Vernon bogdanor the new british constitution pdf

In the 2009 JUSTICE Tom Sargant memorial annual lecture, Professor Vernon Bogdanor concludes: ... it is dangerous for a society to believe that it can leave its liberties in the hands of judges. The philosophy of rights, while it may be necessary, is not sufficient to meet the challenges of the 21st Century. We need to return to an older form of liberalism ...which seeks to balance interests and competing claims. Tom Sargant was JUSTICE's Secretary from the organisation's foundation in 1957 to his retirement in 1982. Downloads Human Rights and the New British Constitution The New British Constitution by Professor Vernon Bogdanor I think the best thing ever said about the British Constitution was said by the Queen. She attended the seminar of one of my colleagues, Peter Hennessey, who is a Professor of Queen Mary College and also an Emeritus Gresham Professor. As a visitor to Queen Mary College, she asked to look around, and she heard the seminar was going on about the British Constitution and she asked if she could sit at the back. She listened carefully to the discussion and, at the end of it, she said, 'The British Constitution has always been puzzling and always will be.' You may think it's a canonical text, because if she does not know about the Constitution, which of us does. She attended another event, a few years before that, at University College London, where I think she was also the visitor. She was going round the various stands, and she came across the stand of the lawyers. She saw one of the books they had edited, which was called 'The Changing Constitution', edited by Jeffrey Jowell ad Dawn Oliver. Jeffrey Jowell was standing nearby and she said to him, 'Changing, Professor Jowell' What changes? I haven't noticed any changes!' He replied, 'Well, evolving, Ma'am, evolving.' She said, 'Yes, but in what direction?' which I think is a good question. But I think you could not now say there have not been any changes. I think you could not now say there have not been many changes, because we have seen, since 1997, a huge number of them, which I suggest in my new book amount to a new British Constitution, as the title suggests. There are really two themes of the book. The first is that these changes that we have had since 1997 give us, in effect, a new British Constitution, though most of us have not noticed it; but second, that these changes are insufficient, and that we now need to open up the Constitution much more than it has been opened up in the past. It is still a closed system. I think it is purely fortuitous, but perhaps I ought to thank people like Nicholas Winterton and Sir Peter Viggers for bringing out the expenses scandal, because I think this emphasises one of the messages of the book; that we have too closed a system, that Westminster is too cut off from the public, and that we need reforms to open it up much more. So there are these two themes: firstly, that there have been very radical changes since 1997, which we have not perhaps noticed as much as we ought to have done; and secondly, that these changes are actually insufficient to give us a really satisfactory Constitution. Until 1997, it could reasonably be said that our Constitution, by which I mean our system of government, was what has been called a historic Constitution. What I mean by that is not merely that it is very old, though it certainly is that, but that it was unplanned; the product of evolution rather than, as it were, human thinking. It just evolved, in a way that so many British institutions have been evolved, and it was very difficult to actually discover what it was. If you were to join a tennis club and asked if you could have a look at the rules of the club, and someone replied to you, 'Well actually, they haven't all been gathered together in any one place; they're the product of a long period of history, and some of them are not written down at all - they're unspoken conventions - and you'll pick them up as you go along, and I have to warn you that if you have to ask about the rules, it shows you don't really belong at all to the club!' I think you might be a bit upset about that. But you may argue that was what the British Constitution was until 1997. The rules were not wholly clear, and in this point, we differ from almost every other democracy. There are only two other democracies without constitutions brought together in one place, and they are those of New Zealand and of Israel. The British Constitution then, and I think the expenses row brings that out, it was never clear what the rules are. It is based on unspoken conventions, and you may say even nods and winks as well - they are not clear. Someone once said, and this was over 100 years ago now, 'The British system of government is based on tacit understandings,' but then he said, 'but the understandings, unfortunately, are not always understood.' So this is one reason why we never had all this brought together, because there is a sense in which England never really began as a society. Most countries have constitutions when they have a constitutional moment, a revolutionary break with the past, as with the United States when it broke from Britain, or Germany after the War when they had to start again, or France in 1958 when De Gaulle came to power after a coup d'etat and determined to create a new system. In such instances countries draw up a constitution; they have to start again. The ex-Communist countries in Eastern Europe are another good example. But in a sense, we never began in that way. But secondly, it is very difficult to have a constitution if, as in our system, Parliament was sovereign. What it means to say that Parliament is sovereign is that Parliament can do what it likes. It was once said by an 18th Century thinker that 'Parliament can do anything it likes except turn a man into a woman or a woman into a man,' but even that is untrue, because if Parliament says, from the point of view of the law, a man is a woman or a woman a man, then that is actually the case. So Parliament can do anything. Now, if Parliament can do anything, there is no point having a constitution, because then the constitution could be summarised in just eight words: 'What the Queen in Parliament enacts is law' and no restrictions on the power of Parliament, in effect the Government. A great French thinker in the 19th Century, Alexis de Tocqueville said that (and here we should perhaps substitute 'Britain' for 'England'), 'In England, the Parliament has an acknowledged right to modify the Constitution, so therefore the Constitution may undergo perpetual change. It does not, in reality, exist. The Parliament is at once a legislative and constituent assembly.' But since 1997, over this period of twelve years, we have had a huge number of constitution reforms, and I have tried to work them out. I list them in my book, and I listed 15. You will be pleased to hear that I am not going to go through the 15 now, and I think a lot of them are probably very familiar to you anyway. But some examples of the main ones would perhaps be of benefit. Devolution is one major reform, so that the non-English parts of the United Kingdom now have their own Parliaments or Assemblies. The Human Rights Act is another very major reform, and you probably read in the newspapers a couple of days ago that the judges said the control orders, which are designed to restrict the freedom of suspected terrorists, go against the Human Rights Act. So I do not think anyone would deny the Human Rights Act, for better or worse, had a major effect on British life and on British Government. Then, the Freedom of Information Act. I think that without the Freedom of Information Act, we would never have known about the expenses scandal, so that too is a very major reform. Then there is the reform in the position of the Lord Chancellor. He has lost some of his role. He is no longer the Speaker of the Upper House, he is no longer the Head of the Judiciary, and for the first time, the Lord Chancellor is not even a peer. It is Jack Straw, Lord Chancellor and Minister of Justice, but he no longer has the roles the previous Lord Chancellor had. The senior judges are moving out of the House of Lords into the Guild Hall. They are much more insulated from politics than they were in the past. So these are all very major reforms, and I think they give us a totally new system, but we have not noticed it because things move in an evolutionary way, and because we do not have a Constitution, we do not actually bring our minds to bear as much as we might otherwise on constitutional change. But I think that someone falling asleep in 1997 and waking up today would find a totally changed landscape. It is rather like the famous story of Rip Van Winkle, who went to sleep for twenty years in America, and when he went to sleep, he saw a pub nearby called The George, and on it, there was a portrait of George III, but when he woke up, it was also called The George, but the portrait there was of George Washington! So a lot had changed while he was asleep, and I think if we had been asleep, we would have found things exactly the same. All these changes, for better or worse, have one very important effect, which I think has not been underlined as much as it should have been, and that is that they limit the power of Government. Now, the Human Rights Act, very obviously, limits the power of Government. Some people say it does this in a bad way, because they say it means Government cannot deal effectively with the threat of terrorism or the problem of asylum seekers. But whether you think it is a good thing or a bad thing, it does limit the power of Government. Devolution limits the power of Government, because in Scotland, Wales and Northern Ireland, what you might call domestic political affairs - matters like health and housing and education ' are now out of the hands of Westminster. They are with the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly, so Government is limited there as well. Then, we have seen a major reform of the House of Lords, which, whether intended or not, that has also had the effect of limiting the power of Government. Before this reform, in 1999, the Lords was composed of two-thirds hereditary peers, who tended mostly to be Conservative, so the Conservatives always had a majority, whichever party was in power in the House of Commons. This meant, in practice, that the Lords did not use its powers very much, because they realised they did not in fact have much legitimacy. But now, with all but 92 of the hereditary powers removed, no single party has an overall majority in the House of Lords. In fact, the largest party in the Lords, for the first time in its history, is now the Labour Party, and the second largest group is a group of cross-bench peers who do not belong to any party, and the Conservatives are now the third largest group. But no one party has an overall majority, and it seems to be accepted that no single party should ever again have an overall majority in the Lords. This has an important consequence, because of course Governments normally have an overall majority in the Commons - they can normally rely on getting their legislation through the Commons - but they cannot rely on getting their legislation through the Lords. They actually have to win the argument, if you like. They have to win over the support, usually, of the cross-bench peers or the Liberal Democrat peers, who are the centre grouping. You cannot win by just getting the votes of the Labour peers - there are not enough of them. They have the majority but not an overall majority. So that is another restriction on the power of Government. It may not have been intended - we do not know. Before 1997, Governments could say, reasonably, once we produce some legislation, we can rely on getting it through. Now, they have to ask themselves a lot of different questions. They have to ask, first: can we get it through the Upper House?; can we get it through the Lords? Then they have to ask: 'Will this apply in Scotland, Wales and Northern Ireland?' Some of you may remember that, long ago in 1997, Tony Blair produced five policy pledges. Two of those pledges were to reduce class sizes and to reduce waiting lists in the National Health Service. Now those policies are outside his power with regard to Scotland, Wales and Northern Ireland. It is up to the bodies there what they do about class sizes or National Health Service waiting lists. So I think this is a further restriction on the power of Government, and you will probably know that, if you are a student, you do not pay fees in Scotland in the way that you do in England, because higher education is free in Scotland. There is an amusing anecdote, which is in Paddy Ashdown's diaries, that Blair berated Ashdown because the Liberals in Scotland were pressing for the abolition of student fees in Scotland. Blair said, 'You can't have a different system in Scotland from the rest of the country!' and Ashdown said, 'Well, in that case, you shouldn't have given devolution to Scotland.? Blair said, 'What do you mean'' He said, 'Well, you devolved that power to the Scottish Parliament. You make yourself ridiculous if, the first time they try and use it, you say they can't!' Blair replied, laughingly, 'Well, perhaps there's a bit of a downside to all this devolution stuff!' I think he had assumed that the Scottish Parliament, the Welsh Assembly and the Northern Ireland Assembly would do exactly the same as a Labour Government at Westminster, but if they did, there was no point in setting them up. The only point in setting them up is they should do different things. Anyway, that is another hurdle that Governments face in getting policies through - it applies only to England. If you take areas like health, education, transport and so on, the Government at Westminster is no longer a United Kingdom Government; it is a Government solely for England. It is a major change; that the non-English parts of the United Kingdom are now governed quite differently. So that is a further point. But of course there is a further limitation, which was there from a long time ago. From 1973, when we joined the European Union, Governments had to ask themselves: 'Is this compatible with European Union legislation?' because if, to take an extreme example, our Government wanted to set up customs duties against French goods, they could not. The European Court of Justice would say it is completely out of turn - it is illegal and you cannot do that. There are all sorts of things that the British Government might want to do that it cannot in fact do because of the European Union. There is a kind of cliché about Government in a way, that people say it is an elective dictatorship. That was first said by Lord Hailsham, a Conservative Lord Chancellor, in the 1970s. Well, whether that is true or not, Government today is much less of an elective dictatorship, as a result of these reforms, than it was before. Government is much more limited than it was, and I think that is one main consequence of all these constitutional reforms. If you go into every single one, it has the effect of limiting the powers of Government, and this seems to me a major change: we now have a more limited system of government. Now, I would like to briefly say something more about the Human Rights Act, because, as I suspect you know, it does not actually give judges the right to strike down legislation they do not agree with. It is not like the American Supreme Court, for example, where if legislation is thought by the Supreme Court to go against the Constitution, they can simply strike it down. They cannot do that - and this has been perhaps misreported in the press. The decision about control orders, for example, is not really a decision. All the judges can do is issue a Declaration of Incompatibility. They can make a statement. A Declaration is no more than a statement. It is then up to Parliament or Government whether they are going to do anything about it, whether they are going to alter the law, which they have discretion to do. So far, it is fair to say, Government and Parliament have, on every occasion - there are about twenty occasions since the Human Rights Act ' altered the law, but they do not have to do so. It is entirely up to them whether they do it or not. The Human Rights Act thus has a double impact, as it were: on the one hand, it preserves Parliamentary sovereignty - it is still up to Parliament to decide whether or not to change the law; but on the other hand, it seems to give the judges much more influence, at the very least. You have really got a conflict between two principles: the principle of Parliamentary sovereignty, which means Parliament can do what it likes; and the principle of the rule of law, which means Parliament cannot do anything which goes against the rule of law, and I think we would all accept that as a moral principle. For example, if Parliament said all red-headed people are to be executed next Monday, I think we would all say, that legally Parliament can do that, but morally, it cannot - it goes against the rule of law. I once asked a very senior judge, 'Now, what happens if these two principles conflict, which they can easily do, the sovereignty of Parliament and the rule of law?' The senior judge smiled at me and said, 'That's a question that ought not to be asked.' You can see the point: this is a very British compromise - try not to ask this question. But people are beginning to ask it because some people are saying that the judges are taking too much power upon themselves, where the judges are saying that Government is too restrictive of civil liberties in a time of danger, that they should be more careful about civil liberties. But there is a conflict also between two understandings of the Constitution: the first is the traditional one, that it is based on Parliamentary sovereignty; and the second is the rule of law, dependent upon the judges deciding what is constitutional and what is not constitutional. I think we are moving towards the second, which is what I would call a constitutional state, where it is not Parliament that decides what is constitutional, but the judges, which is as you have it in most other countries. Now, suppose you had a law which went flagrantly against any notion of the rule of law. Would you expect the judges to apply it or not? There is a very interesting analogy here from the European Union. There is a famous case, which will be familiar to those of you who are lawyers. It is a case called the Factortame case in 1990, and that came about in the following way. Parliament had passed a Merchant Shipping Act, which restricted the fishing rights of foreigners in British territorial waters. Some Spanish fishermen said this was against the European Union's Common Fisheries Policy, and the European Court of Justice agreed with them - they said that it was against European law. But what were the British courts to do, because, you see, the European courts say the European Union is a superior legal system to the British or any other member-state legal system, and so they held that they say what is legal and what is not. What do the British courts do? Are they to follow that rule or are they to follow the rule of the sovereignty of Parliament, which says Parliament can do what it likes' Well, the British courts did something quite revolutionary: they said they would dis-apply those portions of the Merchant Shipping Act which restricted the rights of Spanish fishermen. In doing this, they were, for the first time ever, restricting the rights of Parliament. You may say to this, if they can restrict the rights of Parliament in relation to the European Union, why not in relation to Human Rights? Suppose Parliament were to pass an act denying people access to the courts, for example. Suppose they were to pass, as they nearly did a few years ago, an act saying that asylum seekers who were denied permission to stay here should not be able to appeal to the courts' Might the judges then dis-apply that legislation and take no notice of it? I think they might, and I think we are moving towards a situation where our civil liberties are coming to be guarded not just by Parliament but also by the judges. I want to quote what Lord Steyn, a retired Law Lord, said in a recent case: 'In exceptional circumstances, involving an attempt to abolish judicial review of the ordinary role of the courts, a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament, acting at the behest of a complacent House of Commons, cannot abolish.' Even more strongly, another Law Lord, Lord Hope, said: 'Parliamentary sovereignty is no longer, if it ever was, absolute. It is not uncontrolled. It is no longer right to admit that its freedom to legislation allows of no qualification whatsoever. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament is being qualified.' And then he said, 'The rule of law enforced by the courts is the ultimate controlling actor on which our Constitution is based.' That is one of the central themes of my book: that we are moving a way from Parliamentary sovereignty to control by the courts of the rule of law. There is one other restriction on Government which I have not so far mentioned, and that is the referendum. I think that if the referendum had never been invented, we might well now be members of the Eurozone, because the Blair Government favoured that policy. Tony Blair said that many times when he became Prime Minister, but he had been forced, as a result of political pressure, to promise that we would not enter the Eurozone without a referendum, and he decided not to call a referendum for the very good reason that not a single opinion poll on the Euro has ever shown a majority in favour of Britain joining, so it is very likely that a referendum would be lost. That is a clear restriction on Government. Before the referendum had been invented, if you like, Governments could simply join the Euro without needing to seek the approval of the people, but now they cannot do that. Governments have also promised that they will not change the electoral system without a referendum, and that is again a restriction on Government. It may be that Gordon Brown these days would like to change electoral systems to keep the Labour Party in office, but he cannot do that without a referendum. It is a great restriction on the power of Government. This is a different restriction from the others, because of course it gives some power to the people. The other restrictions are restrictions of lawyers or other legislative bodies, but this restriction is, if you like, a popular restriction; it gives us the power to limit Government. But it gives us a very limited power, because, after all, it is Governments who decide whether to promise a referendum and when to have one. The Labour Party promised some time ago to have a referendum on electoral reform, but they did not say when they were going to have it, and many people who are in favour of change, the Liberals for example, say it is about time you had it - you made this promise a few years ago. But I think there is a rather difference between a promise and a politician's promise! But this really sums up the first theme of my book; that now it is no longer right to say that our Constitution is purely the product of evolution and unplanned and historic. It is something deliberately planned and designed by human beings, by Government, for better or worse. You may think it is a good new system or a bad new system, but it is deliberately designed and planned. We are moving in a very tortuous, typically British, piecemeal way, towards having a written Constitution. Gordon Brown has said there ought to be a debate on that - we ought to think more carefully about that. We are doing this in a piecemeal way because there is no real political will to do more, and there is no consensus on what the end point should be. But despite all this, and despite the fact there has been a dispersal of power to a quite considerable degree, it is reasonable to say that this has made little impact on most people. It certainly has not cured the malaise in the political system, which is I think very strong, and this malaise was there before the expenses scandal, which only served to highlight it. This malaise was brought home to me in a very stark fashion when something happened to me that I suspect has not happened to many other people. It was shortly before the 2005 Election, and I was rung up by the Editor of Cosmopolitan. I thought that perhaps they want my photo on the front of the magazine?but it wasn't that. They said they were very worried at the fact that so few young women aged between 18 and 24 voted in General Elections, and the figure for 2001 was just 33%, just one third of young women, were voting, and they asked what could be done about it. It is very difficult to think of a rapid answer on the phone, but I gave what I suppose is a typical academic's answer: 'Why don't you have interviews with the three party leaders on issues of interest to young women, and then publish the results, and perhaps turnout will improve?' They did that, but needless to say, turnout did not improve - it was exactly the same! Amongst the 18 to 24 year olds, as a whole, 39% vote, but it is only 33% of young women who vote; many more young men than young women actually vote in elections. If you look at overall turnout in the last Election, it was 62%, and the Election before, 58% - it's the lowest in Britain since universal suffrage. So whether you think these reforms are good or not, whatever your views on them, they have not excited interest in the political system, they have not affected the malaise of non-participation, and that is the second theme of the book, on what is to be done about that. But if you look at these reforms, if you take someone living in England and ask what effect have they had on me, they may say that it is all very well, the Scots can have devolution if they want it, but we do not want it here. But here in the South East, we live in a region - we do not want regional devolution or an English Parliament. The last thing we want is another set of politicians with a new body and bureaucracy and so on. I think it was John Major who once said, 'If the answer is 'More politicians,' you're asking the wrong question!' We do not want that. And then they say, well, the Human Rights Act may be a good thing, but we hope never to use it. We want to keep out of the hands of lawyers if we can, and not to have to go to court. That may be a good thing. But what effect has it really had on me, living in England' Answer: none. I think the reason for this is that the first, if you like, tranche of constitutional reforms has only redistributed power. It has dispersed power, but between different members of the political and judicial elite. It has redistributed power between the political elite in London and a different political elite in Edinburgh, Cardiff and Belfast, and also through the Mayor of London. It has redistributed power to members of the House of Lords and to the judges. But it has redistributed power, if you like, sideways - you can say it is as if the officer class is deciding how to divide up the spoils; but it has not redistributed power downwards, and I believe that is the central weakness of the reforms. This is in the last part of my book, where I say that this is one main reason for the disenchantment with politics. I think the expenses crisis has reinforced that view. Firstly, it has shown how out of touch MPs are with the public, and that Westminster is very much of a closed system - you might say a house without windows, where people are not looking out at what the popular attitudes are. I think many people feel that about Westminster, that it is very out of touch with public opinion, on expenses issues for example. Secondly, I think the expenses crisis has undermined the authority of Members of Parliament, because people say that MPs had the authority to legislate because they have certain superior qualities, but if they do not have these superior qualities, if they are no better than the rest of us, or indeed much worse than most of us, then what is their authority to legislate? Can't we in fact legislate more for ourselves, make more decisions for ourselves? Gordon Brown made a very good comment about this, as long ago as 1992. He may have taken some time to act on it, but he made a good comment on it back then. 'In the past,' he said, 'people voted for the Labour Party as an agent of change, but now they want to be agents of change themselves.' I think that is a very perceptive comment. They do not want to rely anymore, as much as they did at least, on politicians and members of the elite to make decisions for them. We have to remember that the tremendous social and educational changes of the post-War period have given us a much less deferential electorate than we used to have, and people are no longer content simply to vote in General Elections once in five years and leave it at that. They want to have much more impact on decision making, and I think that is a very crucial feature in our modern degree of disenchantment. I think there is a great danger in looking back and thinking of a golden age of politics. I reviewed a book a little while ago on post-War Britain, and the level of political knowledge at that time was absolutely pitiful. There was a survey undertaken in 1949, asking people if they could name a single British colony, and 49% of those surveyed could not. Then there was a survey in 1950 of the Greenwich constituency, and this was before the party of the MP was put on the ballot paper - you just had the name of the candidate, and alongside that it did not say Labour Party, Conservative or whatever - and they asked people what party the MP for Greenwich belonged to. This was in the General Election campaign, and 50% of the electorate did not know. So we must be very careful about romanticising the past, because the truth is that people are now much more politically educated than they ever were, and partly for that reason, much less deferential than they were. They want to play a much wider part in making political decisions for themselves, rather than simply voting every four or five years and leaving it to wiser people than themselves. What I discuss in the last part of my book are ways to open up the system. Though I say it myself, I think this has been given even more force by the expenses scandal, although the book was of course written before that. The first of the four things I suggest is that there should be primary elections for MPs, so that they are no longer chosen by small unrepresentative cliques of voters. Party membership is much smaller than it was. In the Labour Party it is about 150,000 and for the Conservatives it is about 250,000. It is a familiar point that the membership of the Royal Society for the Protection of Birds or the National Trust is more than that of all the political parties put together! People are joining organisations, but not political parties, and that is an important point that I have tried to make: that the democratic spirit in this country is very healthy, but the democratic institutions do not reflect that health. There is something wrong with our institutions. Last year, in the election for the Mayor of London, David Cameron rather bravely put forward the idea - and indeed, it was carried into effect - of an open primary for the Conservative candidate. An open primary meant that anyone could vote between the candidates. It did not have to be Conservative Members or supporters; any elector could vote. People said that would work badly, that people who did not belong to the Conservative Party would deliberately vote for the worst candidate in order to damage the Conservatives. Now, some of you may say that this actually happened since they got Boris Johnson! But I think that would be an unfair point, because Boris Johnson, whatever your views of him, was obviously the ablest of the Conservative candidates. But primary elections are very important. It is not an accident, I think, that many of the worst offenders on expenses were in safe seats, where they had been chosen by small groups of party members and could not be challenged. If you look at one of the worst offenders, who was Nicholas Winterton from Macclesfield, who is not standing again, he is only the second MP who has sat for Macclesfield since 1945. There have been two Conservative MPs. It is a very safe seat. Similarly, a seat like Durham would be safe for Labour. You could put a donkey up there and call it Labour and it would win the seat. So it is in the safe seats that you get the worst problems. The second proposal that I mention to open up the system is to get an electoral system that allows people to choose between candidates of the same party as well as between parties. The single transferable vote system is one such system. There are others. The one thing we do not want is a closed party list system of a kind we have in the European elections, which I think has helped parties such as the far-right BNP. People sometimes talk as if proportional representation is just the name of one particular system, but it is actually a generic term for a wide range of different systems, with different properties, and I am sure I could drive you all out of the room fairly quickly by talking about the differences between them, or the additional member or the d'Hondt quota or so on. I think it is important to understand the differences between the various systems, to some extent, but you will be relieved to hear I am not going to do that today. The third proposal that I mention is that there should be a much greater degree of direct democracy; not just referendums but initiatives. The difference between the two is that a referendum is triggered by Government, but an initiative is triggered by the people. We have an example of that already. It was in the 2000 Local Government Act. In that Act, any 5% of local electors in any local authority area could require a referendum on a directly elected Mayor. The reason for that was the Government had found that most Councillors did not like the idea of a directly elected Mayor, but many people were actually in favour of it. The Councillors thought it would undermine their position, but many ordinary voters were in favour of it, for one reason or another, and it is for this reason that 5% could trigger it off. I remember signing such a petition in Oxford, where I live. We got the referendum, but sadly the proposal for a Mayor was defeated, but at least we were able to get it on the agenda. This is a revolutionary innovation in British Government because it gives people the right to trigger a referendum on their own, without relying on Government. They can do it effectively against the wishes of Government. You may say, if people can do it on the issue of directly elected Mayors, why not on other issues as well? Why not, for example, on the organisation of schools in an area? Why shouldn't 5% of electors be able to trigger a referendum, shall we say, that they want grammar schools or sixth form colleges? What about even the organisation of the National Health Service in their area, or the size of the local authority budget? Why shouldn't we start to extend that principle so that people themselves can trigger legislative initiatives? Associated with that is a proposal that is not in the book, and I think it probably should be, but it occurred to me after I was reviewing a book, which at first sight seemed a bit odd. It said that some of our legislators could be chosen by lot. I wonder why not. For instance, suppose in a local authority, you had five Councillors chosen from a list of volunteers randomly. They would not then be party people. They would be ordinary citizens playing their part. What about a few people chosen by lot for a National Health Service board? There was a very interesting experiment on those lines in Canada, which I do discuss, and that is the last of my proposals. In the provinces of British Columbia and Ontario, the provincial government said they were going to elect a citizens convention by lot, and that that citizens convention was to recommend a new electoral system for the province, and whatever their recommendation, it would be put to referendum. So it would not be just a talking shop, it would be put to referendum. They chose one male and one female from every constituency in the province, and people had the opportunity, when their names were put out of the hat, of saying I am not interested, because it meant giving up 52 weekends - it lasted for a year - with no pay, other than expenses and childcare where necessary and so on. The remarkable thing about both of these conventions is how effectively they worked; that the ordinary people concerned took evidence and experts studied papers, there was a lot of work, they gave up 52 weekends, and they produced excellent reports which were put to referendum. They are repeating it this year because the referendum was defeated for their proposal, so there is another one this year in British Columbia. We do not yet know the outcome. But it does show that many tend to underestimate the ability of ordinary voters in a democracy to make decisions for themselves on complex matters, without relying on politicians. A lot of us might say, at first sight an electoral system is far too complicated - you had better leave it to those at the top, but actually, that is not the case, and Canada shows this works perfectly well, and the more you bring people into Government to make decisions, the more I think of an educated and sophisticated electorate you have. So those are the four proposals with which I conclude the book, and which suggest that what needs to be done now is a second phase of constitutional reform. The first phase dispersed power between elites, helped to control power, and that I think was very valuable, but the second phase needs to open up the system, to open up power if you like, and disperse it not sideways but downwards. I think this is particularly difficult in some ways in the British Constitution, because the whole principle of Parliamentary sovereignty implies a top-down system, that the Queen in Parliament governs. In contrast, so many other constitutions, like the American for example, begin with the words not 'the Queen in Parliament,' but 'We, the people,' and you may say, if you live in a democracy, you should be governed by 'We, the people,' and not by the Queen in Parliament. Of course our system derives from a time long before Britain was democratic. So we have a top-down system derived from the past, and I think that top-down system is really incongruent, inconsistent if you like, and contradicts the social and political pressures of the age, which are for a much greater degree of popular power; people wanting to take power for themselves and to make decisions for themselves. So I think we are faced with a very deep-seated conflict between our inherited, traditional constitutional forms, which are of a top-down nature, and these forces, if you like, coming up from below, so the next phase of constitutional reform has to try to resolve that contradiction. I think it is one of the most important problems that Governments face, and I think, in a way, the expenses crisis has only underlined the importance of that problem.

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