



HOUSE OF LORDS

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The Select Committee on the Constitution
Inquiry on

THE UNION AND DEVOLUTION

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Questions 18 - 43

WEDNESDAY 21 OCTOBER 2015

10.15 am

Witnesses: Sir Paul Silk and Sir Kenneth Calman

Rt Hon Peter Riddell and Akash Paun

Members present

Lord Lang of Monkton (Chairman)
Lord Cullen of Whitekirk
Baroness Dean of Thornton-le-Fylde
Lord Hunt of Wirral
Lord Judge
Lord MacLennan of Rogart
Lord Morgan
Lord Norton of Louth
Baroness Taylor of Bolton

Examination of Witnesses

Sir Paul Silk, former Chairman of the Commission on Devolution in Wales, and **Sir Kenneth Calman**, former Chairman of the Commission on Scottish Devolution

Q18 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.

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 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 bring 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.

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 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 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 Maclellan 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 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—aren’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 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 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.

Examination of Witnesses

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 kind 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 at 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.