1. The term ‘nation state’ is used in two senses: to refer to the sovereign state; and to one in which the state and sense of nation coincide. Over the years, a lot more attributes have been added, including shared citizenship and social solidarity. At its most expansive, the nation state is a fixed territory within which there is a shared identity, a common culture, a distinct economy, a sense of social solidarity, a set of governing institutions, a system for representation and common citizenship rights and duties. In this sense, it can be seen only as an ideal type, not a description of any actual system.

2. The United Kingdom is not a nation state in the usual sense, but a plurinational state. That is a state in which there are both distinct nations and distinct understandings of what the nation means and what are its political implications. It is better understood as a union, but that in turn needs to be interpreted. Unionism in the United Kingdom was a distinct doctrine, which recognized national diversity within the union but refused to extend this to political autonomy of the component parts. Instead, it insisted on the unitary sovereignty of the Westminster Parliament while allowing flexibility in the application of policy and respecting the autonomy of civil society.

The plurinational nature of the state has deep implications for the form of union and constitutional settlement it might sustain. National constitutions often assume the existence of a shared demos and telos. Demos refers to the definition of the ‘people’, or nation and is the basis for one form of democracy. Some thinkers have argued that such a common identity, indeed, is necessary for democracy to work. Telos refers to the goal of the constitution, a shared understanding of where we are heading. The United Kingdom has neither of these. In the non-English parts, substantial numbers of people do not regard themselves as primarily British (or even British at all), while a significant minority in Northern Ireland and Scotland do not share the goal of keeping the union in being. This does not mean that we cannot have common institutions or a union, but does imply that it should be a particular type of union. The Northern Ireland settlement recognizes this, by allowing citizens to articulate different senses of identity and recognizing different long-term aspirations as equally legitimate.

3. The traditional unionist understanding of the constitution was challenged by devolution at the end of the twentieth century, as it had been by Irish Home Rule proposals in the late nineteenth and early twentieth centuries. Yet initially Westminster declined to acknowledge this, insisting that its sovereignty remained unabridged. The UK, notably, did not convert itself
into a federation, although did acquire some federal features. The government of England was not altered, so that the settlement was highly asymmetrical.

4. The settlement is further challenged by a wider process of spatial rescaling, taking place across the world and especially in Europe. This refers to the migration of functional systems, including the economy, welfare and culture, to new spatial levels. Identities are becoming more complex and multiple. Governing institutions and systems for representation and accountability must adapt at the state, the sub-state and the supranational level, but do so with difficulty. There is no obvious, or purely technical, solution to this question.

5. The dilemmas of rescaling are common to advanced democratic states. The issues of plurinational accommodation are also found elsewhere, notably in Canada, Spain and Belgium and, to a lesser extent, France and Italy. Eastern and central Europe raise questions of their own. Plurinational states have sought accommodation through constitutional reform. This has proved difficult and lengthy, with successive rounds rather than a definitive settlement. It has proved particularly difficult to find common normative foundations for sovereignty, given the different historical and other claims for recognition. It has also been difficult to link citizenship and social rights to a sense of common national identity, where the latter is weak. This has led to a lot of time being taken up on what appear to be symbolic matters or historical disputes, but which are in fact claims to original sovereignty. In Spain, there are endless arguments about whether Catalonia can call itself a nation or whether the Basque special status is derived from the Constitution of 1978 or is prior to it. The UK, in recognizing multiple nationalities and not obsessing with doctrine, has avoided some of these deadlocks.

6. There have been many attempts recently to define the Union and ‘Britishness’ by common values, including liberty, democracy, the rule of law or social solidarity and to derive institutional principles from that. Yet these are not peculiarly British principles but universal values. They are, moreover, the same values espoused by non-unionists who want to set up their own states. There has not been a divergence of values across the United Kingdom but, if anything, a convergence. The divergence is about the constitutional and national framework in which these values will be expressed. Moreover, any effort to entrench common values across the United Kingdom would, if it were to mean anything, have to apply to Westminster as much as the devolved administrations. The Westminster parties have not, hitherto, shown much enthusiasm for entrenching social rights constitutionally.

7. The Union is currently in a state of flux and it would be premature to define it at this stage. It would be better to allow linked debates among
the component nations, and especially within England and then consider how it all might fit together. Otherwise we might end up with a settlement that is rapidly overtaken by events.

8. The constitutional asymmetry in the UK is the result of an underlying asymmetry in the demands of the component parts and their historical development. It should not be seen as a problem in itself but problems may arise in consequence of it. Rather than seeking to impose the same settlement across the United Kingdom, it is better to ask what the various nations and regions want and seek to accommodate that (recognizing that the nations and regions are not themselves internally united on what they want). If the priority in England is local government or English Votes for English Laws rather than an English Parliament, that should be respected.

9. There is a remarkable degree of agreement on the general idea of economic and social union across the United Kingdom, as long as these are dissociated from the Britishness agenda, which is itself a form of nationalism. The Scottish National Party has argued for retaining a common economic space and a ‘social union’ (however ill-defined). There is a consensus among the main parties about the need for an economic union in Europe (although disagreements about the political dimension). It would be possible to work out some general principles against which to assess proposed changes. The idea of ‘detriment’ could be defined better as a way to control differences in economic and fiscal policies. There could be an analysis of what types of social risk might appropriately be shared at which level. This kind of analysis could usefully have informed the work of the Smith Commission, had adequate time been made available.

10. It has been suggested that a Citizens’ Convention be held to agree on a new settlement for the United Kingdom. I am very sceptical of this idea. We do not have the shared demos and telos to underpin such an exercise, which, if it were truly inclusive, would just become a forum for ventilating fundamental differences. It would be better to allow a fuller debate in the various parts of the UK. Scotland has had a referendum but the option of maximum powers within the Union was not put to the vote, with the result that opinion was polarized. The Northern Ireland settlement remains precarious and any effort to tie it more firmly into the Union would be destabilizing. The constitutional debate in Wales is still in progress, while England is divided among competing options.

11. A critical role in the development of the United Kingdom is played by Europe, including the European Union and the European Convention on Human Rights. The EU framework has provided guarantees for economic union, allowing more devolution within the United Kingdom than might otherwise have been possible. The European Convention on Human
Rights provides equality of basic rights while detaching these from the need to be or to feel British. This is of critical importance in Northern Ireland but is also relevant in Scotland. Both EU law and the ECHR are directly applicable in the devolved territories. There is an appreciation of these factors within the devolved territories, which exhibit less Euroscepticism than does England. UK withdrawal from the EU or the ECHR would therefore be destabilizing for the internal constitution of the United Kingdom.

12. The main element missing in the UK devolution settlement concerns not the devolved territories but the centre. Devolution was bolted onto an existing unitary constitution. The United Kingdom is not going to become a federation in any normal sense (because of the disproportionate size of England) but we could usefully import federalist ideas, which imply a balance between the centre and the territorial legislatures and administration and a role for the latter at the centre itself. The procedure for determining the allocation of public expenditure leaves a great deal to the discretion of the centre. The boundary between English and UK government in unclear. There is no provision for territorial representation in the second chamber of Parliament. The arguments about the provisions in the Scotland Bill to recognize the Scottish Parliament as permanent or to entrench the Sewel convention show the difficulties in limiting central power within of the present constitution.

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