There are very clear risks, just as there are clear benefits, to the whole devolution agenda. Just to share a couple of thoughts on those, in our contact with the Smith commission, for example, we were very clear that we did not feel that there was a case for devolution of issues like the national minimum wage or employment and trade union law. We think it is important that, wherever you live in Great Britain, you are subject to the same provisions in terms of employment law and you have the same rights at work, whether you work in Glasgow or Guildford. Likewise, on the national minimum wage, we
were very concerned that could have been the precursor for the regionalisation of the national minimum wage more broadly. At a time when the economy is still fragile, that means regions having the potential to set lower minimum wages, competing against each other on the basis of who has the lowest minimum wage. We do not think that sort of race to the bottom does anybody any favours at all.

Likewise, we have real concerns about issues around regional pay, and maybe we will get into this during the course of the discussion, but just as people are worried about a postcode approach to the provision of services, so we would be concerned about a postcode approach to pay terms and conditions. One of the things that we have argued consistently over the last few years—at the same time as supporting devolution and the developments in Scotland and Wales, and devolution in the English regions—is that we do not want to see that at the detriment of public sector pay terms and conditions. It is interesting, for example, that many of our largest successful private sector organisations maintain national pay frameworks, because they are coherent, they make sense and they address issues around equality, and we would not want to see the move towards devolution, either in the nations or regions, leading to any negative impact on pay terms and conditions.

Lord Morgan: I am very sympathetic to that, but you rightly say, Mr Nowak, that you do not want to pit one region, or indeed nation, against another, which is entirely right, but is that not in danger of happening? The Scotland Bill, as I say, does appear to allow for the possibilities of social security payments being distinctly stronger and better in Scotland than in other parts of the UK.

Paul Nowak: Some of those concerns are part of the reasoning underpinning the move in the English regions to greater devolution, and we are seeing developments in not just Greater Manchester but in the north-east and Birmingham as well. From the TUC’s perspective, we are very clear there needs to be a common set of standards around things like welfare, employment law and rights at work. That is to the benefit of workers in Scotland, in Wales and across England as well.

Lord Morgan: Thank you.

Q213 Lord MacGregor of Pulham Market: It seems to me you are in an almost impossible situation. The whole principle of devolution, and we are going to see it in a whole set of areas, is for local parts of the UK to decide. We are already seeing it in Scotland on tuition fees, and other things. Is it not inevitable that, if you give greater powers to the devolved assemblies, they will use those powers and it will lead to differences in the very things you do not want to see differences in?

Paul Nowak: To be clear, there have been very clear differences emerging over the last few years in areas like education and health. Some of those I would characterise as positive differences. If you take the approach to education, for example, in both Scotland and Wales, successive Scottish and Welsh Governments have decided not to go down the route of academies, free schools and the fragmentation of education, and the teaching unions and teachers that we represent would see that as a positive step forward. It is important that we do have a devolution settlement such that those national Governments can take responsibility for those areas. From my point of view, I would not want to see as a consequence of that teachers working in Cardiff being employed on poorer terms and conditions than those employed in Colchester, by dint of the nation in which they work.

There will be differences, and again there will be positive differences. If you think about public service reform and the pressures on public finances, we know whether you are in Scotland, Wales or England—across the regions—public finances are under pressure. If you look at Wales, one of its characteristics—and it is not perfect, by any stretch of the imagination—is that over the last few years they have tried to embed a partnership approach to those very difficult issues around public service reform. Local government, employers, the Welsh Government, trade unions and the
voluntary sector sit down in a workforce partnership council to try to mitigate the worst impacts of those pressures on public spending and to navigate the way through public service reform. There are always, clearly, going to be risks but, as I say, there are also positive experiences to draw on from the devolved Administrations. Maybe one of the bits of learning is how we better share some of the best practice between Scotland, Wales and increasingly the English regions, as we move forward.

**Q214 Baroness Taylor of Bolton:** You are talking about positive differences, in terms of top-ups. Do you think there is a definitive list of those areas of public policy that must be determined from the centre, or at least where there must be a floor from the centre, and if so what does it include? Healthcare? Welfare? Where would you see the situation developing in the future, for example with the steel redundancies that we have had? If we had the same steel company in the north of England and in Scotland, with different top-ups, would you see that as positive or would you see that as undermining the principle of equalisation of conditions?

**Paul Nowak:** Steel is a good example of the need for action at a regional/national level, but also at a UK-wide level. While there may be additional support that, for example, the Scottish Government might provide for particular companies, some of the big issues facing our steel industry, whether subsidies to mitigate the impact of carbon taxes or the issue of China’s market economy status, can only be dealt with by the UK Government. I would be very wary, Baroness Taylor, of saying there is a definitive list of areas that should or should not be devolved. We are moving towards the situation we have in Wales, where it is incumbent on the Westminster Government to identify areas. Going back to Tony’s point on subsidiarity, why could you not devolve an issue? There are some things, such as defence, where I do not think there would be any appetite, but with macroeconomic policy there is a recognition that you have to have a view across the whole of the UK. Clearly, though, there is education and health, and there are colleagues in Wales pressing for, for example, thinking about policing in Wales and the scope for extending powers in that regard. I would be wary of a list, and I suppose that the point I would stress is the interaction between what happens at a national/regional level and what happens on a UK-wide level, as well, and steel is a good example of where you need action by Government right across the piece.

Sorry, Lord Cullen, for a very long-winded answer, but there was some really positive work done in Wales, for example, in the aftermath of the crash in 2008. They set up ReAct and ProAct, which were schemes to mitigate the impact of or avoid redundancies. That was a piece of learning that could have been applied in other parts of the UK as well. Jobs were saved in key sectors like automotive, because the Welsh Government took positive, proactive action.

**The Chairman:** Mr Armstrong, do you have anything to add?

**Tony Armstrong:** We do not take a particular view on the UK settlement, being an England-only organisation. I suppose, as a fairly neutral observation, what has been quite interesting is the impact on the charitable sector as devolution has unfolded, because more UK-focused organisations have found it now impossible to act on a UK basis, and so have federated or become separate organisations. In our own case, we are now four separate organisations with our own independent boards and independently constituted organisations, when a few years ago we used to operate much more as one single set of organisations. Although we have always had strong individual focus in each of the four nations, we have become wholly separate now. It is more about a partnership of equals, because the political, policy and regulatory environment is now so different in each of the four areas. Again, it is about learning. We all look longingly at various aspects of the policy environment in each of the four, depending on the combinations, but it is quite an
interesting development. It has made the job of the charities sector slightly more difficult, in managing that transition, but it is quite interesting now that we have more equal relationships.

**Q215 Lord Norton of Louth:** I have similar questions, I suppose, but within the context of England and the devolution taking place, because it is not uniform. We are seeing asymmetrical decentralisation, and the evidence we have had on it so far is varied. Adam Tomkins saw it as a virtue; Professor Robert Hazell said he thought it was probably not sustainable. How do you see the benefits and disbenefits of asymmetrical decentralisation from your perspective? Is there the danger that some are going to be left behind as a result of the process that we are presently seeing?

**Tony Armstrong:** For us there is a very parochial difficulty. It becomes even harder to keep in touch with, lobby, support and feed into the differences, because you have wholly different structures springing up in different places. For the voluntary and community sector in general, it becomes more difficult to keep track of that. One of the things that we have highlighted as a particular difficulty is that, with the move to create self-sufficient local authority funding streams, you end up potentially mainstreaming deprivation into funding settlements, because you have a lower tax base for people to use, and if you are relying on generating your own income, obviously you have different possibilities depending on where you are and who lives in the area.

We have not yet seen an answer to that problem, and I know that there is a Government consultation on transferring some resources, but it is a really big problem for us. That is our major concern, and a lot of our members are operating in some of the most challenged neighbourhoods, and they have often had minimal public sector investment, lots of social problems, which are increasing, and it is going to be difficult to sustain funding using locally generated income from that neighbourhood.

In parallel we have also seen the withdrawal of lots of services from some of those more deprived neighbourhoods and challenged areas. In some cases, local council offices have now been centralised, perhaps to the town hall, so on an estate or in a particular neighbourhood you do not have those strategy services operating. There is now a weird transfer of wealth going from the neighbourhood in terms of council rents and things that people are paying for locally, and they are not getting back the services locally in that neighbourhood. It is a double whammy: you are withdrawing those services as well as seeing that reduction in overall income for the area.

**Paul Nowak:** I will just pick up one thing, Lord Norton, from Tony’s contribution, and then maybe talk a little about asymmetry more broadly. All of this is happening in the context of very difficult pressures on public sector spending—a 37% cut in local government funding from central government over the last five years—and that puts real pressures on our core cities and regions right across the UK. I would say that there is nothing fundamentally wrong with having an asymmetrical approach. I do not think there is a blueprint for devolution. By necessity, devolution is going to look slightly different in the north-east than it will do in the Midlands. There are some very real concerns out there that are fed back to me from regional TUCs about whether this rush towards devolution works in some parts of the country. Yes, we can see how it works in Manchester and potentially in Liverpool and in Birmingham; we are struggling to see how it works in the south-west, where you have a much more disparate region and you do not have the same sort of core cities across the region. There are concerns very much there.

Rather than having a blueprint, there are some fundamentals that you need to see in all of the devolution settlements. From the TUC perspective, that would be things like positively engaging the workforce. We have done work in Greater Manchester as part of the Devo-Manc deal. We have just
agreed a protocol on handling workforce issues, which brings together the different unions representing people across the different parts of public services in Manchester, in health, in higher and further education and in local government. How are we going to work together with the new devolved machinery in Manchester? We would extend that and say there is a need to engage not just the workforce but the local citizens and civic society organisations as well, and there is probably learning that can be taken from the best of the old regional assemblies in that regard: how you empower voluntary and community sector organisations, trade unions, local businesses and others to engage in these new structures. That is important.

The one thing that is missing from our perspective is, if we agree that there is no blueprint for what devolution looks like, do we have a shared vision of what we want devolution to deliver? It is clear, because of those funding pressures, lots of local authorities are reaching out for these deals, quite rightly, because I understand in this context that, if you are a local authority leader, anything that improves your financial position is something you are going to look at positively. However, they are reaching out without clearly thinking through what they want devolution to deliver. For me, it is not devolution for devolution’s sake. It is thinking: is there a shared vision within the region or locality? Can we use this not just to boost the regional economy but to make this a better, fairer place to live? Can we improve the quality of employment? Can we use the procurement opportunities that we have, the economies of scale, to drive improvements in the procurement process and the supply chain? It is the vision bit that is missing, and partly because there has been a rush, the money has been dangled; I understand absolutely why people say, “It is important that we make these deals, because we need that cash, and we need it now, as well as the additional responsibilities that the deals bring”.

Lord Norton of Louth: I suppose that the question is then, how would you get people to agree the vision? There has to be agreement.

Paul Nowak: There has to be a vision that goes beyond the leaders of the particular local authorities within a locality. We held an event just before Christmas in York, which brought together union representatives from across the country, local authority leaders, including Simon Henig, from the combined authorities in the north-east, and community and voluntary organisations; Tony Lloyd was there from Manchester. One of the criticisms that came across very loud at that event was that people felt these were deals done behind closed doors. If you are serious about reinvigorating local democracy, how do you engage local people right from the outset rather than presenting them with a fait accompli? Now, again, I would not take anything away from local authority leaders across the political spectrum. We know the pressures they are under. In many ways the timing of this is being taken out of their hands, but it is important to find ways right at the outset of engaging the broader spread of civic society, rather than this being seen as a deal done behind closed doors by local authority leaders.

Tony Armstrong: We would definitely agree with that. The development of some of the deals and geographical combinations of authorities is quite interesting. We have been doing a lot of work in Yorkshire, and there have been various negotiations going on about who is in and who is out of various deals, which is done entirely without any public accountability or scrutiny. Some of the councillors that we have been talking about in local authorities have also been completely in the dark about some of the negotiations being carried out.

There is a necessity, I guess, to restrict negotiations to a small group of people to make it workable, but where is that debate about what kind of area you want to have? One of the things we have been saying in the paper that was mentioned earlier is whether there can be some kind of mini constitutional convention—that type of approach—where you bring in civil society and people from
outside the public sector to talk about what kind of city, city region or county we want to have. The deals have been made because there has been a particular process that has been introduced, and that has been externally imposed, but let us use this now as a starting point to say, “Actually, okay, we have established the geographical boundaries. We have swallowed an elected mayor for the region. What do we want to see in terms of the onward devolution opportunities down to communities, and can we create that positive vision?”

Q216 Lord Norton of Louth: I am from Hull and on the commission that is trying to do this at the moment, and we are about to report. I suppose the question is, from what you have said, what if agreement is not reached? If there is no shared vision—if you cannot bring people together, whereas other parts are reaching agreement—does that not create the position that Robert Hazell was saying may be unsustainable?

Tony Armstrong: We have said this is a process, not an end result. We are at the stage where we are imposed largely by central government’s timing on it. I suspect it is going to take quite a lot of time to build up trust and any sense of interest in a lot of these areas. We have been talking to some of our members and they are some of the most established—they have the most capacity within the community and voluntary sector to engage—and very small numbers of them are knowledgeable about what is happening in their local area or have the capacity or inclination to feed into things. That is one of the reasons why we have been interested at a national level in saying, “You really must be interested in this, because decisions are going to be taken that will directly impact on your work”, such as where commissioning sits in these new structures.

I suspect it will be bumpy and it will be a long-term process, but unless you build up that conversation across civil society, we are definitely guaranteed to have alienation from the process and poor access to decision-making processes. In some areas, let us not forget, people have voted against having mayors and now have elected mayors. I know they are not the same geographical coverage, but that is quite a tricky thing to explain to local people, along with why things are happening. It is imperative that you have that ongoing process of consultation and involvement of people, or else you are just going to have, at best, complete ignorance and a lack of engagement with the new structures.

Paul Nowak: I would just reinforce the point. It is incumbent on national government not to set artificial deadlines or in some way to guillotine the opportunity. From the TUC’s perspective, it is better that these deals are worked out and done well than necessarily done quickly. Obviously, you are always going to struggle to get absolute consensus, but I genuinely think local politicians working with local businesses, local community sector organisations and organisations like trade unions—we had experience through the regional assemblies and regional development agencies—can build, if not consensus, a shared vision.

The only other point I would add, Lord Norton, is about capacity. It is important to provide the space for community and voluntary sector organisations and, from my point of view, trade unions to engage in these new structures, but you have to help build the capacity for people to engage in those structures as well. We have about 160,000 workplace representatives; we train 65,000 workplace representatives each year. Am I confident that in all of these new devolved arrangements we would have fully skilled, fully trained, confident union reps who could go in and articulate the concerns and issues of working people? We would struggle right at the outset, and so thinking again about how local government can facilitate capacity-building is important. I used to be the TUC’s regional secretary up in the north-east during the days of One North East, the regional development agency, and the regional assembly. We did a lot of work to try to build a capacity of
not just unions but community and voluntary sector organisations to engage in the new structures, because just giving people a seat at the table is no good if they are not properly supported to be able to take full advantage of that opportunity.

Q217 **Lord Maclennan of Rogart**: What I would really like to hear is how you would structure public engagement so that you and your organisations can get the message across or derive the message from the public. You mentioned a convention and you talked about taking time, but it does seem to me that the issues of decentralisation are with us and, if we delay too much, we could face the break-up of Britain. How would you like to see this structured?

**Tony Armstrong**: For us, it is about building on existing networks and on what is already there. Often, when particularly local authority consultation is done poorly, it is because it is done in a rush and as an exercise because you had to tick a box, rather than going to where people are engaged in conversations about what is needed locally. A very good recent example is Leeds City Council, where we were talking to the Chief Executive about the deal in West Yorkshire. They had got all of their cabinet out and gone to community organisations, held their cabinet meeting there and talked to people who were in and out of the centre, rather than asking, in a fairly dry exercise, what people think about the future. There are lots of organisations, infrastructure organisations, community anchor organisations, that we represent and other voluntary bodies out there that have direct access to client groups or service users—people who are experiencing some of the services that are on offer or some of the things that are at stake. Going to those groups and talking to those people directly is something that is really useful, rather than overlaying a rather bureaucratic process on top of that.

**Lord Maclennan of Rogart**: Who should be doing that?

**Tony Armstrong**: It should be certainly local councils and other public sector bodies as well, like the NHS. The NHS is sometimes poor at engaging with the public. It tends to be focused on patients rather than thinking about the public in general. We have seen that increasingly as prevention types of funding and prevention services have declined.

If you are having a conversation in the context of devolution deals, when you are setting up the new structures—and usually that will be led by local authority officers and councillors—decision-making routes need to be built into the process, and consultation and engagement routes into those. Although it is not a long-term gap before things happen—I am not suggesting that people sit around for three years discussing what area they want to look at—it is more of an iterative process. By all means implement the deals, get on with the elected mayors, because that is happening, and think about where budgets are going to be delegated, but alongside that also have an ongoing conversation about how decisions can be devolved further to local neighbourhoods and communities.

One of the ideas that we have suggested that deserves discussion is whether, rather than shifting responsibilities around various bits of the public sector, you could shift responsibility out to civil society, to existing community and voluntary organisations, many of which are already delivering public services on a contractual basis. You could take a step further and think about setting them up as partners to statutory bodies, who could then ask for a review of particular statutory services and then take on more responsibility, with appropriate oversight and accountability, which obviously needs to be built in. Rather than just thinking of it as the public sector deciding which bits they will let go of and which bits they will retain and how to rearrange them, other people can play a bigger role, which is the big society concept. I think that was the original intention of it: that community
organisations can play a more active role in delivering and designing services at a more locally appropriate level.

**Paul Nowak:** To reiterate what I said before, Lord Maclennan, we would support the idea of civil society forums that underpin these new devolved arrangements in the English regions, but I would make a particular pitch for the need to engage the workforce. When I talk about the workforce, I do not just mean the directly employed public sector workforce—those people delivering health services or local authority services in a particular area. If you are serious about economic regeneration and about a shared effort to improve economic performance, think about how you engage workers across the private sector as well. One of the critiques I would have of existing pieces of architecture, things like the local enterprise partnerships, is that they are very narrowly defined; it is local authorities and local businesses. We do not think about how the public service can support economic development; we do not think about how you engage the workforce in that process. These are not new ideas: going back to the old days of the training and enterprise councils, there used to be union representatives sitting on those; union and employee representatives sat on the regional development agencies. You need to think about ways of reaching out beyond local politicians.

It is important to make the point that it is not as if the situation on the ground is perfect now. People quite often feel disconnected from local government. They certainly do not have any sense that they have any say in how local health budgets are allocated or those priorities are identified. We saw with the turnout for the police and crime commissioners that people do not seem to be demonstrating the sense that they really own these new posts. This could be an opportunity to reinvigorate local democracy and should be seen as an opportunity to do so. For me, that means more than just asking people to put a tick in a box once a year at their local council elections. It is giving them other types of opportunities to get engaged.

**Lord Maclennan of Rogart:** Who should take the initiative to stimulate what you are describing?

**Paul Nowak:** Ultimately, the responsibility in each of the devolved arrangements will lie with local authorities, but I would like to see clear guidance coming from central government saying, “We are not going to set out the blueprint for devolution, but there are some fundamentals that we think should be part of every devolution deal”. That would involve setting out how you are going to actively engage local civic society, setting out how you are going to engage the workforce, and setting out how you are going to use this as an opportunity to boost local democracy rather than to circumvent local democracy. Central government could insist on that as part of their process of agreeing these new devolved arrangements and set some of those basic benchmarks.

**Q218 Lord Lester of Herne Hill:** Do you think that devolution in general and decentralisation in England in particular risk making lines of accountability for public policy less clear?

**Tony Armstrong:** Inevitably, that is happening right now in terms of who is accountable for who is in and who is out of various geographical combinations and what kind of powers. As I said, many councillors are completely absent from those conversations, so in terms of the process currently that is a huge risk about being unaccountable. I think, though, we probably have to look at how to treat accountability slightly differently in devolution. One thing we have been saying to our members is it is going to be more annoying for all of us to engage with, because there is not going to be a neat pattern of structures that is consistent across the country. There are going to be different things that happen in different areas, and so everybody needs to respond to those in a different way.
There are some more interesting things we can think about in terms of accountability. Some of what I was just saying around devolving powers potentially to non-public-sector bodies or community organisations would be a prime candidate for that, to deliver aspects of services or to fulfil parts of what are currently local authority responsibilities. There has to be accountability around that, but it does not necessarily need to be all routed through a local authority/councillor state.

Echoing what Paul was saying, the current situation is already quite fraught with unaccountability in the system. If we think about the commissioning framework, at the moment commissioning is a problem with local authorities. We are seeing an increase in the scale of contracts, which means that lots of local providers are effectively blocked out of even competing for some of those contracts. If you are letting a big contract because you need to save money and you have put lots of services in one pot and then put it out to the market at £20 million, you are not going to get many local providers who are able to deliver that. We have seen outsourcing companies and large national charities being the only people who can bid for things, undermining current contract delivery from small businesses and small community organisations. The relationship between the democratic accountability of how they manage those contracts and the delivery is already very opaque in terms of who is really accountable for delivering some of those things, and we have seen some contracts being handed back to the state unfinished, leaving a huge problem.

I would argue it is not particularly accountable at the moment, so are there ways that you can break down some of that? For us, it is about the principle of keeping it local, making sure that local providers are able to bid for things. Although it may seem that it is not a cost saving for a council to have relationships with many providers locally, there is a myth that people are saving money by that scale and standardisation happening at the moment.

If you have closer relationships on an ongoing basis with smaller organisations, we think there is more knowledge that is happening between local council officers and councillors and local organisations. There is more direct accountability from the delivery agencies because they are from the local area and, therefore, have a stake in the success and economic growth of the local area. Very importantly, they are retaining wealth and employment locally, so not just having money going out to a head office but staying in the area. If you look at that in terms of the accountability to the local area, retaining economic growth and the proceeds of growth in an area, you start to have a different conversation about how to imagine services being disbursed and how contracts are let.

**Paul Nowak:** Going back to your question as to whether lines of accountability are in danger of being blurred, I think they could be. One of the concerns that we have is that you have devolution of responsibilities without devolution of adequate resources to accompany those responsibilities. If you think about the most advanced devolution arrangements in the English regions, in Manchester, Greater Manchester councils have lost £1.5 billion worth of central government funding since 2010. The independent King’s Fund says that it faces a health-funding deficit over the next five years of £2 billion. You can achieve a lot of efficiencies and savings by combining and integrating health and social care in Greater Manchester over the next five years; you are going to be pushing it to find efficiencies that will deliver £2 billion worth of savings. There is a danger that the responsibility is devolved and pinned on local politicians and it allows national government to say, “That is your responsibility. We gave you those powers. You are responsible for running health and social care in Greater Manchester”.

There does need to be a serious and grown-up discussion about funding for our public services. If this was happening at a time of growing public spending, more investment in local government,
more investment in health, it would be a very different picture from the one now, where people are having to make very difficult decisions on funding and on local authority employment in particular. From speaking to local politicians, I know that they want to step up and take responsibility on behalf of their local communities, but they are worried about what the reaction of the voters is going to be in a few years’ time when national government turns around and says, “This is all down to you. You have had the tools”. There is a danger that lines of accountability do get blurred if resources are not put in place to support these new arrangements.

Lord Lester of Herne Hill: As I understand your evidence, you are not advocating some form of legally enforceable set of standards as, for example, you have for equal pay for women where, because of EU legislation in particular, devolution does not allow unequal pay for women to prevail. However, you are not advocating, are you, some legally enforceable set of standards that would protect what you regard as the national interest?

Tony Armstrong: No.

Paul Nowak: No. If you take health as a very real example, we have long been supporters and proponents of integrated health and social care. One of the interesting things about the developments in Manchester is that is a fundamental part of the new arrangements—a drive to integrate health and social care across Greater Manchester. That is a good thing, but we want that within the context of a national health service. How do you maintain national standards? How do you ensure that people in Greater Manchester still get the quality healthcare that you get in other parts of the country? I do not think that is by setting legally mandated targets, but it does pose a question about, rather than imposing targets or standards from the top, what the process is for devolved authorities, national government and national government departments to agree the standards they will apply, so it does not matter if you live in Greater Manchester or in Guilford: you can still expect to be seen by a doctor within a certain time. I do not think that is a set of legal standards. It is about local government and Westminster working together to set mutually agreed standards. The National Health Service should remain a national health service, albeit it is responsive to the needs of local communities.

The Chairman: We have to stop there. Thank you very much indeed for your evidence on the basis of your experience and the perspective of the organisations that you represent. Thank you indeed.
Transcript to be found under Professor Charlie Jeffery, University of Edinburgh
ABOUT US
UNITED AGAINST SEPARATION is a grassroots campaign group that supports Scotland remaining part of the United Kingdom. With over 65,000 supporters on Facebook, we have the largest grassroots social media campaign of any group opposed to separation.

OUR VIEW
Firstly we would like to welcome this inquiry as we share some of the concerns raised by the Committee and we believe that not enough is being done to strengthen the United Kingdom. The only solution currently provided by all the main Pro-UK political parties appears to be to continue devolving more and more powers to the Scottish Parliament and other devolved institutions without recognising this undermines the UK Parliament and the nation state.

On the 18th of September over 2 million people voted for Scotland to remain part of the United Kingdom, this decision was decisive and the UK Parliament and Her Majesty’s Government now have a clear mandate to strengthen Scotland’s place within the United Kingdom. Over a year has now passed since the referendum and sadly nothing has been done to address the serious problems facing the union, this has led to a void that has been exploited by the SNP and resulted in increased support for their cause.

Urgent action is now needed to stabilise the devolution settlement, strengthen the Union, and prevent more damage being done to the United Kingdom. There are a lot of different actions that could be taken, much of which does not require legislation, and would not be expensive to implement.

Below is a list of recommendations we believe the UK Parliament, Her Majesty’s Government, and political parties that support the United Kingdom should take.

RECOMMENDATIONS
On the current Scotland Bill before Parliament:
Defend the sovereignty of the United Kingdom and UK Parliament
The United Kingdom is a country and sovereign state with a sovereign UK Parliament at Westminster. No steps should be taken that undermine the sovereignty of the UK Parliament or the status of the United Kingdom as a sovereign country.

We are extremely concerned about attempts to amend the current Scotland bill to more deeply entrench the Scottish Parliament. The current wording meets the commitment made in the vow, no amendment should be supported that in any way could be viewed as transferring sovereignty to the Scottish Parliament or limiting further the power of the UK Parliament to abolish or change the Scottish Parliament, nor should the UK Parliament be prohibited from legislating on devolved matters when necessary. The UK is not a federal state, ultimate legislative power and authority rests with the UK Parliament which has chosen to devolve some of those powers to the devolved institutions. The principle of UK parliamentary sovereignty must not be undermined further.

Do not allow the SNP to abolish the British Transport Police in Scotland
The Scotland Bill currently proposes transferring policing of the railways to the Scottish Parliament,
whilst this was part of the Smith Commission recommendations, it was never part of the agreement to allow the SNP to abolish the British Transport Police in Scotland which they have announced they intend to do. This is strongly opposed by unions, and by the British Transport Police themselves, and all 3 of main pro UK political parties in Scotland, yet the power to do it is still going to be devolved?

We strongly recommend an amendment to the Scotland Bill to ensure that the British Transport Police remains a Great Britain wide organisation and to prevent the SNP Government from having the power to abolish it in Scotland. The Scottish Parliament could be given greater oversight, but for many reasons including the security of our railways and to prevent the further undermining and extinction of another British organisation in Scotland, the current legislation must be changed.

**On Devolution for England:**

*Do not risk further harm to the United Kingdom by introducing “English Votes for English Laws”*

We recognise that the current devolution settlement is not symmetrical and given the nature of the United Kingdom and its constituent parts, it never will be. There will always be differences between each part of the United Kingdom and this will always be exploited by those who seek the destruction of our country, but the solution is not a change that will make the situation worse. The greatest threat of nationalism still remains Scottish nationalism, attempts to encourage or appease English nationalism will fuel even more support for separatism across the United Kingdom, including in England. “EVEL” will not stop an English nationalist from saying “it is not fair that Scotland has a Parliament but England does not have one too”, but it will result in Scottish nationalists claiming discrimination against Scottish MPs.

The previous proposals put before the House of Commons are unacceptable and extremely dangerous. We strongly urge all political parties and especially the Government to think about the long term consequences of such proposals and recognise that the rushed nature of devolution in the 1990s has led to an increased threat to the United Kingdom. Repeating this mistake by rushing through fundamental changes to standing orders which would restrict the rights of some MPs based on their location is not just an unworkable option that solves nothing, but it is an attack on the Union that makes the situation far worse.

To prevent a rise in English nationalism, the best approach is to encourage support and understanding for the United Kingdom, something that can easily be done with the right policies. Some of the recommendations below are proposals that would not only strengthen Scotland’s place in the United Kingdom but strengthen the whole of the United Kingdom.

**On ensuring that the devolution settlement is stable and not undermining the United Kingdom:**

*No second referendum*

Scotland has voted to remain part of the United Kingdom in what was described by the SNP at the time as a once in a generation vote. It is totally unacceptable for a second referendum to be permitted or even considered so soon after the clear mandate for the UK was given. If the SNP are allowed to constantly re ask a question until they get the answer they want, there can be no stability. All pro UK political parties and the UK Government should explicitly rule out a second referendum for a generation.

*Pro UK Political parties should rule out further devolution*

Following the referendum all 3 of the main Pro UK political parties and the Greens and the SNP came together in the Smith Commission and agreed an extensive increase in powers for the
Scottish Parliament. This should be the final settlement for the Scottish parliament. There can be no stability when every few years pro UK parties are suggesting and allowing for further powers to be devolved. This is undermining the UK parliament and if it continues it moves us closer to separation.

Ban the Scottish Parliament and Scottish Government from interfering in reserved matters
The Scottish Government should not be allowed to express an official position on any reserved matter, to do so undermines the UK Government. Whilst the Scottish Parliament is prohibited from passing legislation on reserved matters, it does pass motions beyond its remit, including when it has symbolically voted on Trident which is clearly a fully reserved matter.

Change the Civil Service Code to prohibit civil servants undermining the United Kingdom
The British civil service is paid for by the British Taxpayer. It is totally unacceptable that civil servants working under the SNP Government should ever carry out any action that undermines the United Kingdom or promotes separatism. The outrageous White Paper “Scotland’s Future” during the referendum was a gross misuse of civil servants time and resources, and it directly harmed the United Kingdom by taking the SNP’s claims and presenting them as facts and official Government policy. This must never be repeated and amending the civil service code can help prevent any conflict of interest or confusion. It should be an accepted principle that no British civil servant will ever act to undermine the unity of the United Kingdom.

Cooperation not competition between administrations and Legislative authorities in the United Kingdom
All the administrations and legislative authorities within the United Kingdom should be working together for the good of the British people, not competing and trying to undermine each other for political reasons. There should be a requirement for regular meetings to take place to better encourage cooperation and sharing of best practices. This should be at all levels of government to try to help foster better working relationships and less rivalry and hostility.

On promoting the United Kingdom:
Introduce a UK National Day to celebrate the United Kingdom
The United Kingdom is one of the only countries in the world without a national day to bring the nation together in unity. This is urgently needed and would be hugely popular. We recommend the UK Government rebrands the May Day Bank holiday as a UK national day. This would allow national events to be held to mark the occasion each year without the cost of having to introduce a new bank holiday. May 1st marks the anniversary of the Acts of Union coming into force, it is the birth of our United Kingdom, yet it gets no coverage and no national events. Introducing a national day of celebration would be very popular, and over 9000 have already signed our petition on the UK Parliament’s petitions website in support of such a day.
(https://petition.parliament.uk/petitions/104343)

Change the Flag Flying protocols to require the Union Flag to be flown every day
The current flag flying protocols published by the Department for Culture Media and Sport only encourage the Union Flag to be flown on small number of “designated days”. This should be changed to encourage the British flag to be flown every day by all Government buildings and public bodies across the United Kingdom. Ideally this would be a specific requirement, rather than just a recommendation by the Government. At the very least there should be a substantial increase in the number of designated days, including with days like May 1st added to mark the anniversary of the birth of the United Kingdom.
**Expand current national events and create more to help strengthen British identity**

There are already some occasions where people get the chance to celebrate being British or support the United Kingdom, but these need to be massively expanded. Current events like the Queen’s Official Birthday, the State opening of the British Parliament, Armed Forces Day and even cultural events like the BBC Last Night of the Proms should all be strengthened and promoted. More events to mark other occasions are also needed, like better honouring Trafalgar Day and celebrating other days of historic national importance.

**The Government should defend the United Kingdom more**

The UK Government and UK Parliament must do far more to make the case for the United Kingdom. More resources should be put into the Scotland Office and its top priority should be to counter the separatist threat. A new Government Department or Government ministerial position should also be created and have overall responsibility for promoting the United Kingdom, countering separatism and ensuring all Government departments and policies are not undermining the integrity of the United Kingdom.

**IN CONCLUSION**

The current devolution settlement is not working, and the solution is not even more devolution. If the United Kingdom is to survive, it requires the UK Government and UK Parliament to take immediate steps to strengthen our country and counter the separatist threat that seeks to divide us. We believe implementing some of the above recommendations would have a positive impact and help keep our country united.

October 2015
Professor Neil Walker, University of Edinburgh—Oral evidence (QQ 149-159)

Transcript to be found under Professor Michael Keating, University of Aberdeen
1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

1.1 The essential ideal for those seeking to create or maintain a nation state is that the borders of state and nation are congruent. Ideally the nation state is the product of a self-determining people and expresses the general will of that socio-political grouping. The “People” – now constituted as a political community under the name of the nation – enter into a social contract whereby they agree to give allegiance to the state and not to fight amongst each other in return for the protection of the state domestically and in the international system.

1.2 However, this is an ideal because it exists in tension with other demands of the international system and domestic politics. The need to create “viable” states at moments of the re-ordering of the international system often creates states that contain more than one political community self-identifying as a nation. In such a situation, those governing a state containing more than one nation face a dilemma: whether to use the power of the state to in an attempt to homogenise the population (for example whether to impose a common or single public language as in republican French and Kemlialst Turkish ideologies); or whether to “bend not break” and devolve power in some measure to constituent national units (as in the United Kingdom and Spain).

1.3 The essential difference between those who seek to govern a homogenised nation state and those who seek to govern one in which power is devolved is that the latter seek to encourage a “thin” common identity (that can co-exist with other nationalities within the borders of the state) whereas the former seek to impose a “thick” common identity (which exists in tension with and is suspicious of other nationalities within the borders of the state). Both use the organs of the state to promote such identities in order to make the state and national borders congruent by encouraging or enforcing commonality.

2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

2.1 Nationalism is a principle of political legitimacy. The fundamental principle that nationalists assert is that government is only legitimate if it is by and for “one’s own people”. Beyond that fundamental principle, defining “one’s own people” becomes politically problematic and any definition can shift over time. This is what has happened in the United Kingdom, most obviously since devolution gave a more audible political voice to Scotland, Wales and Northern Ireland, although the process had been developing for some time if we look at diverging voting patterns in each of the UK’s four nations since 1987, for example.

2.2 In the United Kingdom the identity that made the borders of state and nation congruent was being British (with the historic exception of Catholic-Nationalist communities in Northern Ireland). This
was always a “thin” identity since central government never sought to homogenise the constituent nations along the French republican and Turkish models noted above (paragraph 1.2). Although “being British” meant different things in different parts of the United Kingdom, a historic sense of commonality developed around Protestantism (at the expense of Catholic Irish in particular), responsible government and constitutional monarchy, trade and empire, and whiteness.

2.3
The idea that these commonalities have a much-reduced resonance today compared with, say, one hundred years ago has been well rehearsed. What can be added is the weakening of political parties that, although they may be rhetorically committed to the Union, are not well represented throughout the United Kingdom and are therefore not in a strong position to follow through on claims about the on-going unity of the United Kingdom. In Benedict Anderson’s famous formulation, the nation is an ‘imagined political community’. The political part of this definition is important and is often overlooked. The United Kingdom’s political community has fragmenting along national lines. Britain was held together in 2014 by making a negative case for continuity, not a positive case for collective belonging.

2.4
Britain’s fragmented politics brings us back to questions of legitimacy. If the fundamental principle that nationalists assert is that government is only legitimate if it is by and for “one’s own people”, then it is clear that consensus about the legitimacy of English politicians (even if they are rhetorically wedded to being British) setting policies for Scottish people has seriously weakened. It is not clear today what the basis of political commonality between the constituent nations of the United Kingdom is or might be beyond external relations and the referendum on EU membership will test this bond.

2.5
Nationalism exists in a tension between the universal and the particular: all nations are unique (this forms the basis for claims to self-determination) but the nation state model has been adopted throughout the globe making its form universal. What is unique to the United Kingdom, therefore, are not fundamental principles. Instead it is the interpretation of the history of the political development of the UK and the ways that centuries of historically accreted political culture allow or inhibit that community to be imagined and hence sustained or changed.

3. On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

3.1
The principle underlying the devolution settlement (if it is indeed settled) was “devolution on demand” created by an attempt to neutralise secessionist nationalism in Scotland which in turn created a demand for “devolution in the round”, but that excluded England. Beyond that, the drive for devolution was created by dynamics within the Labour Party in Scotland and Wales and an inflexible unionism within the Conservative party during the 1990s. This inflexible Conservative unionism collided with a politicised Scottish identity that sought to reassert Scottish autonomy.

from Thatcherite Conservative governments that were ironically perceived in Scotland as asserting greater state control rather than rolling back the state’s frontiers. A broad-based anti-Conservative Scottish nationalism emerged between 1988-97 that sought home rule rather than independence, whereas secessionism made significant gains during the New Labour years. If any underlying principle is discernible it is devolution as a response to nationalist pressure.

3.2
The devolution settlement emerged as a response to political pressure growing in Scotland and Wales and in the context of the need to end the conflict in Northern Ireland with a political power-sharing solution. These were admirable political settlements but in responding to political events that were not well understood outside of those nations, the New Labour government created an “asymmetrical” solution to the politics of nationalism within the United Kingdom. That asymmetry became part of the constitution after 1999.

4. Are there applicable examples from other countries with multi-level governance structures?

4.1
Spain is the state with the most similar devolved structure that also responded to “devolution on demand” in the 1970s. Most other multi-national states have a federal or confederal structure such as Belgium and Canada. In Belgium’s case the constituent units are roughly equivalent in size, whereas in Canada the disparities in population between provinces is managed by representation in the upper House. Such disparities are managed in this way in Australian federalism too.

4.2
Treating England as a single unit creates problems for the devolution settlement. England is much the largest of the constituent nations of the UK in terms of population size and territory. The most notable historical example of a similar demographic and geographic dominance is Prussia in Weimar Germany, but this is not a happy comparison.

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

6.1
In establishing power-sharing government in Northern Ireland in 2007 (and noting the years of work which also went into this solution by John Major’s Conservative government), New Labour inadvertently created another “national question”: that of England. Although Scotland had now replaced Northern Ireland as the “motor” of nationalist politics in the United Kingdom, a politicised English identity was increasingly articulated after devolution. This is not to say that devolution caused the “rise” of English nationalism alone. The drivers of the politicised Englishness are varied and should not be divorced from the defence of British sovereignty in the face of European integration or concerns about immigration and border control. Nevertheless, although the distinction between England and Britain was always harder to articulate south of the Tweed, politicians have been articulating England’s interests in ways increasingly distinct from that of Britain and the other nations of the UK. This has been happening within the Conservative and
Labour Parties and amongst their members and supporters and evidence of a politicised English public opinion emerging.  

6.2
If devolution throughout the UK has been one of the drivers of a politicised Englishness, then we might expect the extension of autonomy to Scotland in the wake of the independence referendum of 2014 to deepen and broaden what we might now call English nationalism. However, treating England as a single unit in response to devolution elsewhere in the UK will add “imbalance” to that of “asymmetry” in the constitutional arrangements.

6.3
Ignoring the English question posed by devolution was the approach adopted by New Labour; indeed in its constitutional guise, this problem usually went by the name of a Scottish parliamentary constituency, the “West Lothian Question”. On the subject of Englishness, the Labour Party often betrayed attitudes that were dismissive of such a concept and portrayed it as parochial and xenophobic. Thus the asymmetry of the devolution settlement does need to be addressed (and one approach is English Votes for English Laws) since doing nothing leaves room for the growth of resentment. The question is how to manage “imbalance” and “asymmetry” when regional devolution is likely to generate “devolution on demand” again potentially deepening a north-south divide in England.

8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

8.1
Some form of political representation for England is required. One means of addressing the “imbalance versus asymmetry” problem would be to reform the upper house into a regional chamber along the lines of the Australian senate.

8.2
With regard to non-legislative action, a positive articulation of commonality is required that makes a case for why the Union should be stabilised or reinforced (if indeed it should). Such an articulation must somehow link all levels of governance: devolved and local; UK; EU and global. This is no easy task of course and public and political opinion may pull in opposite direction in some instances, such as differing views on the EU between the SNP and parties with the majority of their support in England (Conservatives, Labour, UKIP).

8.3
Positive rhetoric is better than negative rhetoric but it can appear as a gloss on otherwise bad situation leading to cynicism and disengagement. Feel good moments like the London Olympics are significant but it is also difficult to create a “legacy” sustaining a common identity. There is a lot that is wrong with nationalism. It is often used as a means to pursue sectional interests in the name of the common good: majorities at the expense of minorities; men at the expense of women; the rich at the expense of the poor and the strong at the expense of the weak. What might be said

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in the nation’s favour is that it legitimises the redistribution of wealth amongst co-nationals. Welfare states need a common nationality to legitimise the state’s redistributive functions.\textsuperscript{181}

Nations may be imagined but this does not mean they are fictitious. The nation is an abstraction of the immediate reality an individual sees around him or herself. If this reality conflicts with the rhetoric coming from politicians and leaders then resentment and disengagement grow. Weakened communities, economic insecurity and diminishing redistribution mean that the re-articulation of a common Britishness to bolster the Union is not likely to be adopted with much enthusiasm by citizens. The Union and Britishness need to be real to be believed. Making the borders of nation and state congruent with a politics that addresses weakened communities and economic insecurity will be the best way of stabilising the Union.

1 October 2015


725
The Welsh Government—Written evidence (UDE0024)

Introduction

1. The Welsh Government is pleased to submit this Written Evidence to the Committee in respect of this Inquiry. Our understanding is that you are concerned to investigate what binds the constituent parts of the Union together, and how it can be strengthened and reinforced.

2. The Welsh Government is strongly supportive of the Union, and we welcome the Inquiry as entirely appropriate now. In a speech to the Institute of Government on 15 October 2014, the First Minister said:

   “....devolution has already fundamentally changed the governance of the United Kingdom. This was clear before the Scottish referendum was even in prospect, and it has become blindingly obvious since then. Public support for the devolved Parliament and Assemblies has created a presumption of popular sovereignty in the different parts of the UK, which has fundamentally challenged assumptions about a centralized British state.

   So much so, that I believe we should stop talking about devolution, what powers can be handed down by a reluctant Whitehall, and start talking about the Union, and the issues we must share with each other”.

3. He returned to this theme in more urgent terms in a speech at the British Academy on 5 June this year:

   “....in [a] longer-term perspective, I cannot be so sure that the Union will survive. There may come a time when Scots will again be asked what future they see for their country. And they may not be persuaded to stay with us without a clearer vision than they had in 2014 of what the UK can offer them in the future.

   I do not believe that that vision can be developed on a bilateral basis, and I continue to believe that we are all Better Together. So those who are committed to the Union need now to work together to develop a perspective for the UK which..... enables the unity of the UK while guaranteeing the diversity of its constituent parts.”

4. From a Welsh perspective, the Inquiry is timely for another reason. As the Committee will be aware, a new Bill on Welsh devolution is in prospect. A key element of this will be the reconstruction of Welsh devolution on the basis of a model, similar in some respects to that already in operation for Scotland, whereby powers are reserved to the centre, with all remaining functions and competences becoming the responsibility of the devolved institutions. The Welsh Government supports this in principle, but of course the fundamental question is, what are to be the powers reserved to the centre? As the recent study, “Delivering a Reserved Powers Model for Wales”, published jointly by the Constitution Unit (CU) and the Wales Governance Centre (WGC), points out, the answer to this is not straightforward, but needs to be approached on the basis of principle:

   “....the absence of any coherent principle for the division of functions between the devolved and UK/England tiers of government will leave the door open to further debate about these issues, and add to the innate instability of any arrangements that are put in
place. They are unlikely to deliver a stable long-term settlement as is widely sought. Coherence and stability will only be achieved by adopting a longer term perspective.”

5. Perhaps the outcome of the Committee’s Inquiry can contribute to the development of that longer-term perspective on the appropriate division of functions within the Union, and provide a template against which the provisions of the Wales Bill, once published, can be assessed.

**The Nature of the Union**

6. We set out below five propositions about the Union which underpin our approach to the questions raised by the Committee’s Inquiry:

(i) Whatever its historical origins, the United Kingdom is best seen now as a voluntary association of nations which share and redistribute resources and risks between us to our mutual benefit and to advance our common interests;

(ii) Although we should be careful about the easy use of the term (because “devolution” is based on the assumption that our state is fundamentally a centralised one which may, if it wishes, give away some power; this starts our discussion in the wrong place), the principles underpinning devolution should be recognised as fundamental to the UK constitution, and the devolved institutions should be regarded as effectively permanent features of that constitution;

(iii) Devolution is about how the UK is collectively governed, by four administrations which are not in a hierarchical relationship one to another. The relations of the four governments of the United Kingdom should therefore proceed on the basis of mutual respect and parity of esteem (and comment on the policies of other administrations should, within a culture of robust political debate, properly reflect that respect). Each of the administrations, including the UK Government in respect of England, has separate responsibilities and accountabilities, which should be recognised and respected by all the other partners, as part of the joint enterprise of the governance of the UK;

(iv) The allocation of legislative and executive functions between central UK institutions and devolved institutions should be based on the concept of subsidiarity, acknowledging popular sovereignty in each part of the UK. (Parliamentary sovereignty as traditionally understood will need in the longer term to be recognised as incompatible with this evolving constitution); and

(v) The presumption should therefore be that the devolved institutions will have responsibility for matters distinctively affecting their nations. Accordingly, the powers of the devolved institutions should be defined by the listing of those matters which it is agreed should, for our mutual benefit, be for Westminster, all other matters being (in the case of Wales) the responsibility of the Assembly and/or the Welsh Government. (Given Wales’ distinctive relationship and degree of socio-economic integration with England, the list of matters attributed to Westminster may, by agreement, include some which may more appropriately be dealt with on an England-and-Wales basis, as well as those dealt with on a UK or GB basis. There should therefore be no assumption that those matters for which Westminster is responsible in respect of Wales will be identical to those in respect of Scotland or Northern Ireland, although there will be very many common features in the lists).
7. The Committee’s inquiry primarily raises issues under point (i) above: what are the matters which merit all-Union action to our mutual benefit? We address that question below, but it is worth stressing first the relevance of points (iv) and (v) to the forthcoming Wales Bill. In our discussions with the UK Government, we have argued that reservations to the Assembly’s legislative competence should be drafted in accordance with the principle of subsidiarity, which we believe provides the “coherent principle” the CU/WGC Report calls for. In other words, we have said that responsibility for decisions should lie at the lowest possible level consistent with their effective implementation, or closest to where they will have their effect, and that the Wales Bill should be drafted accordingly. We will be examining the Wales Bill, once published, from that perspective.

8. Turning then to the Union itself, since the Report of the Calman Commission in 2009, this has generally been regarded as having three elements: economic union (including currency union and fiscal union); political union; and social union. Taking these in turn:

9. Our economic union implies that there should be no barriers to trade, business and employment for people and companies in different parts of the UK; ours is a “single market” (to an extent that the European Union is still some way from achieving). The devolution statutes reinforce this, by reserving to Westminster exclusive legislative competence in respect of such matters as company formation and dissolution; business regulatory powers; statutory employment rights, and so forth. We would expect the Wales Bill to reaffirm that, in respect of Wales, these matters should continue to be Westminster responsibilities; the Welsh Government has not argued to the contrary. Economic union also implies central responsibility for macro-economic and monetary policy, within the context of a common currency, and again the Welsh Government supports that. The more difficult question, however, is the extent to which economic and currency union requires full fiscal union; on this, the Welsh Government considers that there clearly is scope for devolution of some tax responsibilities, but our position differs in detail from those of both the UK Government and the Scottish Government.

10. So far as the UK Government’s position is concerned, in 2013 it introduced a Wales Bill providing for a limited measure of devolution of responsibility for income tax rate-setting, but attached to this a “lockstep” restriction (subsequently removed by amendment in the House of Lords) on the Welsh Government’s ability to propose movement of individual rates which in our view would have resulted in no real freedom of action at all (and so we welcomed the amendment).

11. We differ from the Scottish Government in our policy on devolution of Corporation Tax (and other business-related taxes such as National Insurance). The First Minister has consistently argued that, leaving aside the special circumstances of Northern Ireland, devolution of Corporation Tax could only lead to damaging competition between different parts of the UK and a “race to the bottom” which would serve only to undermine the UK’s overall tax base and business tax take; this would do nothing to reinforce the Union.

12. Our political union is principally manifested in the UK’s external relationships and membership of the European Union and of international organisations, and by reserving the European Communities Act 1972, and Foreign Affairs and Defence to Westminster, the devolution statutes reaffirm that position. There is also obviously a domestic dimension to political union, based on our common commitment to democracy and the rule of law; this is principally manifested in the form of a House of Commons with Members, of equal status, drawn from all
parts of the Union, and a Home Civil Service which shares with the Northern Ireland Civil Service common values, principles and professional standards. These currently are, and in the Welsh Government’s view should remain, matters for which legislative competence should be reserved to Westminster. So far as the Civil Service is concerned, we welcome the fact that the Scottish Government did not argue a case to the Smith Commission for devolution of responsibility for civil servants supporting Scottish Ministers, and we strongly support the recent four-administration initiative, led by Sir Jeremy Heywood, to enhance civil service capability in relation to devolution.

13. The social union is multi-faceted, and of course includes extensive family and social relations amongst UK citizens, as well as a cultural heritage with strong common features across the Union. In our evidence to the Silk Commission in 2013, we drew attention to “The vital role that broadcasting institutions play in creating a common cultural citizenship for people across the UK (which) would not be strengthened by any attempt to divide responsibility for broadcasting institutions among its constituent parts”. We did however “believe that this vital UK role can be reinforced by measures aimed at strengthening the particular contribution which the broadcasters make in each of those constituent parts”, and our approach to BBC Charter renewal, in which we will continue to take a close interest, will be based on this approach.

14. As Professor Gallagher argued in an essay published very shortly after the Scottish referendum, the political union and the social union are closely linked:

“...political union has internal significance as well..... People throughout the UK elect members of Parliament not just to deal with foreign affairs but taxation too. They expect the UK Government to manage the economy of the whole of the union. Political union also provides the legitimacy for sharing fiscal resources across the whole UK, most obviously and directly in social security. Pensions are paid to people wherever they are in the country, irrespective of local taxable capacity. Benefit payments in poor or depressed areas are funded by taxes transferred from better off ones. This applies not merely within Scotland or England, but across the nations of the UK”.

15. 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. The First Minister made the point in these terms in his Institute for Government speech previously referred to:

“Our welfare state establishes a certain set of rights and entitlements for our citizens which apply wherever they live within the UK. I place a strong value on the fact that we all have an equal claim on the safety net that protects us – however imperfectly – from Beveridge’s five famous ‘giant evils’. So I see social security as one of the core components of our common citizenship – one of the great achievements of the UK. I would not want that safety net to fray as a result of ill-considered or rushed reforms”.

16. The Welsh Government has concerns about the direction of policy on welfare devolution, particularly as seen in the Scotland Bill, under which the Scottish Government will have new powers to supplement provision currently provided on a GB-wide basis. In practice this could mean that Scottish residents in receipt of social security benefits could receive higher levels of support than citizens in identical circumstances but resident in Wales or England. It is hard to reconcile this with conceptions of common social citizenship across the Union. In a recent paper, Professor Gallagher has argued that
“Social security has always been reserved, and entitlements the same throughout the United Kingdom.....this social union was one of the strongest arguments for Scotland’s remaining in the United Kingdom. But an equally strong argument can be made for allowing Scotland, if it wishes and is willing to pay for it, to offer a more generous welfare package, including benefits as well as services”. (Emphasis added)

17. In the Welsh Government’s view, this is only an acceptable proposition if each administration within the UK is in broadly the same position in terms of resources so as to be able to make higher benefits payments to those it deems worthy of these; benefit levels for citizens in different parts of the Union should not depend on whether the particular administration in whose territory they are resident is well or poorly served by the Union’s resource allocation mechanism.

Financial Reform

18. That last comment leads to our principal conclusion. For the health of the Union, reform is needed so that the distribution of resources across the UK takes account of the factors that influence the demand for public services in each part. And the case for financial reform is even stronger when it forms the central element of a funding model with devolved taxes. As outlined in our evidence to the House of Lords Select Committee on Economic Affairs for its inquiry into devolution of public finances within the UK, it is the Welsh Government’s view that public spending should be determined by needs, and therefore a needs-based allocation formula is ultimately the most sensible way to deliver fairness across the UK. The inadequacies of the Barnett Formula in this respect are well-known, and do not require restatement here; but obvious unfairness in the allocation of resources across the UK can only do harm to the strength of the Union. The principle should be that the different parts of the Union should be able to deliver an equivalent level and quality of public services for an equivalent tax effort. Each part of the UK should be able to make its own choices at the margin about tax rates and so determine the total of resources available for public services in its territory; but there should be a common core UK standard, with resources being redistributed from areas with a stronger tax base to those with a weaker tax base to ensure this. We would strongly oppose any suggestion that each part of the UK should retain the product of its tax base and only pool resources for common services.

19. The Welsh Government would also favour greater scrutiny and a more open and transparent approach to the calculation of funding for Wales (and the other devolved administrations). The operation of these resourcing arrangements, including determinations of devolved administrations’ spending power and borrowing limits, and functions in respect of Revenue and Customs, should be the responsibility of public agencies accountable to all four administrations jointly. The Holtham Commission recommended the establishment of an independent advisory body. Alternatively, the Silk Commission suggested that the Office for Budget Responsibility or the National Audit Office could review and audit technical aspects of the funding regime. Either of these approaches would enable the Devolved Administrations to have more confidence in the framework.

20. Reform along these lines should sit alongside improved and strengthened structures for the management of inter-governmental relations, which need to work effectively if the Union is to remain strong. Following the Constitution Committee’s valuable report earlier this year, work, in which the Welsh Government is participating, is ongoing to review the existing arrangements.

Conclusion
21. As noted above, the Welsh Government welcomes the Constitution Committee’s initiative in establishing this timely and appropriate Inquiry, and we hope this Evidence is of assistance to the Committee. We will read with interest other Evidence submitted to the Committee, and will be particularly interested in that of the UK Government; we will want to test the provisions of the Wales Bill against the arguments the Government advances as to the nature of the Union and the principles which ought to be considered in the allocation of responsibilities between Westminster and the devolved legislatures. That may also be a fruitful area of inquiry for the Committee in due course.

September 2015
Kirsty Williams AM, Liberal Democrats—Oral evidence (QQ 255-263)

Transcript to be found under Andrew RT Davies AM Conservative
Transcript to be found under Jessica Blair, the Institute of Welsh Affairs
Leanne Wood AM, Plaid Cymru—Oral evidence (QQ 255-263)

Transcript to be found under Andrew RT Davies AM Conservative