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Summary

- History has a special value in explaining how present constitutional circumstances in the UK have come about.

- Policy-makers should approach the UK constitution as a multination entity. If their objective is a cohesive state, it must be founded in recognition of the existence of diverse subcomponents, rather than an undifferentiated polity.

- Policy-makers should give serious attention to the contradiction between the principles of, on the one hand, sub-UK autonomy and, on the other hand, supremacy for the UK Parliament. They should decide whether one of the two needs decisively to give way to the other.

- Policy makers should be aware that at present the principles on which the different devolved systems rest are varied. Unless and until a more unified set of values is established, the approach to devolution cannot assume an identical normative framework for each.

- Policy-makers in the UK should be aware that there are examples of federation or quasi-federation in states, especially Spain, that are in some ways comparable to the UK. But the relative size of England is unusual and must be factored into any constitutional model.

- As more powers are devolved, contemporary policy-makers should give special attention to the need to balance variety – which is an inevitable consequence of devolution, and without which devolution would be meaningless – with the guarantee of basic standards. Where, precisely, the line is drawn between the two requirements inevitably has both arbitrary and ideological dimensions to it.

- A model which has gained a growing body of advocates in the UK lately is that of a federal UK. Those who favour a federal system argue it could provide a clearer basis for the UK constitution. It could, they hold, guarantee autonomy to sub-units within the UK, which would become ‘states’, but at the same time bind these components together more clearly at UK level. It would also, supporters of this approach claim, be the best means of extending devolution to the whole of the UK, including England.

- Federalism would pose a challenge to established constitutional understandings in the UK. But it has important cultural roots in the UK. It could be a suitable means of expressing the multination quality of the UK. Moreover, the UK has a powerful intellectual tradition of federalism.
Past international experience suggests that the introduction of a federal system to the UK may not be an easy task. The construction of a federal UK is not a guaranteed outcome, and could if attempted prove unworkable. Indeed, there are many historic examples internationally of multinational federations that have collapsed or have experienced pronounced, sometimes violent, divisions.

But while some commentators may seek to use history to close off the federal option, it is better to view the past as a means of providing a wider perspective on the paths available to us. Policy-makers should not necessarily treat examples of federal difficulties as a reason to rule out a federal project for the UK. Such case studies could as easily provide an opportunity to learn by mistakes, and increase the chances of attaining success in a future federal venture.

Introduction
1. History & Policy (H&P) is a UK-wide initiative led from King’s College London and the University of Cambridge. It seeks to bring policy-makers into contact with historical research. The objective of H&P is to provide fresh perspectives on issues of contemporary concern, broadening out debate and expanding the range of options available to policy-makers. This submission forms part of the newly-initiated H&P parliamentary engagement work-stream, under the general heading ‘Democracy in the 21st Century’.

2. History is of exceptional importance to the UK constitution. Famously, the UK lacks a single text of special legal status setting out its core arrangements, or ‘written constitution’, as such a document is commonly known. There has never been a specific moment at which the UK has sought decisively to write down the key values and rules of its system. While all constitutions develop over time, the UK constitution stands out for the extent to which it appears to be an accumulation more than a specific planned construction. For this reason history has a special value in explaining how present constitutional circumstances in the UK have come about.

3. This general principle is clearly apparent when the development of the Union and devolution is considered. This timely Committee inquiry is therefore approached using this particular perspective.

1. What are the essential characteristics of a nation state? Are these different for a state in which power is devolved and, if so, how?

4. A nation state is a country the people of which are bound together by a clear identity, given legal-institutional representation. However, a consideration of UK history suggests that the concept of a multination state is, as a tool of analysis, at least as useful as is the concept of a nation state. The UK came together as a consequence of a series of incorporations of two or more distinct nations, beginning with the absorption of Wales into England in the sixteenth century; followed by the Union between England and Scotland of 1706-1707, then the Union between Ireland and Great Britain of 1800. There
was then a partial disintegration, with the formation of the Irish Free State in 1922, leaving six counties in the UK, forming Northern Ireland. At different times, Wales, Scotland, Ireland and Northern Ireland have all had special constitutional arrangements reflecting their distinct status within the UK. These arrangements have included recognition for particularities of language, religion, education, local government, and for different legal systems. Devolution was first used in the UK for Northern Ireland from 1921-1972; and was introduced to Wales, Scotland and Northern Ireland (again) under the Labour government that first took office in 1997.

5. Whether the UK ever fully overcame its internal diversities to establish a clear, unifying, positive, national identity is debatable. Some historians believe that British identity during the eighteenth century was largely founded in hostility towards outside countries such as France and Germany, as opposed to an internally generated sense of cohesion. The incorporation of Ireland was always problematic, partly but not exclusively for religious reasons, and frequently met with resistance, both of political and violent nature. A sense of ‘Britishness’, associated with the global imperial project, gained some viability, but underlying attachment to the sub-UK nations persisted. A ‘UK’ as opposed to ‘British’ identity has never possessed traction. Moreover, the desire to exit the Union altogether has manifested itself at various points throughout the history of the state, most notably in Ireland, and Scotland.

6. Therefore, devolution in the UK should not be seen primarily as a set of reforms that have challenged the status of a nation state. It is, rather, a change that expresses forces that have existed within the UK from the outset, and which are connected to its multination status. Devolution has, moreover, some precedent in the past constitutional make-up of the UK, which has always reflected divergences in ways that would not generally be associated with the systemic arrangements of a nation state. However, it is possible that devolution has had the effect of intensifying internal national identities within the UK, especially in Scotland, even to the extent of encouraging serious threats to the continuation of the UK in its present form.

7. Policy-makers should, therefore, approach the UK constitution as a multination entity. If their objective is a cohesive state, it must be founded in recognition of the existence of diverse subcomponents, rather than an undifferentiated polity.

2. What are the key principles underlying the Union between England, Wales, Scotland and Northern Ireland? Are there principles that are unique to the UK’s Union?

8. Historically, a key purpose of the UK was security against external threats through unity. This intention is detectable in the unions of 1706-1707 and 1800. The Union between England and Scotland took place at a time when Louis XIV threatened to achieve dominance on the continental landmass. Great Britain incorporated with Ireland at the time of similar peril emanating from France, this time under the leadership of Napoleon. Another,
connected, desire underpinning the Union was preservation of the Protestant succession and the exclusion of Roman Catholics from the throne. These values are surely anachronistic today. Despite the tone of some of the popular press, it is not plausible to regard France as the military enemy it once was, and France has a longstanding alliance with the UK, expressed in agreements such as the *Entente Cordiale* of 1904. Moreover, while the UK retains religious discrimination in its constitutional arrangements, the issue of the Protestant succession does not generate the sense of urgency it once did. While the monarch must adhere to the established religion, society has moved on in other ways, as indicated by legislation such as the *Equality Act 2010*, which includes protections against religious discrimination.

9. As already suggested, it is possible to discern another important set of historic values underpinning the Union. They involve the allowance for constitutional diversity reflecting the multination make-up of the state. Indeed, the UK has been an outlier internationally in the extent to which it allows for constitutional differences, for instance through having three different legal systems operating within a single state. These principles remain relevant in the contemporary UK.

10. Running in parallel to this recognition of internal differences, the UK has had another legal and intellectual tradition emphasising the idea of an all-powerful, ‘sovereign’ Parliament. The prominence that the UK (and in particular, England) has attached to this precept has been another way in which it is unusual internationally. The contrasting concepts of multinationhood and parliamentary supremacy are suggestive of a longstanding tension in the key principles of the Union. This conflict persists today. For instance, the present government intends through the Scotland Bill to place the Scottish Parliament and Government on a permanent basis. This provision would recognise that, since devolution, a lasting change has taken place within the UK constitution. Yet, if the doctrine of parliamentary sovereignty remains valid, then the UK Parliament could abolish the Scottish Parliament and Government through simple majority votes. While Parliament retains an unrestrained power to legislate as it sees fit through regular procedures, other ‘key principles’ lack firm legal meaning.

11. Policy-makers should give serious attention to this contradiction, and consider whether one of the two principles: sub-UK autonomy on the one hand and supremacy for the UK Parliament on the other hand, needs decisively to give way to the other.

3. On what principles are the UK’s devolution settlements based, or on what principles should they be based? Have principles emerged through the process of devolving power, or as power has been exercised by the devolved nations and regions?

12. In their foundational principles the UK devolution systems differ from each other. In Scotland, the *Claim of Right* (1989) suggests that it is for the people of Scotland to determine what their constitutional future should be. A further set of values can be discerned from the ‘Vow’, issued by the then-leaders of
the three main pro-Union parties shortly before the Scottish Independence Referendum of 2014. It proposed principles including that the Scottish Parliament should be permanent. The Belfast Agreement of 1998 is the foundation of devolution in Northern Ireland. It too suggests a role for a people in deciding upon their own fate. But in this instance it is a group of people who do not at present reside in a single state: the people of Ireland as a whole. The Agreement provides devolution in Northern Ireland with a unique quality within the UK, in that it forms part of a settlement intended to achieve peace, and resolve disputes by political rather than violent means. Discerning foundational principles for the Welsh system is more difficult. It is probably fair to say that much of the work in this area was carried out after the initial introduction of devolution, through a variety of commissions and other discussions. The system itself has altered substantially in the process.

13. Policy makers should be aware that at present the principles on which the different devolved systems rest are varied. Unless and until a more unified set of values is established, the approach to devolution cannot assume an identical normative framework for each.

4. Are there applicable examples from other countries with multi-level governance structures?

14. One relevant international example that the Committee should take into account is that of Spain. Like the UK it has a multination tradition, upon which there have been historic attempts to superimpose a centralised system. Tensions between the two approaches have led to prolonged violent conflict. Following the Franco dictatorship, Spain sought to move by consensus into a post-authoritarian era through its 1978 constitution. Under this system, it has been possible for different ‘Autonomous Communities’ within Spain to acquire powers transferred from the centre to suit their particular requirements. The precise authorities taken on, and the speed at which this process takes place, can vary on a community-by-community basis. Yet while the example of Spain since 1978 has similarities with the multi-national asymmetry of the UK, there are also clear differences. There is no one nation within Spain that has the equivalent dominance in population size, and associated qualities, that England possesses within the UK. Another distinction is that autonomy is available throughout Spain, while in the UK devolution is not yet possible for most of England.

15. Policy-makers in the UK should be aware that there are examples of federation or quasi-federation in states that are in some ways similar to the UK, but that the relative size of England is unusual and must be factored into any constitutional model.

5. How might these two sets of principles be embedded in the UK’s constitution, or entrenched in the work of governments and legislatures across the UK?

16. During its history, the UK has not had a clear ‘constitutional moment’ leading to an attempt to devise and entrench an express statement of principles and
rules, of the kind often found in written constitutions internationally. Any attempt to clarify or reformulate the principles underpinning the UK as a state might require the occurrence of such a ‘moment’, though the circumstances that might lead to it are difficult to predict. It could involve the formation of a constitutional convention of some kind, charged with examining issues of pressing concern to the UK, among which devolution and the future of the Union would be prominent. The convention could consider the various issues raised elsewhere in this submission, including the means of sustaining a multi-nation state, the possibility of a federal UK, and the continued viability of the doctrine of parliamentary sovereignty. It could make recommendations that might then be given statutory or other expression.

6. What is the effect on the Union of the asymmetry of the devolution settlement across the UK? What might be the impact of the further proposed devolution of powers to Scotland, Wales, Northern Ireland and English local government? Is the impact of asymmetry an issue that needs to be addressed? If so, how?

7. What might be the effect of devolving powers over taxation and welfare on the economic and social union within the UK? Are there measures that should be adopted to address the effects of the devolution of tax and welfare powers?

17. To take questions 6 and 7 together, in some ways the UK constitution is moving into unprecedented territory, with the transfer of powers to the devolved institutions that they did not possess before. History may from this perspective seem to be of limited value. However, some examples from the past are instructive. The Northern Ireland Parliament that sat for half a century from the 1920s enjoyed substantial discretion across a variety of policy areas. It is often depicted as having deployed this autonomy in a discriminatory fashion against the Catholic community. This pattern need not replicate, but it is a tendency that policy-makers should keep in mind.

18. There have also been points in the past when local government in the UK enjoyed significantly greater tax-raising powers than it does at present. In this sense there is precedent for sub-UK fiscal autonomy. Moreover, before the development of the welfare state during the course of the twentieth century, social provision (or its absence) was more of a locally determined matter. Once again, views of this method of coverage are often not positive, one criticism being the pronounced variability in standards.

19. Contemporary policy-makers should give special attention to the need to balance variety – which is an inevitable consequence of devolution, and without which devolution would be meaningless – with the guarantee of basic standards. Where, precisely, the line is drawn between the two requirements inevitably has both arbitrary and ideological dimensions to it.
8. What other practical steps, both legislative and non-legislative, can be taken to stabilise or reinforce the Union? How should these be implemented?

9. Is the UK’s current constitutional and legal structure able to provide a stable foundation for the devolution settlement? What changes might be necessary?

20. To address questions 8 and 9 together, a model which has gained a growing body of advocates in the UK lately is that of a federal UK. Those who favour a federal system argue it could provide a clearer basis for the UK constitution. It could, they hold, guarantee autonomy to sub-units within the UK, which would become ‘states’, but at the same time bind these components together more clearly at UK level. It would also, supporters of this approach claim, be the best means of extending devolution to the whole of the UK, including England.

21. A federal constitution would imply that the whole of the UK would have an equivalent to devolved government, in contrast to the uneven coverage that prevails at present. Furthermore, power would be shared between the devolved institutions and the UK Parliament. The latter would lose its ‘sovereignty’, and a written constitution would become the ultimate authority within the UK system, in place of the Westminster Parliament.

22. Federalism, therefore, would pose a challenge to established constitutional understandings in the UK. But federalism does in fact have important cultural roots in the UK. It could be a suitable means of expressing the multination quality of the UK. Moreover, the UK has a powerful intellectual tradition of federalism. At the time of the negotiation of the Union between Scotland and England in 1706, some – especially on the Scottish side – favoured the idea of a ‘federal’ Union over the ‘incorporating’ Union that was eventually implemented. (Though at this time the word ‘federal’ referred to a looser conglomeration than it would now.) From the nineteenth century onwards, federalism gained a significant body of advocates and was the subject of much intellectual investigation in the UK. At various points the federal movement has focussed on a variety of possibilities, including imperial federation (in the late nineteenth century), an Atlantic union (especially between the wars), a global system (for significant parts of the twentieth century), or a ‘United States of Europe’ (at various points, most notably in the late 1930s and early 1940s). But a key part of the package has been the idea of an internal federation for the UK. Vital impetus for this concept arose during the late nineteenth century from the desire to resolve the ‘Irish Question’ in a way that avoided a break-up of the UK. Federalism also came to be seen as a means of accommodating the needs of the other Celtic nations of the UK. The idea of a federal UK has grown in currency again in the second decade of the twenty-first century, this time in response to the growing possibility of Scottish independence.

23. The UK has also played a part in influencing and drafting federal constitutions across the world, from the US in 1787 (which arose following a revolution against the Empire, but sought to incorporate English political principles), to
Australia (1900), Canada (1867, 1982), India (1949), and post-Second World War West Germany (1949).

24. So why has the UK not yet acquired its own federal constitution? Part of the answer is the size of England, which accounts for more than 80 per cent of the total population of the UK. It is often noted that there is no example of a federal system incorporating a single unit of anything like this relative size and proving successful. Under such an arrangement, the smaller participants can feel threatened and may wish to secede; or the larger component may feel resentful that it is not receiving influence within the system on a scale that reflects its importance and the contribution it is making to the federation.

25. If it is accepted that the size of England is potentially a serious barrier to the formation of a federal UK, any consideration by policy-makers of the possible application of this model to the UK needs to take into account how to handle England. One approach is to incorporate a series of English regions, rather than England as a whole, into a federation. Historically, advocates of a model of this type have included Winston Churchill, who proposed a system along these regional lines, both within government and in public, when he was a Liberal minister early in the second decade of the twentieth century. England may appear to be by tradition indivisible, but in its Anglo-Saxon pre-history it comprised a set of different kingdoms.

26. As this consideration of the possible role of England in a UK federation suggests, past experience suggests that the introduction of a federal system to the UK would not be an easy task. The construction of a federal UK is not a guaranteed outcome, and could if attempted prove unworkable. Indeed, there are many examples of multination federations that have collapsed or have experienced pronounced, sometimes violent, divisions. They include the West Indies (1958-1962), the Soviet Union (1922-1991), Yugoslavia (1918-2003), and Czechoslovakia (1918-1992).

27. But while some commentators may seek to use history to close off the federal option, it is better to view the past as a means of providing a wider perspective on the paths available to us. Policy-makers should not necessarily treat examples of federal difficulties as a reason to rule out a federal project for the UK. Such case studies could as easily provide an opportunity to learn by mistakes, and increase the chances of attaining success in a future federal venture.

28. Closer inspection of ‘failed federations’, for instance, helps demonstrate the many varieties of federalism that exist and the different contexts in which it succeeds or otherwise. It also suggests that definitions of success and of failure can vary. The problems experienced by some of the systems already described may relate to issues not directly arising from the federal models they deployed. Some used authoritarian government, others had pronounced cultural or ethnic divisions, others still had economic deficiencies. It is necessary, therefore, to treat direct comparisons with the UK with caution. Failure in one state should not necessarily prompt pessimism regarding the prospects for a UK federation.
29. Equally, it is important not to assume immediate equivalency when we consider what may be termed ‘federal successes’, such as the United States of America, Germany, or Australia. These countries do not, for instance, have the same multination character as the UK. Moreover, such federations have come about in different circumstances, for instance, as a means of binding together more disparate units (as was the case with the US in 1787), rather than accommodating an increasingly autonomous set of sub-components.

30. Some useful historic comparators include Canada, Belgium and Spain. All are developed economies with pronounced internal distinctions, even divisions, that have adopted, in different ways and at different times, federal approaches. The successes and difficulties associated with these countries offer to policy-makers valuable guidance for an attempt to devise different constitutional and legal structures for the post-devolution UK. The Committee should take them into account as part of its ongoing work in this area.

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