This submission is made on an individual basis

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

1 The Union

1.1 How to describe the United Kingdom (UK) has exercised the definitional ingenuity of academics. The term unitary state is no longer fashionable, long since replaced by the more appropriate term, union state. James Mitchell’s imaginative state of unions has found favour recently, a definition which captures the institutional and legal variations in the UK as a consequence of devolution.1 My preference remains the term multinational state.

1.2 One of the clearest, if venerable, expressions of this multinational Union was by Sir Ernest Barker who, for much of the 20th century, was the official philosopher of the UK. UK multiculturalism for Barker meant a common political identity as well as an acknowledgement of national difference. Multi-national democracies will collapse, Barker thought, unless: ‘as we have somehow managed in our island, such a State can be both multinational and a single nation’.2 Barker identified the efficient, if paradoxical, secret of multinationalism: On the one hand, political representation at Westminster secured the common interest of its component nations. On the other hand, it was through the accommodation of diverse and distinctive institutions, practices and cultures that national identities were sustained. This is what Barker called the distinctive British ‘mixture of unity and diversity’, one in which each individual nation contributed to collective strength and each nation got more ‘by being included in the wider scope of the United Kingdom’ than by being separate.3

1.3 The UK’s capacity to act as a single state despite its multinational composition distinguished it internationally (and this distinctiveness was to become even clearer with the break-up of former communist states, like Yugoslavia or Czechoslovakia, in the 1990s). Nevertheless, describing the UK as a multinational state calls attention to those things which differentiate the parts and this always risks undermining the UK’s capacity to see itself as a whole, something which scholars spotted early.4 Devolution, of course, has institutionalised and politicised that differentiation of parts. In principle, greater autonomy for the parts need not affect the integrity of the whole. But the politics of national identity can foster
multinational fragmentation by promoting only the one narrative of differentiation – unless, that is, a countervailing narrative of commonality can establish a renewed post-devolutionary balance. The Committee is correct to be concerned that there is a present popular sense of differentiation rather than commonality. It is this balance which this Committee is considering, defined as ‘a more stable settlement that will preserve and strengthen the Union as a whole’. It correctly identifies the need to give meaning and coherence to the Union.

2 Principles

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

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

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

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

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

3 Devolution

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

3.2 Political research has identified another paradox: the *devolution paradox*. The paradox is that while citizens in Scotland, Wales and, with qualifications, Northern Ireland appreciate the ability of devolved institutions to deliver policy diversity there is also a wish for common standards of public service throughout the UK. If this appears contradictory it provides further social science confirmation of *elective affinity* in action. Citizens choose difference in particular but claim affinity in general. The Scottish vote last year confirms that paradox, even when pushed to the political limit.
3.3 Devolution in general - and the Scottish Referendum debate in particular – raises another question. What is the relationship between instrumental support for the Union (implying choice, or contract) and allegiance support for the Union (implying affinity, or solidarity)? Some scholars have asked a fundamental question: what is the UK for in the 21st century? For nationalists, of course, the answer is that it serves no purpose. Of course, this question has its flip side: what is national independence for in the 21st century? This question tends not to make the headlines. It is more fundamental.

3.4 Thus, while electing to end political Union, those advocating ‘yes’ in the Scottish Referendum also proposed to maintain other unions which actually assumed cultural affinity throughout the UK. Two of these were given prominence. The first is social union, encompassing what was described in the Referendum campaign as all the distinct national and regional communities in the British Isles based on close social, economic and cultural links and symbolised by Scotland retaining the monarchy. The second is monetary union which is nothing other than the financial cornerstone of UK solidarity (as we can understand better now in the light of Greece’s recent experience of the Euro). The proposed continuity of these unions poses one difficult question for nationalists: ‘If you want unions, why secede from the Union?’ I suggest this is a more difficult question to answer than the question ‘what is the UK for?’ That fact should also inform the Committee’s deliberations.

3.5 It is worth emphasising that point. Robert Hazell has argued consistently that confidence should be one of the principles of the new constitutional order meaning that the Union rests on much broader and firmer foundations than its critics realise. I think he is right.

4 Changing politics

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

4.2 Recently, opinion polls reveal popular disenchantment with processes of decision-making at Westminster which can appear sometimes immune to public influence (for example, talk about the Westminster bubble or the Westminster elite). Support for the traditional UK political parties has also declined along with some of the old certainties which sustained them. It is these changes, as well as the SNP’s success in Scotland, which challenge the integrity of the old fifth nation.
4.3 Vernon Bogdanor captures this new reality well when he argues that the constitutional measures enacted since 1997 have transformed the UK such that the *sovereignty of Parliament* is slowly being replaced by the *sovereignty of a constitution*. That indefinite article is quite explicit because its shape is still uncertain. The future of the UK (as it was once said of the European Common Market) is an unknown destination. This is the changed context in which the Committee’s deliberations take place.

5 Practical steps to strengthen the Union

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

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

5.3 I am persuaded of the value of that approach. Macaulay’s idea of British constitutionalism - nothing of symmetry and much of convenience, never removing an anomaly merely because it was an anomaly – which has served so well in the past, no longer seems fit for purpose.

5.4 Consent for the Union is contingent, not certain. The contingency of that consent impresses many commentators today. In particular, it is important to find some way for everyone in the UK to consent to a possible Charter of Union. The old medieval principle ‘what touches all must be approved by all’ is a good one – and sorely missing in recent and partial referenda. A UK-wide vote on a Charter of Union might reverse the present popular mood that every moment of the devolutionary process is eroding rather than strengthening the Union.

6 Conclusion

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

7 August 2015
References


6 David Cameron, ‘Extremism, individual rights and the rule of law in Britain’, speech February 26, 2008

7 Arthur Aughey, Nationalism, Devolution and the Challenge to the United Kingdom State London 2001


13 Lord Norton of Louth