



HOUSE OF LORDS

Revised transcript of evidence taken before
The Select Committee on the Constitution
Inquiry on

THE UNION AND DEVOLUTION

Evidence Session No. 11 Heard in Public Questions 149 - 159

FRIDAY 11 DECEMBER 2015

1.15 pm

Witnesses: Professor Michael Keating, Professor James Mitchell and Professor Neil Walker

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

Professor Michael Keating, University of Aberdeen, **Professor James Mitchell**, University of Edinburgh, and **Professor Neil Walker**, University of Edinburgh

Q149 The Chairman: 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—where there is a debate—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 in 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 ready, 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, uncoded 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. So plurinationalism also describes the 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, uncoded 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.