



Our new Constitution

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Ladies and gentlemen, this is the last in the long series of lectures that I have been on the changes in the Constitution that we have had over the last two years. The first one which I gave, nearly three years ago now, was called 'Our old Constitution', and since then I have been contrasting that with the various changes that have occurred. In today's lecture, called 'The new Constitution', I want to draw the threads together to try and see how the Constitution has changed from what it was ten years ago and more, before going on to ask the question of what difference it has actually made to most of our lives in normal everyday terms.

Let me first briefly recapitulate what the old Constitution was like. Perhaps this is a bit of a caricature, but I think not too much. First of all, the old Constitution was based largely on convention. It was very informal and pragmatic in style. Broadly speaking, what worked worked. Its central principle was the sovereignty of Parliament, and that reflected the political fact of the dominance of the Executive; the dominance of Government over Parliament. Britain was a unitary and centralised state, ruled from London; there was no devolution, and the boundaries of the United Kingdom, the geographical boundaries, were taken for granted. The permanence of the United Kingdom was also taken for granted - no one believed or thought that the United Kingdom might at any stage come to an end.

The courts had a limited role in constitutional matters. The judges tended to be deferential towards Government and the Members of Parliament, and the rule of law was secured primarily through Parliament and not through the judges.

Finally, there was no place for the referendum in the British Constitution. That is going a bit further back because we had our first, and so far only, national referendum in 1975, but if you look before then, the referendum was thought to be unconstitutional. This was because, broadly speaking, there was no place for the people in the Constitution and there was no provision for popular consultation. All decisions were made by Parliament.

The new Constitution is different in almost every single respect. Firstly, a lot of it has now been put down on paper and drawn together. If you want to know what devolution is about, you look at the devolution legislation. If you want to know about human rights, you can look at the Human Rights Act of 1998. If you want to know about Europe, you can look at the European Communities Act and subsequent amendments to it. A great deal is put on paper.

But more important than that, although Parliament may still be sovereign - and even that could be questioned because of our membership of the European Union - in practice it has been very severely qualified. Indeed, it was qualified early on, long before the period we are talking about, in 1973 when we joined the European Union. The European Union, as we are coming to realise, is not just another international organisation, like NATO or the United Nations; it is a legal order which is superior to the British

Parliament. Of course, if you take the principle of the sovereignty of Parliament seriously, there can be no such legal order superior to the British Parliament - Parliament must be superior. Thus there is a conflict there, and that conflict has not been worked out, either in theory or in practice. There are numerous examples - some of them people do not like, some of them they do - whereby legislation has been adopted by the European Union and Parliament has had no option but to accept it as a consequence of our membership.

A more recent example, which I think will have very considerable effects upon the United Kingdom, is legislation against age discrimination: you can no longer put in an advertisement for a job that you want someone young or someone experienced, and you can no longer put euphemisms like 'dynamic' and so on which indicate young. It now has to be worked out by various institutions how we are going to comply with this. It may well happen that we, as in the United States, come to the conclusion that you cannot retire someone on grounds of age. Many of my older colleagues retire from my University and go to work in America where they cannot be retired on grounds of age - in America you can only be retired on grounds of lack of competence, which is not so easy to show as to show that you have reached a certain age. It may be we do that here, and that will cost a lot of money, stop younger people getting jobs - it will have all sorts of consequences, which you may think good, you may think bad, but the key point is that the legislation was not passed by Parliament here; it was passed by the European Union, and we now have to find some way of complying with it. So whatever the theory, in practice, Parliament is much less sovereign than it was because of Europe.

Parliament is also less sovereign in Scotland, Wales and Northern Ireland, because of devolution. Formally, Parliament remains sovereign: it could repeal the Scotland Act tomorrow and abolish the Scottish Parliament if it so wished, but we all know it is not going to do that, and in practice, matters of health, education and other domestic affairs, are conducted by the Scottish Parliament, in Wales by the National Assembly, and in Northern Ireland by their Assembly, and not by Westminster. Again, this is a practical limitation upon the sovereignty of Parliament.

Furthermore, the Human Rights Act in practice limits the sovereignty of Parliament. Formally, it does not because Parliament could take no notice of the judges, but so far it has always done so. This means that a lot of things that Parliament would like to do, it cannot because of judicial control. There was a very good example relating to what happened last week - the escape of three men who were under control orders. The Home Secretary, John Reid, said he faced a problem, because he had originally taken the view that the Government had - that these people should have much stronger restrictions - and the original proposal was they should be detained, without being charged, by the Executive. That was ruled out of order by the judges. Then they were discussing ninety day detention before charge was produced, but that was dropped in Parliament, because it was generally felt the judges would not have it. The control orders themselves had been under criticism from the judges. So ministers say that the things they would like to do against terrorism are stopped by the judges. You can take what side you like in this argument - you can say the judges are right and we have got to preserve a liberal society, or you can say that the Government's right because they are accountable to the people for protecting us from terrorism - but whatever you say, I think you cannot get away from the fact that Parliament is no longer sovereign in the sense that Government can do what it likes and ignore the judges. So in practice, there is another restriction on the sovereignty of Parliament.

What we have got here is legislation which in fact is constitutional legislation. Under the old Constitution, you could not have constitutional legislation because Parliament was sovereign, and any act had the same status as any other act. This legislation I have been talking about - the European Communities Act, the devolution legislation, the Human Rights Act - they have the status of constitutional statutes in the sense that although they could be repealed in theory, in the same way as any other, in practice, they have an entrenched status. They are the fundamentals of what might eventually be a written Constitution, and I am going to talk later on about the question of whether we ought to have one.

But let us go on to further changes from the original position I talked of. I mentioned the referendum, and I said we had one national referendum in 1975. Since 1997, we have had a number of sub-national referendums. We have not had a national referendum, but we have had a number of sub-national ones. We have had referendums in Northern Ireland, Scotland and Wales on devolution, and they were all successful. We have had a referendum in London on whether there should be a Mayor and an Authority, and that also was successful. Then in 2004, we had a referendum in the North-East of England on whether they wanted regional devolution, and that was unsuccessful - they said they didn't want it and so that ended that particular proposal. We have not, as I said, had any other national referendums, but all sorts of referendums have been promised. I have got a list here of six referendums that have been promised at various stages, and I will read them out to you.

First, we will not be joining the Euro without a referendum. This does show the power of a referendum, because it is said Tony Blair would have liked to get us into the Euro, but it is difficult for him if he has to have a referendum because there has not been one single opinion poll that has shown a majority in Britain for entering the Euro. You may say that before 1997 Governments would have ignored that - they would say, 'we think it is right to join the Euro, we should join, and no doubt people will judge us afterwards in a General Election'. But Blair, Gordon Brown or anyone else cannot join, because they have to have a referendum first and that restricts. It is again a further restriction on the right of Parliament, a form of entrenchment if you like, preventing Parliament or the Government from doing what it says it would like to do.

The second referendum promised, again on Europe - no accident that so many of them are to do with Europe - that the constitutional treaty, if it is resurrected, will not be ratified unless there is a referendum. The Government at the present is trying to get out of that slightly, because it may be that the original treaty will not be resurrected, but there will be a mini-treaty containing some of the items, and there is a big argument over whether that should require a referendum or not. The Government is saying it should not, but you can be sure there are lots of people who will say, look, you are trying to weasel out of this and we are not going to sign up to any constitutional changes in Europe without a further referendum. So that is a second area; the question of a treaty for Europe.

The third area is changing the electoral system, possibly to one of proportional representation in Westminster. In 1997 Blair promised that there would be a referendum on the electoral system after a commission had been set up. A commission was set up by Roy Jenkins, which produced various proposals, but there has not been a referendum. But I think it is fair to say that, nevertheless, we wouldn't change - no Government would contemplate changing the electoral system for Westminster without the use of a referendum. It would now be thought to be wrong.

The fourth referendum is what we have had in local government, not only in London, but any other area which wants a directly elected mayor has to have a referendum before it can do that. Around twelve authorities have succeeded. In Oxford, where I live, it failed, but in other areas, it has succeeded. I think Watford has one, and Hemel Hempstead another, but there are various areas which have mayors. There are very few at the moment, but no local authority can have a directly elected mayor without a referendum. That is the London Principle as well, of course.

The fifth is that a referendum is required before Northern Ireland can be separated from the rest of the United Kingdom. If the Assembly, if the elections produced a majority in the Assembly, say under Sinn Fein, that said we do not want to be in the United Kingdom anymore, that would not be enough, because there has to be a referendum on the question.

The sixth one is a new provision - it is rather obscure and probably has not been noticed by many people, and there is no reason why it should. It relates to Wales. Those who attended my lecture on devolution may or may not remember, but Wales does not have the same form of devolution as Scotland. It does not

have power over primary legislation - over statutes - but only over secondary legislation - that is, orders of government, statutory instruments and the like. There are some people in Wales who want it to have the same powers as Scotland, and some people who do not, but the Government passed legislation last year, a new Government of Wales Act, saying that Wales could not have primary legislative powers without a referendum in Wales. So that is yet another proposal for a referendum.

I make that six different proposals. Obviously, the referendum has become an important instrument in Britain, and no one can say anymore that it is unconstitutional and somehow anti-British.

It follows from all this as well that the centrality of Parliament in British life is much less than it was because there has been a transfer of powers, both upwards to Europe, and also downwards to these various devolved bodies. There is now a sharing of power, a sharing of sovereignty if you like, and not only within the country, but in Northern Ireland, as those of you who were at my last lecture will remember, a sharing of power with the Irish Republic, because the Irish Republic has a certain role in the government of Northern Ireland, so it is sharing with a government outside the United Kingdom Government - a very remarkable situation. You may say that for the non-English parts of the United Kingdom, Westminster is now in effect a federal Parliament, because the domestic matters are now dealt with outside.

All this relates to a further point that follows on from it; that being British, something on which Gordon Brown has spoken very eloquently, means something different from what it meant ten years ago. Back then, if asked about being British, most of us would say it means belonging to the British nation, which is a single nation. However, now it seems that being British is belonging to a multinational state comprising not one nation but four or three-and-a-half nations, however you call the Northern Irish: the Scottish, the English, the Welsh, and the Northern Irish (or the Unionists in Northern Ireland). But at least there is more than one nation in Britain now - we do not see ourselves as a single nation, but a multinational country, and part of the problem of Government is to ensure these various nations live in harmony together. That was not a problem say fifty years ago - no one thought about it much; about whether people were English, Scottish or Welsh and so on, or how much money Scotland got from the Treasury, etc. But we now do think of such things.

It is a union which seems subject to continual renegotiation. Already, the position of Wales has altered a bit, with the Government of Wales Act last year. The Scots, especially under the new Nationalist Administration, will be asking for more powers from Westminster, and the Liberals in Scotland also think that Scotland ought to have more powers. Some people think Scotland should have the power to raise its own revenue. So it is all in the air somewhat. At the time of devolution, the Welsh Secretary, Ron Davies, said that devolution was 'not an event, but a process', a continual process of renegotiation, and that certainly seems to be the case. So Britishness, in a sense, now seems to be a kind of conversation, a permanent conversation, between the English, the Scots, the Welsh and the Northern Irish on matters which are difficult to settle definitively.

Moreover, you cannot take the continued existence of the United Kingdom for granted, in a way which could have been done, say, fifteen years ago. It is possible - not probable perhaps - that Scotland will, at some future stage, become independent. I think that cannot be excluded. So the future of the United Kingdom, far from being a certainty, is now, as it were, a question mark. Indeed, some people in England welcome the separation of Scotland: they say, 'we would be better off without the Scots, they should go and good luck to them', and so on. Some people in Scotland think that too. There are sizeable proportions who favour Scottish independence, on both sides of the border, and that also is new.

Furthermore, at the very centre of Government, Westminster, Parliament itself has changed in a way opposite to the way suggested by most people. Most people think that Parliament is a rather docile body - sort of Blair's poodles and so on - but actually Parliament, which had been fairly docile in the past has begun to find itself in the last few years. Dissent - MPs voting against their Party line - is now much greater

than it has ever been. If you look at the last Parliament, from 2001 to 2005, the revolts on the Iraq War and foundation hospitals were the largest revolts since the Corn Laws in 1846. Even in this Parliament, the Government has been defeated four times already on its legislation, and that's a greater number of times than any Government with a secure majority since the War. MPs are, in one sense of the word, revolting - more than they were in the past - contrary to the image of very docile Members of Parliament.

The House of Lords also, which tended to be fairly docile, at least when Conservative Governments were in office - it has a permanent Conservative majority. Since the hereditary peers were removed in 1999, the House of Lords has also become much more assertive and more professional. Particularly on civil liberties matters, it has rejected many things done by the Labour Government. This is not because there was a Conservative majority in the Lords - there is not - and the convention now seems to be accepted that no single Party should ever have an overall majority in the Lords, which is also something very new. The largest Party now in the Lords, for the first time in its history, is the Labour Party. The second largest group is a cross-bench group, and the Conservatives are now third, with the Liberals third. In practice, to get through most legislation produced by the Government, you need support from the cross-benchers and/or the Liberals to succeed. Therefore, it is now not as easy as it was to get things through the House of Lords.

A further change from ten years ago is the tremendous diversity of electoral systems in this country. If you read about the Scottish Elections, you will have read about the confusion which people had because they had two different systems of proportional representation in use: one single transferable vote system for the Scottish local government authorities; and one, which is the German additional member system, for the Scottish Parliament. Please do not ask me to explain these two different systems - I did that when I gave my lecture on electoral systems, and it is on the Gresham College website. But these are two different systems, and the point I want to stress is that if you had said fifteen years ago we would be using all these different systems, you would be thought to be slightly out of touch with reality. Back then, people said the basic British system is first-past-the-post and anything else is rather cranky and used by foreigners and we do not want to experiment with that here.

Now we have got no less than four different electoral systems used, together with first-past-the-post, in Britain. We have got the single transferable vote, which is used for most elections in Northern Ireland and for Scottish local government. We have got the supplementary vote, which is used for the London Mayor, which people here who live in London who voted for it will have used themselves. You have got the additional member system, the German system, which is used for the London Authority and also for the Scottish and Welsh devolved bodies. You have got the regional list system of proportional representation, which is used for European elections. As I say, I am not going to describe these again, but they are on the website for those who are interested. A voter in London uses four different electoral systems - let me go through them again: one for the House of Commons, which is first-past-the-post; another for the European Elections, a regional list system of PR; a third for the London Authority, which is the German or the additional member system of PR; and a fourth for the London Mayor, the supplementary vote. The fifth one comes in Scottish local government and Northern Ireland, which is the single transferable vote. So we have five different systems.

As I say, fifty years ago certainly, proportional representation was regarded as something a bit cranky, and now it is used for all elections in Britain, except elections to the House of Commons and elections to local government outside Scotland and Northern Ireland - in England and Wales - and Wales is thinking of changing their local government system. So you may think, and you may be pleased or displeased about it, that proportional representation is like the tide coming in - difficult to hold it out. Once you start in one place, it gets into somewhere else as well, and it is difficult to keep out, and the last redoubts are really English local authorities and Westminster. Some might say it is an inevitable tide sweeping in, and others may say 'no, we have got to push it back, it is no good', but regardless, that is an important change.

Following from that, we have seen other changes, mainly new experiences of coalition and minority

government in Scotland and Wales. We have had, since the Scottish Parliament was set up, it has been governed, until this year, by a coalition between Labour and the Liberal Democrats. It is now being governed by a minority government, comprising the SNP and the Greens. Wales has been governed by a majority - Labour majority, a Labour-Liberal coalition, and now a minority Labour Government - which may at any time be overthrown by a rainbow coalition of Plaid Cymru, Liberals and the Conservatives. So these are new political arrangements, very unfamiliar at Westminster, where we have not seen a coalition since the War, and minority governments are very rare. One interesting question to ask is: will all this have any consequence - getting coalitions in non-English parts of the country?

Furthermore, as a result of proportional representation, voters are more willing to support minority parties than they were. We used to think we were a strongly two-party system. In the last Election, even for Westminster, just 69% of those who voted, voted Labour or Conservative, the lowest proportion by far since the War. But people are not just voting for Liberal Democrats; they are also voting for the Greens; they are voting for UKIP, which in the European Elections gained 17% of the vote in 2004; and they are voting for the BNP, which gained over 4% in the European Elections in 2004 - those Elections conducted by proportional representation. People's views on PR tend sometimes to differ according to who they think it will benefit. If you say it will benefit the Liberals the reaction may be positive, 'Oh they are good people - good idea'; but if you then say it might benefit extremists, like the BNP, then the reaction may be negative 'We do not want that.' But you cannot have both.

The interesting question is whether this habit will be transferred into a greater willingness to vote for minority parties at Westminster. There is no answer to that question. All I can say is let us wait and see - we do not know, but it is a possibility.

Finally, judges have a much greater role in politics than they did, and it is not enough now for Governments to say, 'We can get our policies past the House of Commons and the House of Lords.' They have to ask, 'Can we also get them past the judges?' Judges are now making decisions which politicians used to make on the balance of civil liberties and protection of society, and that obviously upsets the politicians because they say, 'We are accountable to the public on these matters, and if there is a terrorist attack, people will blame us. They will not blame the judges. They will say, 'Why didn't you protect the country?' but our hands are bound because of Human Rights legislation.' So there is a new conflict there.

To summarise these points, in general, and contrary to many public perceptions, there are many more checks on Government than there were. You have got devolution, you have got the judges, you have got rebellious MPs, you have got the House of Lords, you have got us, the people, through the use of the referendum. Thus, if one wants to summarise the major changes in one sentence, I think it would be that Government is much more trammelled than it was ten or fifteen years ago - it is now constitutionally checked. In a way that is what you mean by a constitution; that there are great checks on the power of Governments - in the American Constitution for example.

But it is fair to say that the central parts of Government, the Government machine, have been comparatively untouched by constitutional reform. There has been no reform of the electoral system for Westminster. There has been no reform of the Cabinet system or party system. There have been some reforms in the Commons, but perhaps not as fundamental as some of the other reforms. Therefore, the core of the British system, what you might call the Westminster model, remains untouched.

But you may say, with a lot of this constitutional legislation having been written down, or what would-be-called constitution in many other countries - devolution, Human Rights Act, all the rest of it - 'is not it time we had a Constitution ourselves?' Statements of this kind have been made by people like Gordon Brown recently, and the Attorney General, who want a debate on whether we should have a Constitution. You may say, 'so much of it is now been written down, why do we not write the whole of it down?'

When people ask this question, they say, 'should Britain have a Constitution?' But really, this is not the question to be asked; the question to be asked is why should Britain not have a Constitution? What is different about Britain from almost every other democracy that has a Constitution? There are only three democracies that do not have constitutions: ourselves; New Zealand, which has a roughly similar principle of Parliamentary sovereignty; and Israel. The latter of these does not have one because they cannot agree, firstly, on the boundaries of the state, and secondly, on the role of religion. They are working towards a Constitution with a series of basic laws, but they have not yet got there. They think they ought to have one, but they cannot agree on what it should be. New Zealand is not preparing a Constitution. But all the other democracies in the world, which are a large number, have constitutions.

Why have we not got a Constitution? I think all this should come out from the lectures, and particularly the first one that I gave. The first reason is historical, that we have never had what might be called a constitutional moment - that is, a moment when we actually began as a state. This occurred, for example, in America when she broke off from Britain, or the colonies - Australia, Canada and so on - had when they broke off from British rule, or Germany after the War when it has to start again after Nazism, or the French when De Gaulle came to power in 1958. The French have often begun again actually - they've begun again sixteen times since the French Revolution; they have had sixteen Constitutions. There used to be a story that someone went into a shop to ask for a copy of the French Constitution, and the reply was 'We don't sell periodicals here!' Their present system, which has now lasted almost fifty years, is the second longest lasting since the Revolution. During the 4th Republic, which preceded it, there used to be an advertisement in the Paris Metro 'Republics come and go - Sude Paint lasts'. So they have started a number of times, but we have not started at all. We have evolved, and we had a break - the only time we had a break really in the Civil War in the 17th Century, and then we had a Constitution in 1653, as Cromwell's Instrument of Government. But Cromwell abolished the House of Lords and then shortly afterwards abolished the House of Commons to become a dictator. So we did not think the experience of a Constitution was necessarily good, and in 1660, when we had the monarchy, we called it the Restoration - we had gone back to where we were before. Since then, we have evolved without ever having begun.

That is a historical reason, but there is also a conceptual reason - namely, the Doctrine of Parliamentary Sovereignty, whereby, if Parliament is supreme, there is no point in having a Constitution because Parliament can trump it. There cannot be something that checks Parliament. I suggested that Parliament is in practice no longer sovereign, so in my view that argument no longer holds as to why we should not have one. As I said, we have already codified so much of the Constitution, there seems no reason why we should not codify the rest. We might now be in a position to consider what the principles of our Constitution should be.

But I think there is an argument against producing it now, and before I say why, I should say that I actually took part with some students last term in trying to draw up a British Constitution - a Constitution as it is, not as it ought to be. If anyone's interested in the result, it is printed in a book published by the Smith Institute called 'Towards a New Constitutional Settlement' edited by Chris Bryant MP, and you can get it from the Smith Institute. They published the Constitution as an appendix, with the names of the heroic students who did the work. So it can be done. But I think it is not a good time now probably, for the very reason that I think constitutional reform, like devolution, is a process and not an event, and we are only halfway down the road. I think I began my first lecture by saying that we have been doing something rather unique in the democratic world: we have been converting an unwritten constitution to a written one in a piecemeal and ad hoc way, rather than in one go, as in the case of most other democracies. There are, I think, two reasons for this.

Firstly, there is no real agreement or consensus on what the final resting place should be. For example, what about House of Lords reform? What is that likely to be at the end? Can anyone envisage what that will be in future? What about the state of devolution? What about our relations with Europe, and the electoral systems? All sorts of things are, as it were, halfway, and we are living in a halfway house at the moment. So that is the first reason: that there is no real consensus on what the final resting place should be.

The second reason is, sadly certainly for the sale of my books, that there is very little public interest in the constitution. I think if you ever canvas for a political party, you do not find people saying at the doorstep 'What we need is a constitution, and I will support any party that does that' or 'The real priority for the country is constitutional reform.' People do not say that. I think this raises an important point, with which I want to conclude these lectures, and it is to try and answer the question of why it is that this whole process of constitutional reform which I have described, and which seems to me very radical, has made so little difference to most people.

I imagine most people here in this room are living in England. Let us imagine that you do not want devolution; you are not particularly interested in having devolution in wherever you come from, and although you may think the Human Rights Act is a good piece of legislation, you hope never to have to use it. The last thing you want is to fall into the hands of the lawyers. So you think it is a good thing to have it on the statute book perhaps, but it really does not actually make much impact on my own life at all.

So you may say that all this has made no difference to you, and I think, on the whole, you would be right. This is because what the constitution reform agenda has done, is to redistribute power between people professionally involved in politics and the law. It is redistributed power away from politicians at Westminster to politicians in Scotland, Wales and Northern Ireland, and London, and also to the judges. You may say that what it is doing is telling us how the officer class is dividing up the spoils and how the elite are going to run things; but you may then say, 'we are not actually members of the elite, we are not in Government, and we do not necessarily want to be in Government and therefore this does not actually help us much'. You may say that there are more checks on Government which enables us to check power more easily - which is true: power is more easily controlled now than it was fifteen years ago - but they do not give us a greater share of the power for ourselves. In other words, there has not been a redistribution of power from the politicians to the people or the electorate. There is a redistribution of power amongst the politicians themselves.

You may say this is one of the reasons for the frequently noted phenomenon of disenchantment with political parties. Some of you may remember, when I spoke about the finance of political parties, I said that fewer of us joined political parties than did fifty years ago. The Labour Party now has under 200,000 members, and the Conservatives around 250,000. Fifty years ago Labour had a million individual members, and the Conservatives around 1.5 million. Or if you put the point another way: fifty years ago, one in eleven of us belonged to a political party, and now just one in 88 do. Or you can put the point another way: bodies like the National Trust or Royal Society for the Protection of Birds have over a million members each, which is more than all the parties put together. This shows an interesting point, that there is a sense of civic spirit in Britain - people are willing to join organisations and support things and are not entirely apathetic - but they are not willing to join the political parties. Also, people are much less attached to the party of their choice than they used to be.

There is been a lot of breast-beating about this point in Britain but it is not peculiar to Britain. It is true of most, if not all, democracies, that people are much less willing to join political parties than they were in the past. This is true whatever the constitutional set-up of the country. Some people say that if we had proportional representation then this would all change - people would then join parties and suddenly come out to vote. Some people say that if we had a federal system of government with more decentralisation then that would all change and people would be more enthused and so on. But countries with those systems have exactly the same problems as Britain. It is not a problem of a particular constitutional structure - it is somehow an endemic problem of modern democracies. I think that the constitutional reform agenda has not dealt with it, because it has not tackled the basis of the problem, which is that people no longer feel that political parties are agents of change as they once were. This was said, interestingly enough, by Gordon Brown, a long time ago when he was in opposition in 1992. He said, 'In the past, people used to join the Labour Party because they saw the Labour Party as an agent of change.' He said, 'Now, people want to be agents of change themselves' - in other words, they do not look to political parties, they believe that they themselves might be agents of change.

One of the reasons for this is that the era of what you might call tribal politics has gone. By tribal politics, I mean that when people used to say 'We have always voted Labour' or 'My father is a Conservative and so I am a Conservative,' I think fifty years ago, one would have heard a lot of that, but one does not hear it now. People do not now say, 'We have always been Conservative or all Labour here.' This is, again, one reason why the support for the two major parties has gone down.

The political agenda has shifted from what political scientists call position politics to what they call valence politics. Position politics is where the parties disagree about fundamentals. For instance, fifty years ago, people disagreed about whether basic industries should be nationalised, whether we should have nuclear weapons or not, whether we should keep the colonies or not etc. - all fundamental disagreements. Now the disagreement is about what political scientists call valence issues. A valence issue is an issue where we all agree about the ends but we disagree about the means. For example, we all agree that there should be a National Health Service. What we disagree about is which party is most efficient at managing and running it. We all broadly agree, within broad limits, that there should be a comprehensive system - David Cameron made that clear last week, at some cost to himself perhaps - but that they need to be supplemented by other sorts of schools but we disagree, perhaps, about which party is best able to secure better schools.

Part of Tony Blair's skill as a politician is to convert position issues into valence issues. Most of the position issues on which the Labour Party was hooked were rather unpopular with the public - more taxation, more public expenditure, more nationalisation etc. People did not like those sorts of things. So what Blair says is: 'We all agree that there ought to be a mix of public and private in the public services, and the question is really about who does it most efficiently, and I think the Labour Party does.' The only way to argue with him is to take an extreme position, on the extreme left, and say, 'Well, it should be only public,' or on the extreme right, to say 'It should be just the market.' If you take those positions, you are probably going to lose elections. So this is why Blair is so difficult to beat. It is called the technique of triangulation - you take two extreme positions and you put yourself in the middle, so you can only be attacked from an extreme and unpopular position. It is a great political skill on his part I think, which he got that from Clinton, and Cameron is trying to adopt also.

So politics is less based on ideology and less tribal, but therefore also in a sense duller. You cannot go to the barricades on behalf of foundation hospitals or city academies. These are issues you can argue about, but you are not going to carry a flag about them. So the difference between the parties are less about ends than about means, and you do not anymore hear the slogans 'Socialism now' or 'Set the people free'. The grip of the parties is less because of this, and it is for this reason that people tend to be disillusioned with political parties. It is not wholly the fault of the parties I think.

Peter Hain said in 2003, as Leader of the House of Commons: 'We who constitute the political class conduct politics in a way that turns off our voters, readers, listeners and viewers. Too many people believe that government is something 'done to them'. Westminster must stop giving the impression of being a private club and instead give the public a greater sense of ownership.' Therefore it is that greater sense of ownership that is the next step in constitutional reform which needs to be done, and in my personal opinion, that involves a much greater degree of direct democracy. Referendums are a beginning, but we only have referendums on subjects that governments think we ought to be able to decide on - what about other issues we want to decide on? The present Government has said that there can be local referendums on whether people want to abolish grammar schools - not whether you want to have new ones, but whether you want abolish an existing one. But you may say, why only on that issue? Why not, for example, the structure of the National Health Service in your area, or the size of the local authority budget? Why not have popular participation on issues of that kind? Why is it only certain issues on which voters can be trusted to decide?

Therefore, in my opinion, if the constitutional reform agenda is going to make an impact on ordinary

citizens it will have to supplement the sorts of reforms I have been mentioning, which on the whole effect only the elite, with reforms which affect the people as a whole. I believe that is the next step forward, because I think the machinery of democracy needs to be improved by involving more people in political decisions. Probably most people here would agree with that, but there is one danger about that which I want to draw your attention to before I conclude.

I do not know how to answer it, but the danger is this: that the sorts of people who will benefit from it are people like ourselves - that is a terrible danger. The reason it is a terrible danger is because we, by definition, are already the articulate, who take an interest in politics, and we are, by definition, a minority because we take an interest in politics, and therefore it would give us, who already have a lot of influence and political resources, because we are articulate, greater power and influence than we already have, and the large majority, who do not perhaps take as much interest, will not have so much influence.

Oscar Wilde very famously said in the 19th Century that the main problem with socialism was that it took up too many evenings. What he meant was that it is only a small minority who are going to actually take the trouble and time to participate in politics, and this, I think, is one of the problems that we need to deal with with this new dispensation.

Nevertheless, I think this is going to be the way forward, and I think if one were to request my conclusion, it would be this: that the constitutional forms and structures that we have inherited are still, despite the reforms of the last ten years and beyond, broadly a top-down system, and no longer in alignment with the real political and popular forces of the age. I think the real problem that we are going to face in the future is to make these constitutional forms congruent with the new political forces of the desire of the public, or at least many members of the public, to make decisions for themselves rather than to have them left to be made by the politicians.

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