1. The significance of the Union is not static. Its meaning and its associations have changed over time, at some points very rapidly. Indeed, the Union has for much of its history enjoyed such overwhelming acceptance in Scotland that there was no need to foster an articulate programme of Unionism. The Union was simply part of the furniture of British life. At certain points Britishness has enjoyed such near-universal acceptance in Great Britain (excluding Northern Ireland) that politics – as between 1945 and the early 1970s – revolved exclusively around class differences within a unified British nation. More recently, of course, that ‘British nation’ has unravelled, and the expression already carries a whiff of anachronism.

2. However, the United Kingdom bears the characteristics of both a unified nation state and a multi-national compound. The reasons for this seeming paradox lie deep within the history of the four nations of these islands, and in the fact that the British state absorbed other ‘nations’ before the rise of articulate, well-defined democratic nationalisms in the Europe of the nineteenth century. In certain respects, the Union of 1707 was an early modern arrangement which has persisted, with certain modifications, into the present. At the time the Union was negotiated, ‘nationalism’ (in our modern sense) was not a major determinant of international relations. It is worth remembering that within a decade of the Union the Peace of Utrecht (1713) at the end of the War of the Spanish Succession - regardless of the wishes of the inhabitants, which were then of no consequence in international affairs - confirmed English (by 1713 British) possession of Gibraltar (taken in 1704), and authorised the transfer of the Spanish Netherlands (Belgium) from Spain to Austria.

3. The Union of 1707 is of this vintage. Moreover, there are further complications. The Union was a product of political short-termism, an ad hoc measure to resolve a succession crisis and in so doing avoid a Jacobite restoration in Scotland. After the death of Princess (later Queen) Anne’s last surviving child in 1700, the English Parliament entailed the crown of England on the Protestant Hanoverian line in the Act of Settlement (1701). The independent Parliament of Scotland was reluctant to follow suit, largely because of Scottish anger at the way English interests had frustrated Scotland’s colonial venture at Darien (Panama) in the second half of the 1690s. In the end Union was devised as an alternative method of ensuring the Hanoverian succession. The second Article of Union guaranteed the Hanoverian succession, and only the third united the English and Scottish parliaments into one (though the arrangement as a whole is referred to as the Union of the Parliaments). Union was introduced primarily as an anti-Jacobite measure, and the nature of this new
united legislature and other questions related to the Union’s constitutional design were secondary to the achievement of the Hanoverian succession. It is important to bear in mind that the Union of 1707 was not planned as a constitutional blueprint for a united British state.

4. Notionally, the Union of 1707 was a union of two equal sovereign independent states, which happened to share the same monarch, Queen Anne of England who was also Queen Anne of Scotland. However, the fact that this Treaty of sovereign equals was constitutive of the new British state was not – and arguably has never been - reflected in its actual constitutional arrangements. Indeed, the fundamental constitutional problem with the Union is the absence of any clear recognition that the United Kingdom is a multi-national state, apart from some provisions respecting the status of the Scots legal system and the Presbyterian Church of Scotland.

5. There was no mechanism built into the Union to allow for the expression of Scottish discontent with the will of an English-dominated Parliament, or for the redress of such grievances through formal institutional channels. Instead, from the start, 45 Scottish MPs sat alongside 513 MPs from England and Wales in the House of Commons, with 16 Scottish representative peers in the House of Lords. The equality of the two sovereign kingdoms of Scotland and England that formed the Union was not acknowledged in the procedures of the new united Parliament. Indeed, that Parliament operated as if it were the English Parliament of old, supplemented by the addition of Scottish members. Parliamentary procedures followed pre-1707 English norms, and the Treaty of Union was referred to as the Act of Union.

6. Until recently, the British polity followed the principles of what came to be known as Diceyanism, after the jurist Albert Venn Dicey (1835-1922). Parliament was sovereign, and was the ultimate source of authority in the state, untrammelled in the exercise of its will. There are advantages to a Diceyan system of government. When it works properly it ensures democratic clarity, unconstrained by constitutional restrictions or by the interference of judges in the political realm. Straightforward parliamentary sovereignty worked well when there was a two party system of electoral competition across most of the UK. However, when, as recently, the appeal of the main parties has dwindled significantly in regions beyond their electoral heartlands, so much so that no party is competitive across the whole of Britain, then Diceyan principles lose some of their legitimacy. If parties do not enjoy widespread support across the whole of Britain, then the case for a constitutional system which rests on democratic clarity is undermined. Currently, the UK occupies a half-way house between the system described by Dicey and a written constitution.
7. A major cause of Scotland’s estrangement from the UK government has been the so-called ‘democratic deficit’ of the late 1980s. The 1987 election was a crucial turning point in Scottish politics. It placed firmly on the political agenda the question of Scotland’s ‘democratic deficit’. Did the Thatcher government – with only ten Conservative seats out of seventy-two Scottish constituencies – possess a mandate to govern Scotland? Notwithstanding the lack of a mandate in Scotland, the community charge, or poll tax, was imposed on an unwilling Scotland in 1989, a year earlier than in England. Notwithstanding the complexities of the politics behind this decision, including the issue of Scottish rates revaluation, when looked at in strict constitutional terms - in the light of the Union of 1707 - there were no constitutional protections within Britain’s unitary state to halt the imposition of the poll tax on Scotland. Today, devolution notwithstanding, the issue of the UK Government’s mandate in Scotland still continues in certain areas of policy. Indeed, one of the principal factors driving demands for independence - or indeed for ‘devo-max’ - is the desire for home rule within Scotland on domestic issues, particularly taxation and welfare. The SNP’s pre-Referendum white paper Scotland’s Future (2013) promised to abolish the ‘bedroom tax’ in the event of independence. Indeed, the bedroom tax grievance was a recurring leitmotif of a text notionally concerned with independence. The high Yes vote in the Referendum of 2014 was as much a complaint about social policy – the bedroom tax especially – as it was a demand for independence.

8. A suitably reconfigured House of Lords suggests a potential solution to this problem. Lords reform has been an issue in British politics - intermittently - for over a century. It is clear that the House of Lords, while performing a useful function as a revising chamber, does not enjoy universal legitimacy with the British public. On the other hand, a wholly elected second chamber presents problems for the House of Commons. The House of Lords might, however, provide a shell for a new second chamber reflecting the multi-national composition of the UK.

9. The House of Lords might become the House of Nations, or the House of Nations and Regions, or the British Senate. However, it is worth asking whether this revamped second chamber should represent the electorates of the different parts of the country, as in the U.S. Senate, or the governments of the different components of the country, as in the German Bundesrat. There is a case for following the German model, a constitutional body which reflects the views of the governments of the Länder, as a way of ironing out wrinkles in the operation of devolution.

10. In order to remedy the ‘democratic deficit’ felt in Scotland the House of Nations would need to be given powers to act as a check on the will of the Commons. This would require repeal of the Parliament Acts of 1911 and 1949. In addition, the House of Nations would need to have a very high super-majority threshold (or arrangements allocating veto powers to one of the constituent nations of the UK) in order to satisfy Scottish demands that
England – containing about eighty-five per cent of UK population – would not be able to impose its will on social and fiscal policy against the wishes of the other component parts of the UK. In practice, England might not be an undifferentiated whole in the House of Nations/Regions, and one imagines, that the interests of regions in the North of England might align with those of Scotland on many issues. Obviously, the Smith Commission reforms would go a long way to alleviating Scottish concerns, though already there is some disquiet about matters that will continue to be reserved. A grand gesture, such as the creation of a House of Nations, would go further than the Smith Commission reforms in clarifying and symbolizing the nature of the new Union and a new constitutional settlement. Moreover, it would avoid the problems associated with federation of the UK. In general, political scientists fear that the UK – with more than eighty per cent of the population in one component of the federation and in whose own constituent regions there is no demand for federal autonomy – is effectively incapable of being federalized. A revamped second chamber sidesteps the toils – and potential futility – of a programme of British federation.

11. However, new institutional arrangements will not in themselves be sufficient to hold the Union together. The maintenance of the Union will also require a concerted PR campaign which marries message and policy. The case for the Union has still to be made. The Referendum campaign was largely a missed opportunity in this respect. More attention needs to be given to the way in which the Union is presented.

12. In particular, the term ‘Unionism’ is toxic for many Scots. Jim Murphy, the leader of Scottish Labour in early 2015, denied that he was a Unionist (Herald, 14 January 2015). Similarly, Jeremy Corbyn, campaigning in Scotland, has recently described himself as ‘a Socialist not a Unionist.’ (Herald, 18 August 2015). The problem here is that Unionism has multiple meanings and associations. Unionism describes both the principle behind the Union-state and the ideology of a particular party, namely the Conservative and Unionist Party, which was between 1912 and 1965 known in Scotland simply as the Unionist Party. In addition, the term has strong associations with Ulster Unionism, and by extension with Protestantism. Indeed, when Murphy denied being a Unionist he was emphasising to Catholic voters that he was not a Protestant, despite being a firm supporter of the Union. There is no point in introducing institutional measures which will strengthen the Union, if large parts of the electorate are allergic to the idea of Unionism. There needs to be some reformulation of the language used to describe the UK. Focussing on Britishness to the exclusion of the Union might, perhaps, be a way forward. Britishness and Unionism are not quite synonymous, and the future defence of the Union might well require more discussion of the former and less of the latter.

13. Anglo-Scottish Unionism lacks a central spine. While it is clear that nationalists stand for autonomy and independence, the message of those who wish to maintain the Union has
become muddied. Devolution has, indeed, turned out to be a process rather than a single event, but one which proceeds in unplanned fits and starts. A strategy of appeasing nationalism with further concessions of Scottish autonomy and enhanced devolution compromises the notion that there is a corresponding case for cohesion, indeed any Union worth defending. Pro-Union politicians need to establish the point beyond which appeasement of nationalism is futile and self-defeating. At what point does the Union cease to be a proper Union? It might be helpful were politicians to focus on the differences between the economic stabilizers built into the British Union and the difficulties of arranging internal cross-subsidies within the so-called European Union. Social solidarity only operates in one of these Unions; but at what point in a process of enhanced devolution would a frayed and disintegrating British Union become like the European ‘Union’, a union in name only?

14. The electoral system is also dysfunctional. At the Independence Referendum in September 2014, the Scottish electorate divided 55:45 against independence. However, the alignment into Yes and No camps persisted at the general election, with most of the votes of pro-independence voters accruing to a single party, the SNP, while votes of anti-independence voters were spread across the three main parties of the Union, the Conservatives, Labour and the Liberal Democrats. Although there are some correctives built into the Additional Member system used for Scottish Parliamentary elections, this anomalous situation will be replicated in the Scottish elections due in 2016, certainly in the constituency ballots. The problem here is a serious mismatch relating to electoral arrangements, inter-party competition and a further fundamental division over the constitutional question. The current party political divide within Scotland does a major disservice to the No-voting majority. Constructive reform of the constitution will be worthless without the parties themselves rectifying the current party political anomaly.

15. Unionism is dead as an articulate set of principles, if it ever existed. Unionism as an articulate brand of politics was – even in Scotland – primarily focussed on the contested issue of the British-Irish Union of 1800. The Unionism of the Unionist Party in Scotland referred to the Union with Ireland. The Anglo-Scottish Union was so widely accepted for so long that it did not need articulation, and did not therefore give rise to any coherent ideology of Scottish unionism. Things have changed drastically in the last fifty years. Now the Anglo-Scottish Union itself is hanging by a thread; but it still lacks a coherent and widely-accepted rationale, beyond, that is, fear of independence. There is still a majority in Scotland for Union, but the realities of demography will over time whittle away the narrow, if decisive, lead of pro-Union voters. Piecemeal tinkering will be insufficient to maintain the Union. What is required is a dramatic coup de théâtre, something which will transform the popular understanding of British government and the place of Scotland within the British state. This question of popular allegiance needs to be addressed and accommodated, alongside technical issues concerning the operations of government. Symbols matter. What
is required is both visible constitutional change, which makes clear the multi-national character of the UK state, and the statement of a coherent case for Britishness.

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