



House of Commons  
Political and Constitutional  
Reform Committee

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**Consultation on A new  
Magna Carta?**

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**Seventh Report of Session 2014–15**

*Report, together with formal minutes relating  
to the report*

*Ordered by the House of Commons  
to be printed 3 March 2015*

## Political and Constitutional Reform Committee

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Evidence relating to this report is published on the Committee's website at [www.parliament.uk/new-magna-carta-consultation](http://www.parliament.uk/new-magna-carta-consultation)

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# 1 Consulting on A new Magna Carta?

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1. On 10 July 2014 the Political and Constitutional Reform Committee of the House of Commons launched a broad consultation on the question of codification of the United Kingdom's constitution.<sup>1</sup> We published three illustrative blueprints for a codified constitution—a Constitutional Code, a Constitutional Consolidation Act and a written constitution—prepared for us by the Centre for Political and Constitutional Studies at King's College London, and framed our consultation around three questions:

- Does the UK need a codified constitution?
- If so, which of the three options offers the best way forward?
- What needs to be included in/excluded from your favoured option if you have one?

2. We said that the initial consultation would close on 1 January 2015. The level of public involvement in this consultation has been unprecedented for this Committee, with over 3,000 separate interactions with the Select Committee. We report below on the conduct of the consultation and the activities organised to promote the Committee's work, and on a number of themes which have emerged from the responses to our consultation. We do not intend discussion of constitutional proposals to end here, and we have proposed a draft accessible summary of the UK's constitution, with illustrative options for reform, to inform continuing debate on codifying our democratic settlement throughout the General Election campaign, the Magna Carta anniversary year and beyond.

## Background

3. The Political and Constitutional Reform Committee was established by the House of Commons in June 2010 with a remit to consider political and constitutional reform. The proposal by the coalition Government to establish fixed-term parliaments of five years, enacted in the Fixed-term Parliaments Act 2011, gave the Committee the freedom to plan a programme of work more expansive in scope than select committees before 2010 had generally been able to contemplate.

4. In September 2010 the Committee, in a unique innovation, accepted a proposal from asked the Centre for Political and Constitutional Studies at King's College London to collaborate on an inquiry entitled *Mapping the path to codifying—or not codifying—the UK's Constitution*. At our request the Centre for Political and Constitutional Studies, under the direction of Professor Robert Blackburn, produced a series of research papers for the Committee, including a literature review and a comparative study of 23 international examples of constitutional codification. The last of these research papers, prepared to inform the Committee's inquiry and the policy debate on constitutional codification more widely, was delivered to the Committee in June 2014 and published as an appendix to the Committee's report entitled *A new Magna Carta?* The paper contained a number of elements:

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1 Political and Constitutional Reform Committee, Second Report of Session 2014-15, [A new Magna Carta?](#), HC 463.

- a chapter setting out arguments for and against a codified constitution
- a chapter setting out the process that could be adopted in the preparation, design and implementation of a codified constitution
- three illustrative blueprints—a Constitutional Code, a Constitutional Consolidation Act, and a written constitution—which indicate how a codified constitution for the UK could take shape.

5. We published the paper to inform debate on constitutional codification as the 800th anniversary of Magna Carta and the 2015 General Election approached: as our report stated, “what we are publishing now represents the most comprehensive attempt so far to provide different detailed models of a codified constitution for comparison and consideration”. We hope that this consciously large document of 423 pages continues to act as a resource for all politicians and electors who have an interest in codification of the UK’s democratic arrangements.

6. We made clear in our report that we did not endorse one view or the other in the debate on codification: the three models of codification were published to inform and advance the debate on the desirability or otherwise of codification. Our stated aim was “to ensure that, if and when a decision is taken to make progress [on constitutional codification], a thoroughly scrutinised and properly devised plan is already in place to achieve a successful outcome.”<sup>2</sup>

7. We also made clear that, although the written constitution blueprint included some illustrative elements of constitutional reform, we did not endorse or recommend these specific changes: they had been included in the blueprint as “one example of how a written constitution could take shape”.<sup>3</sup>

8. In opening the consultation, we expressed the hope that “the leaders of all political parties in the United Kingdom, politicians from local and central government, academics, think tanks, and other organisations, [would] read the research and take part in the discussion”.<sup>4</sup> We went on to say that:

Above all, we hope that the public, including school and university students, seize this unique opportunity for the nation to debate the future of our democracy. The constitution, written or not, should belong to the people of the United Kingdom. The research we are publishing will enable a large number of people to access a comprehensive source of information about the form, if any, a codified constitution could take.<sup>5</sup>

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2 [A new Magna Carta?](#), para 11

3 [A new Magna Carta?](#), para 12

4 [A new Magna Carta?](#), para 14

5 [A new Magna Carta?](#), para 14

## Activities to promote the consultation

### *Seminars and conferences*

9. In addition to inviting comments on the exercise from as broad a range of participants as possible, we arranged expert seminars to discuss some of the key features of the proposals for codification, and in particular the blueprint for a written constitution. These took place as follows:

- Executive powers (30 October 2014)
- Local government (19 November 2014)
- The House of Lords (26 November 2014)
- The judiciary (3 December 2014).

10. In addition, issues of constitutional codification were discussed at seminars on the Committee's visits to Edinburgh (16 October 2014), Cardiff (3 December 2014) and Belfast (8 January 2015). We are very grateful indeed to all those who participated in expert seminars to discuss the blueprints for constitutional codification which we have published.

11. We held an all-day conference on *A new Magna Carta? A constitution for the 21<sup>st</sup> century* in Portcullis House on 11 December 2014. Some 80 people attended, including Members and staff of both Houses, academics and researchers, writers and campaigners on constitutional issues and barristers practising in constitutional law. Four panels of speakers addressed the conference, covering subjects such as the prospects for constitutional reform in 2015, how democratic principles could be reflected in a written constitution, what type of body could prepare a written constitution for the UK and what constitutional changes could engage the public in politics. We are grateful to the Centre for Political and Constitutional Studies at King's College London for providing support for the event, and to the Institute for Public Policy Research for assistance in publicising the conference more widely. A transcript of the conference proceedings is published as an appendix to this Report.

12. The Parliamentary Outreach service was an active partner in promoting the consultation at its regional events, and used its local networks and its connections with university faculties to raise awareness of the consultation. We thank Parliamentary Outreach for its support for our consultation, which we hold up as a model for collaboration between select committee and outreach activity.

### *Other consultation activities*

13. The consultation required dedicated work to engage directly with members of the public and to encourage participation in the consultation through a number of channels other than the traditional call for evidence and consideration of long-form written submissions. Committee staff devised further channels for members of the public to give their views on the issues on which the Committee was consulting. Attendees at a Parliament Week event for young people addressed by the Chair were invited to complete an online questionnaire about some of the issues raised by proposals for constitutional

codification. A further questionnaire on codification issues, promoted through Parliamentary Outreach and on social media, received over 440 responses.

14. Interested third parties organised events to discuss the proposals and to seek further views from members of the public. Unlock Democracy, which campaigns on constitutional issues, ran an online survey on issues raised in the Committee's consultation, and received over 2,100 responses.<sup>6</sup>

15. The Committee also ran an online competition to find a suitable preamble for a future written constitution. Prizes were awarded in two categories: the best preamble submitted by a member of the public, and the best preamble submitted by someone under 18. The winner in the public category was Richard Elliott, while the joint winners in the under-18 category were Harrison Engler and Jake Kennedy. The winning entries are reproduced at Appendix 1 to this Report. We congratulate all those who submitted entries to the competition.<sup>7</sup>

### *Use of social media*

16. Social media was an important channel for promotion of the consultation, and Committee staff used #UKconstitution to promote the conversation across social media platforms. Wherever possible this campaigning activity was linked to other relevant Parliamentary activity, for example the events of Parliament Week (14-20 November 2014).

### *Twitter and Facebook*

17. Over five weeks Committee staff encouraged engagement by asking questions relevant to the issues under discussion from the Committee's Twitter account. These tweets were cross-promoted through the Parliamentary Outreach and UK Parliament Twitter accounts and were also targeted at specific interest groups and networks.<sup>8</sup> The Chair held a Twitter chat on relevant issues during Parliament Week. The consultation was also promoted on the UK Parliament Facebook account.

### *Buzzfeed and Storify*

18. To follow up the 'In the House' event during Parliament Week, Committee staff created a BuzzFeed community post using photographs of participants at the event giving their views on "What our democracy needs".<sup>9</sup> Committee staff published a storify of the

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6 Unlock Democracy ([AMC0154](#)), appendix A

7 The entries to the competition submitted online can be viewed at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/inquiries/parliament-2010/consultation-new-magna-carta/web-forum/>

8 Throughout the campaign [@CommonsPolCon](#) increased its followers by over 200 users, had 414 retweets and 228 replies.

9 BuzzFeed is a news and entertainment website aimed at the under-35 demographic that uses photographs and short videos to illustrate points. The post is available at <http://www.buzzfeed.com/commonsprc/13-things-our-democracy-needs-14mep>. This has had over 300 views to date.



Chair's Twitter chat during Parliament Week and also produced a storify of the 11 December conference to highlight the topics covered and points made by those attending.<sup>10</sup>

## Responses and levels of engagement

### *Written submissions from individuals and organisations*

19. By the end of January 2015 the Committee had received and accepted for publication 161 long-form submissions.<sup>11</sup> Of these responses, 143 were from individuals and 28 from organisations. Organisations submitting evidence included Unlock Democracy, Republic, the Law Society of Scotland, solace, the Convention of Scottish Local Authorities, the Constitution Society, the Better Government Initiative, the National Secular Society and the Institute of Local Government Studies (INLOGOV) at the University of Birmingham.

20. Among the individual responses we received were contributions from a former Foreign Secretary, a former First Parliamentary Counsel and a number of leading academics in the field of politics and constitutional law. While the breadth of experience and knowledge represented in these submissions is highly valuable, we were also pleased to receive responses from members of the public prompted to respond because of their interest in the issue, their concern at the present state of the uncodified constitution or their concern to preserve the present uncodified nature of the constitution.

### *Responses from schools and universities*

21. The Committee particularly encouraged schools and universities to participate in the consultation, and the Parliamentary Outreach service assisted us in promoting engagement with the exercise. Several universities participated, in a variety of ways. Students on politics courses at the University of Manchester and Cumbria University drafted submissions as part of their course assignments. A number of universities facilitated joint submissions: students on political science courses and law courses at Manchester Metropolitan University, the University of Greenwich, Northumbria University, the University of Liverpool, Lincoln University and Canterbury Christ Church University all contributed to joint submissions from those institutions. Students of the Law School and the School of Politics at the University of Hull organised a constitutional symposium for lecturers and students to respond to the issues raised by the consultation.<sup>12</sup> Some 300 first-year students at Birmingham Law School collaborated in the drafting of over 30 preambles for a written constitution. In all, over 500 students contributed to joint submissions from their departments.

22. The views of several 16-18 year olds were also reflected in the responses we received. Thirteen sixth formers at the Sixth Form College, Solihull made a joint submission setting

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10 Storify is a website that allows users to create timelines of events or stories using numerous people's posts on social media. The Twitter chat storify is available at <https://storify.com/ParliamentWeek/ukconstitution-live-parliament-week-twitter-chat>; the conference storify is available at <https://storify.com/commonsprc/a-new-magna-carta-conference>.

11 The written evidence received is listed at pp 116-119

12 University of Hull ([AMC0171](#))

out a number of elements they would like to see addressed in a written constitution, while 58 16-18 year olds from schools and sixth-form colleges in the Runnymede area participated in a deliberative event organised by Royal Holloway, University of London which was designed to demonstrate creative ways of using youth engagement in decision-making.<sup>13</sup> We received a submission from 29 pupils aged 9 and 10 from Year 5 of William Fletcher primary school in Yarnton, Oxfordshire participating in the Pupils 2 Parliament scheme, and an individual submission from Finley Sterry, aged 10.<sup>14</sup>

23. We are very encouraged by the willingness of students to participate in our consultation, and the imaginative ways in which universities and other educational bodies have facilitated the participation of many young people in democratic debate over the future of the UK's constitution.

### *Responses to surveys and forums*

24. As outlined above, Committee staff ran an online survey via Parliamentary Outreach, asking a number of focused questions around issues raised in the consultation (e.g. 'Should the UK have a written constitution?'). The survey was promoted via Twitter, and received 440 responses from members of the public.

25. Unlock Democracy ran their own survey on questions related to the consultation, and received over 2,100 responses: the responses received are summarised in the evidence which Unlock Democracy has submitted.<sup>15</sup>

26. While it is possible that a number of individuals who have made a written submission may also have contributed to the Outreach and Unlock Democracy surveys, a rough estimate is that over 3,000 individuals have engaged in at least one activity related to the Committee's consultation.

**27. In the year in which the 800th anniversary of agreement to Magna Carta is commemorated, as well as the 750th anniversary of the establishment of a representative Parliament in England, it is right that citizens should not only reflect on our democratic legacy but also consider the future of our constitutional arrangements. The consultation has been an exciting and productive process with very high levels of engagement for a Select Committee report. This is not only a new benchmark for the way Parliament can involve the public, but is an important precedent should the UK ever choose to adopt a written constitution. The aspiration that such a choice could with new technology involve several million founding fathers and mothers is eminently realisable. We are very grateful to all those who have taken the time to respond to our proposals.**

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13 The Sixth Form College, Solihull ([AMC0090](#)); Nicholas Allen ([AMC0111](#))

14 Pupils 2 Parliament ([AMC0116](#)); Finley Sterry ([AMC0115](#))

15 Unlock Democracy ([AMC0154](#)), appendix A

## 2 Themes from consultation responses

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28. The Committee's work on codification throughout this Parliament was intended to 'map the path' to codification—or non-codification—of the UK's uncodified constitution. The work the Committee has undertaken, in partnership with King's College London, has resulted in an extensive description of the constitutional landscape, with three blueprints which provide a coherent explanation of the UK's existing constitutional arrangements, and a series of comprehensively researched and well-argued papers which have reviewed the constitutional literature,<sup>16</sup> examined the existing constitution,<sup>17</sup> the case for and against codification,<sup>18</sup> international comparisons of constitutional drafting,<sup>19</sup> and considerations to be taken into account in the design, preparation and adoption of a codified constitution in the UK context.<sup>20</sup>

29. Having mapped these paths, we established, through the Committee's public consultation and associated activities, a broad space for all interested parties to have their say on the blueprints published by the Committee and the desirability or otherwise of constitutional codification. The wealth of opinion and information we received by way of response, both through formal submissions and via responses to the Committee's online survey, has been highly encouraging. The level of response demonstrates, should there have been any doubt, that there is a substantial appetite beyond legal and academic circles for deliberation and debate on matters of constitutional codification and constitutional reform, and that these issues are of far broader interest to the general public than might generally be assumed.

30. Given the breadth and number of submissions received in response to the Committee's exercise, we do not propose to publish a unified response which takes into account all the points made and issues raised. We have nevertheless identified a number of issues and themes emerging from the responses, which we discuss briefly below.

31. The submissions received fell into a number of broad categories:

- Arguments for, or against, the principle of constitutional codification;
- Preferences for one or other of the blueprints published by the Committee, or for the status quo;

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16 Centre for Political and Constitutional Studies, King's College London, [Codifying – or Not Codifying – the United Kingdom Constitution: A Literature Review](#), Series Paper 1, February 2011

17 Centre for Political and Constitutional Studies, King's College London, [Codifying – or Not Codifying – the United Kingdom Constitution: The Existing Constitution](#), Series Paper 2, May 2012

18 Centre for Political and Constitutional Studies, King's College London, [Arguments For and Against Codifying the UK Constitution](#), Part I of *Mapping the Path to Codifying – or Not Codifying – the UK Constitution*, published as an appendix to Political and Constitutional Reform Committee, Second Report of Session 2014-15, [A new Magna Carta?](#), HC 463, pp 19-28

19 Centre for Political and Constitutional Studies, King's College London, [Case Studies on Constitution Building](#), July 2014

20 Centre for Political and Constitutional Studies, King's College London, [The Preparation, Design and Implementation of a Codified UK Constitution](#), Part III of *Mapping the Path to Codifying – or Not Codifying – the UK Constitution*, published as an appendix to Political and Constitutional Reform Committee, Second Report of Session 2014-15, [A new Magna Carta?](#), HC 463, pp 19-28

- Commentary on specific aspects of the blueprints;
- Proposals for amendments to one or more of the blueprints;
- Discussion of the principles on which a codified constitution should be based, and where the boundary between constitutional law and statute should be drawn, and
- Proposals for alternative forms of codification, including alternative written constitutions.

32. There was a general welcome for the Committee's exercise. The Constitution Society, an educational foundation established to promote informed debate on constitutional issues, stated that

The questions of whether the UK should adopt a written constitution, how it should go about doing so, and what it might include have received significant levels of academic interest over the years. However, they have not previously been the subject of sufficient consideration at political level.<sup>21</sup>

It described the Committee's work as valuable, and also timely, given the "almost constant practice" of constitutional change in recent years, "often without adequate consultation or due consideration of the implications".<sup>22</sup>

33. Nevertheless, a number of responses did criticise the premise of the exercise and the necessity of any kind of constitutional codification, praising the flexibility of present constitutional arrangements and arguing that there was no need for change or codification.<sup>23</sup>

### **Is the time right for constitutional reform?**

34. There is undoubtedly more discussion of democratic issues than when we first set out on this task. The campaign around the independence referendum in Scotland, the drive for devolution in England, interest in the UK's relationship with the EU and voter participation are among the issues now firmly on the political agenda.

35. While the seismic constitutional change which would have accompanied a vote for independence for Scotland in the September 2014 referendum has not come to pass, the promises made to voters in Scotland by the major pro-union UK parties before the referendum have set in train a process which will result in further constitutional legislation in 2015 and a very substantial change in the structure of the Union. Agreement has since been reached on changes to the devolution settlement in Northern Ireland and further changes to the settlement for Wales, over and above the provisions of the Wales Act 2014, are promised.

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21 The Constitution Society ([AMC 0088](#)), para 4

22 The Constitution Society ([AMC 0088](#)), para 6

23 See, for example, Hannah Hewson ([AMC0030](#)).

### ***A constitutional convention for the UK***

36. The concept of a constitutional convention for the UK to discuss and make proposals on these issues has been subject of much discussion: this Committee looked at the case for a constitutional convention as early as 2012, and in March 2013 we recommended that the Government examine the case for a convention to look at the future constitutional structure of the UK.<sup>24</sup>

37. Two of the three main parties are now publicly committed to a constitutional convention after the 2015 general election, and the third has acknowledged the possibility that a convention may be held. The Labour Party has announced plans for a constitutional convention in the autumn of 2015 “to determine the UK-wide implications of devolution” and “to discuss the shape and extent of English devolution and what reforms are needed in Westminster, as well as the case for a regionally representative Senate or for codifying the constitution. Major recommendations would then be debated by Parliament.”<sup>25</sup>

38. The Liberal Democrat position was set out in the Command Paper on *The Implications of Devolution for England* in December 2014:

[T]he Constitutional settlement of the UK has been transformed since 1997. [...] Given this, the time is right for a Constitutional Convention to discuss the relationship between the constituent parts of the UK and also to explore the values and principles which bind us together.

A Constitutional Convention should be composed of representatives of the political parties, academia, civic society and members of the public. The Convention should be led by an independent Chair agreed by the leaders of the three main political parties. The remit of the Convention should be decided by parliament through legislation, if possible on a cross party basis. The Liberal Democrats believe this should include the consideration of the appropriate level for political decision-taking in the UK, the powers of the devolved administrations, the interactions between the different institutions of the UK and the voting rights of MPs. The working practices and way in which it chose to approach the remit should be decided by the Convention itself.

The Liberal Democrats believe that a Constitutional Convention should be legislated on at the earliest possible opportunity so its work can start as soon as possible. We would expect the next Government to recognise and engage with the outcome of the Convention and put its proposals to a binding vote of parliament in the most appropriate possible way.<sup>26</sup>

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24 Political and Constitutional Reform Committee, Fourth Report of Session 2012-13, [Do we need a constitutional convention for the UK?](#), HC 371

25 [A Constitutional Convention for the UK](#), Labour Press, 19 September 2014

26 Cabinet Office, *The Implications of Devolution for England*, [Cm 8969](#), December 2014, pp 31-32

39. In the same Command Paper, the Conservative Party set out its position on a constitutional convention:

The Conservative Party believes that any future constitutional convention or commission should be concerned with the effective working of the constitutional arrangements for each part of the Union, including the new arrangements for England, to build a better and fairer settlement within our United Kingdom.

Such a body could consider the case for a ‘Statute of the Union’ to enshrine and reinforce the constitutional arrangements for each part of the Union, and to assist in achieving a stable, long-term settlement across the United Kingdom.

The establishment of any such convention or commission should not delay the implementation of the Smith Commission in Scotland and equivalent changes in the rest of the United Kingdom, including the introduction of English Votes for English Laws, or English and Welsh Votes for English and Welsh Laws.<sup>27</sup>

### ***A ‘constitutional moment’?***

40. Perhaps the “constitutional moment”, which in quieter times some believed was a prerequisite for change, is now close at hand. Professor John McEldowney, Professor of Law at the University of Warwick, argued in his submission that the moment which would precipitate large-scale change to, and codification of, the UK’s constitution, was indeed now imminent:

It is argued that the defining moment has arrived in the aftermath of the Scottish referendum and proposed increased powers to Scotland, Wales and Northern Ireland as well as to the English regions, including changes to local government. There are also profoundly important consequences in the role of the UK Supreme Court in respect of devolution issues. Additionally plans to amend/abolish the Human Rights Act 1998 and the question of holding a referendum on membership of the European Union are important policy decisions that have major constitutional implications. Reform of the House of Lords in the direction of a wholly elected chamber will also profoundly change the nature of the Constitution.<sup>28</sup>

41. The question of whether the UK is approaching a ‘constitutional moment’ was also discussed at the Committee’s conference on 11 December 2014, where Professor Vernon Bogdanor and Professor Dawn Oliver both addressed the issue.<sup>29</sup>

42. The President of the Supreme Court, Lord Neuberger, has suggested in a recent speech<sup>30</sup> that substantial constitutional change may be approaching, and that there are

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27 Cabinet Office, [The Implications of Devolution for England](#), Cm 8969, December 2014, p. 27

28 Professor John McEldowney ([AMC 0151](#))

29 See Appendix 2

powerful arguments in favour of adopting a written constitution: a constitution would presumably “have primacy over decisions of the Human Rights Court in Strasbourg and even those of the EU Court in Luxembourg”, and fundamental constitutional principles would prevail over any decisions of the ECHR or ECJ inconsistent with them, an approach which, for example, the German Constitutional Court has shown itself ready to take in respect of the principles of the German constitution. Lord Neuberger went on to suggest that any substantial change to the UK’s constitutional arrangements would strengthen the case for codification and the drafting of a written constitution:

We have a proud and successful history with a pragmatic, rather than principled, approach to law and legal systems, and we have managed pretty well without a constitution. But times change, and the fact that we managed well without a constitution in a very different world from that which we now inhabit may be a point of limited force when applied to the present. So long as things remained much the same, the argument based on the status quo was hard to resist. However, if, and it is a big “if” which is ultimately a political decision, our system of government is going to be significantly reconsidered and restructured, there is obviously a more powerful case for a written constitution. Writing a constitution may help focus minds on the details of the restructuring, and, once the restructuring has occurred, a new formal constitution should provide the new order with a clarity and certainty which may otherwise be lacking.

43. We also received submissions arguing that a “constitutional moment” has not been reached, or that political conditions were not right for the introduction of a new constitutional settlement. Sir Stephen Sedley, Visiting Professor of Law at the University of Oxford, told us that consensus on a new constitution could only be reached “when a society embarks on a genuinely new beginning”, the exemplar being post-apartheid South Africa: he saw no signs of such developments in the UK.<sup>31</sup> Lord Owen argued that since “the party political debate in the UK is more fragmented and unstable at present than even in the 1930s”, any new constitution would need a more settled political environment to develop.<sup>32</sup>

44. The changes to the Union which are proposed following the result of the Scottish referendum, along with changes to the devolution settlements for Wales and for Northern Ireland, together represent a significant change to the UK’s constitutional arrangements. At the forthcoming general election, parties will be seeking support for manifestoes which will undoubtedly entail forms of constitutional change. **Taken together, the potential for substantial constitutional reform in the new Parliament is significant. It is vital that the process of any such change is properly assessed in advance and the implications of constitutional change are assessed in the round. Drafting a codified constitution which**

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30 Lord Neuberger, [The UK Constitutional Settlement and the Role of the UK Supreme Court](#), speech to the Legal Wales Conference 2014, Bangor, 10 October 2014.

31 Sir Stephen Sedley ([AMC0146](#))

32 Rt Hon Lord Owen ([AMC0094](#))

**sets out clearly and coherently the settlement envisaged as a result of constitutional change would be a sensible approach to any major constitutional reform.**

### Is a written constitution necessary?

45. Many responses to the consultation have supported the general proposition that codification is desirable, adducing many of the reasons set out by Professor Blackburn in the paper setting out arguments for and against which we published with our initial report. Several went further and argued in favour of a written constitution. Among the reasons cited in support of a written constitution are those of basic fairness—the accessibility to all citizens of an authoritative text of basic law. It was argued that a written constitution would make Government more accountable to Parliament and the electorate, and could make a separation of the powers in the state more effective. Some suggested that a written constitution would arrest the capacity of the executive, working through the legislature, to enact substantial constitutional reform in a piecemeal fashion without effective consultation or proper consideration of how such changes would operate: a written constitution with a clear procedure for amendments could provide a check on such tendencies.

46. Submissions against codification in general, and a written constitution in particular, argued that the present system was sufficiently flexible and that any form of written constitution would hamper swift and efficient change to the constitution where this was deemed necessary.

47. The submission from Sir Stephen Laws, former First Parliamentary Counsel, argued that the UK had an effective political constitution, which was “more authentic, more democratic and more radical” than a written constitution “enshrined in law and regulated by the judiciary”.<sup>33</sup> He suggested that the real mischief in the present system was a lack of transparency in its operation, which in turn distorted the accountability in the political process which the political constitution required to operate: there might be something to be gained from setting out “the framework of principles within which governments propose to set decision-making” in a form which would not be justiciable.<sup>34</sup> The Better Government Initiative, “an informal body made up of people with practical experience in government at a very senior level”, argued that recent and proposed constitutional changes were, in their volume and their scale, “beyond the capacity of an evolutionary “unwritten constitution” to manage”, though they argued that what was required was an agreed and properly managed process for constitutional change, rather than a process of codification.<sup>35</sup>

48. Some respondents argued for a simpler form of written constitution, expressing basic values and leaving detailed arrangements to be worked out in primary legislation. Richard Hannam told us that a constitution should confine itself to high-level themes and principles, establishing institutions but not governing how they operate.<sup>36</sup> Jack Steiner said

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33 Sir Stephen Laws KCB ([AMC0150](#)), executive summary and para 65 ff.

34 Sir Stephen Laws KCB ([AMC0150](#)), executive summary and para 109

35 Better Government Initiative ([AMC0113](#)), para 4

36 Richard Hannam ([AMC0032](#)), section 2



that a more concise draft should be prepared, in simpler English, to improve the accessibility of the constitution on a broader scale.<sup>37</sup>

## Should codification start from here?

49. Several respondents expressing support for codification indicated that the written constitution draft ought to be amended (either in general terms or in detail) to provide clarity or to introduce elements of reform which they believed desirable.

50. A number of respondents who were generally in favour of a written constitution considered that consensus needed to be achieved on some broad political and constitutional questions before moving to codification. Among the issues most frequently identified for further work were devolution (where there was some support for moving to federated arrangements for the UK), reform of the House of Lords and reform of the voting system for the House of Commons.<sup>38</sup>

51. Equally, a number of proponents of a written constitution were against any attempt to codify the existing constitutional arrangements in a documentary constitution: one submission argued that none of the blueprints offered an acceptable basis for a written constitution, and that the existing arrangements should be swept aside in favour of a more radical settlement.<sup>39</sup> Several submissions argued that the constitutional doctrine of Parliamentary sovereignty, or the sovereignty of the Crown in Parliament, ought to be explicitly repudiated and replaced by an acknowledgment of popular sovereignty expressed in a written constitution.<sup>40</sup>

52. A number of respondents offered their own proposals for constitutional texts or for alternative systems of government.<sup>41</sup> Some respondents criticised the form of the written constitution blueprint, considering that it did not address new and emerging power structures and that it should include provision (for example) for civil society participation, control of markets, and budgetary discipline.<sup>42</sup> Professor Justin Champion, of Royal Holloway, University of London, made a trenchant critique of codification of the *status quo*:

Most of the long established principles and historical elements of the current system have much to do with the regulation and preservation of dynastic monarchical settlement rather than a set of constitutional values that are the expression of civic partnership or collective convention. More time is spent deciding who gets to rule and how, rather than 'why and what for?'<sup>43</sup>

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37 Jack Steiner ([AMC0112](#)), paras 9-10

38 See, for example, Stephen Barber ([AMC0036](#)), Mark Harrison ([AMC0055](#)), David Weaver ([AMC0056](#)), Andrew Brown ([AMC0085](#)), Daniel Goodwin ([AMC0097](#)), Daniel Webster ([AMC0125](#)) and Anthony Tuffin ([AMC0168](#))

39 Michael McCarthy ([AMC0091](#))

40 For example, Michael McCarthy ([AMC0091](#)), students of Manchester Metropolitan University ([AMC0095](#)), Republic ([AMC0138](#)), Lawrence Serewicz ([AMC0145](#))

41 For example, Ryan Doyle ([AMC0020](#)) and Ed Straw ([AMC0105](#)).

42 For example, Frank Vibert ([AMC0026](#))

43 Professor Justin A.I. Champion ([AMC0137](#)), para 6

In practical terms, starting with a public debate, but conducted in localities, about a fundamental question, would be helpful—“what's government for?” Engaging as many voices in such a discussion would be a powerful ambition. Having established a set of answers, it then might be suitable to progress to a follow up discussion, along the lines of, 'How do processes and political institutions enable, achieve those purposes?'. Such public discussion would encourage public participation and develop a genuine civic character to the principles of political life.<sup>44</sup>

## How should codification be approached?

53. Those in favour of some form of codification nevertheless had varying views on how it should be approached. While there was broad support for some form of convention to determine the principles to be enshrined in a written constitution and to draft its provisions, some were concerned that the process of constitutional change might be subject to the whims of a party with a parliamentary majority.<sup>45</sup>

54. There were some submissions in favour of the ‘building-block’ approach to constitutional change, which was one model advocated by Robert Blackburn: under this model, agreement might be reached on core constitutional principles expressed in a constitutional code, and that consensus could be used as the basis for further development of codification, though a consolidation of constitutional legislation or a written constitution.<sup>46</sup>

## Our view

55. In our original report we presented the arguments for and against constitutional codification and a written constitution, to assist those considering the matter to make up their minds one way or the other. While the balance of views expressed to us favours some form of codification in general, and a written constitution in particular, we do not propose here to endorse or to amend one particular model or blueprint. Our purpose has been to set out the arguments and to illustrate how codification might be achieved.

56. As Professor Blackburn has made clear in his paper on the design and implementation of a codified constitution, the initiative for codification lies with the executive.<sup>47</sup> The involvement, for the first time, of a parliamentary committee in inquiring into the basis of the UK’s constitutional arrangements and illustrating options for codification has received a broad welcome. The practical illustrations we have provided, together with the informed

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44 Professor Justin A.I. Champion ([AMC0137](#)), paras 9-10

45 For example, The Constitution Society ([AMC0088](#)), John J Blanche ([AMC0107](#))

46 For example, INLOGOV ([AMC0106](#)). For Robert Blackburn’s proposal, see the Introduction to Centre for Political and Constitutional Studies, King’s College London, *Three Illustrative Blueprints*, Part II of *Mapping the Path to Codifying – or Not Codifying – the UK Constitution*, published as an appendix to Political and Constitutional Reform Committee, Second Report of Session 2014-15, *A new Magna Carta?*, HC 463, p. 29

47 Centre for Political and Constitutional Studies, King’s College London, *The Preparation, Design and Implementation of a Codified UK Constitution*, Part III of *Mapping the Path to Codifying – or Not Codifying – the UK Constitution*, published as an appendix to Political and Constitutional Reform Committee, Second Report of Session 2014-15, *A new Magna Carta?*, HC 463, p 363

commentaries on the exercise, should serve as a resource for an incoming administration which has constitutional codification as a policy priority: much of the practical work of examination and description of the existing constitutional arrangements has been achieved.

57. As vital as the debate about whether and how to codify the constitution is the debate about what constitutional arrangements it is desirable to codify. The three illustrations of models of codification which we published have been grounded in practical politics and the maintenance, as far as possible, of the status quo: where the written constitution blueprint described elements of reform, it did so on the basis of existing proposals for reform. We deliberately did not set out to propose constitutional codification allied with radical constitutional reform, but we recognise that an element of constitutional change may well be necessary in any process of codification. Moreover, we recognise that the broadest possible public debate about constitutional alternatives must form the basis of any process of large-scale constitutional change which genuinely seeks the engagement and consent of the public.

**58. We consider that the public is entitled to know the processes by which it is governed and the fundamental rules on which the constitution is based. Broader knowledge of the UK's existing constitutional arrangements will lead to more informed debate on constitutional issues. A simpler, more accessible constitutional text will contribute greatly to more informed public debate, and we set out below our contribution to this ongoing debate.**

## 3 Further work

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### Other initiatives for constitutional renewal

59. Several other initiatives have been established to promote discussion of the key constitutional issues in our democracy. The Great Charter Convention, an online collaboration between the politics departments of the Universities of Oxford and Cambridge, OurKingdom, IPPR and the Department of Politics at the University of Southampton, seeks to promote “an open, public debate on where arbitrary power lies in the UK today and how we should contest and contain it.”<sup>48</sup> ConstitutionUK, run by the LSE Institute of Public Affairs, is an online project to crowdsource ideas for a written UK constitution to be drafted by a constitutional convention which plans to convene in April 2015.<sup>49</sup> **We welcome all initiatives which promote open public debate, and encourage public engagement with, our constitutional future.**

### Amendments to the blueprints

60. Respondents were asked for any recommendations for changes to their favoured option for constitutional codification, if they had one. A number of respondents proposed detailed drafting changes to the published blueprints, in particular to the blueprint for a written constitution: for example, the submission from Oxford Pro Bono Publico addressed, with extensive comparative evidence, the treatment in the written constitution blue print of the civil rights of non-nationals.<sup>50</sup> Our aim in publishing the blueprints has been to ensure that, if and when a decision was taken to make progress on codification, a “thoroughly scrutinised and properly devised plan” is in place “to ensure a successful outcome”.<sup>51</sup>

61. With that aim in mind, **we have invited Professor Robert Blackburn to assess the detailed proposals for revision made in the consultation responses and to revise and update the blueprints as necessary in the event that a future body charged with preparing a codified constitution calls for an authoritative text which accurately describes existing arrangements.**

### Consideration by the House in the 2015 Parliament

62. **This Committee was established to consider political and constitutional reform for the lifetime of the present Parliament. The establishment, or re-establishment, of a committee with an express remit to examine such issues in the 2015 Parliament will depend on the will of the House which is to be elected on 7 May. *Should the programme for government of the administration formed after 7 May include any elements of constitutional reform, we strongly recommend that a select committee be established to***

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48 The Great Charter Convention is hosted online at <https://www.opendemocracy.net/ourkingdom/collections/great-charter-convention>

49 The ConstitutionUK project is hosted online at [constitutionuk.com](http://constitutionuk.com)

50 Oxford Pro Bono Publico ([AMC0143](#))

51 [A new Magna Carta?](#), para 11

*examine the Government's proposals and to keep the progress of any political and constitutional reform under regular review, to continue the work this Committee has undertaken in the present Parliament. In the absence of such a committee, we recommend that our work on political and constitutional reform, and the continuing debate on the UK's constitution, be taken up by the select committee with a remit to examine the work of the Government department with responsibility for constitutional policy.*

### **A draft accessible summary constitution, with options for reform**

63. As we indicated above, a number of the responses we have received suggested that the options for constitutional codification which we published were too dry or too detailed to engage the general reader. We recognise the requirement for a more basic document to set out the general principles which underpin the UK's constitution—whether uncoded, as at present, or codified. We are therefore publishing, as an annex to this report, a draft of an accessible written constitution based on the UK's existing constitutional arrangements.

64. The “pocket constitution” which we have published is intended as a summary of the present constitutional position. It also includes a number of alternative options to the present arrangements, many of which arise from the responses to the consultation exercise, for discussion and debate during the General Election campaign, throughout the Magna Carta anniversary year and beyond. None of the above purports to represent the settled view of all the members of the Select Committee: instead we intend this document to promote further debate on our constitutional arrangements and options for reform. In publishing it in a brief and accessible format we hope to engender the broadest possible discussion of constitutional issues. To that end, we will establish a further web survey to seek the views of members of the public on the status quo and on the alternatives we have sketched out. *We recommend that the successor committee of the House with a remit to consider constitutional issues in the 2015 Parliament should collate and evaluate the responses and maintain an ongoing consultation with the public on our constitutional future.*

## Conclusions and recommendations

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### Consulting on A new Magna Carta?

1. In the year in which the 800th anniversary of agreement to Magna Carta is commemorated, as well as the 750th anniversary of the establishment of a representative Parliament in England, it is right that citizens should not only reflect on our democratic legacy but also consider the future of our constitutional arrangements. The consultation has been an exciting and productive process with very high levels of engagement for a Select Committee report. This is not only a new benchmark for the way Parliament can involve the public, but is an important precedent should the UK ever choose to adopt a written constitution. The aspiration that such a choice could with new technology involve several million founding fathers and mothers is eminently realisable. We are very grateful to all those who have taken the time to respond to our proposals. (Paragraph 27)

### Themes from consultation responses

2. Taken together, the potential for substantial constitutional reform in the new Parliament is significant. It is vital that the process of any such change is properly assessed in advance and the implications of constitutional change are assessed in the round. Drafting a codified constitution which sets out clearly and coherently the settlement envisaged as a result of constitutional change would be a sensible approach to any major constitutional reform. (Paragraph 44)
3. We consider that the public is entitled to know the processes by which it is governed and the fundamental rules on which the constitution is based. Broader knowledge of the UK's existing constitutional arrangements will lead to more informed debate on constitutional issues. A simpler, more accessible constitutional text will contribute greatly to more informed public debate, and we set out below our contribution to this ongoing debate. (Paragraph 58)

### Further work

4. We welcome all initiatives which promote open public debate, and encourage public engagement with, our constitutional future. (Paragraph 59)
5. We have invited Professor Robert Blackburn to assess the detailed proposals for revision made in the consultation responses and to revise and update the blueprints as necessary in the event that a future body charged with preparing a codified constitution calls for an authoritative text which accurately describes existing arrangements. (Paragraph 61)
6. This Committee was established to consider political and constitutional reform for the lifetime of the present Parliament. The establishment, or re-establishment, of a committee with an express remit to examine such issues in the 2015 Parliament will depend on the will of the House which is to be elected on 7 May. *Should the programme for government of the administration formed after 7 May include any elements of constitutional reform, we strongly recommend that a select committee be*

*established to examine the Government's proposals and to keep the progress of any political and constitutional reform under regular review, to continue the work this Committee has undertaken in the present Parliament. In the absence of such a committee, we recommend that our work on political and constitutional reform, and the continuing debate on the UK's constitution, be taken up by the select committee with a remit to examine the work of the Government department with responsibility for constitutional policy. (Paragraph 62)*

7. The “pocket constitution” which we have published is intended as a summary of the present constitutional position. It also includes a number of alternative options to the present arrangements, many of which arise from the responses to the consultation exercise, for discussion and debate during the General Election campaign, throughout the Magna Carta anniversary year and beyond. None of the above purports to represent the settled view of all the members of the Select Committee: instead we intend this document to promote further debate on our constitutional arrangements and options for reform. In publishing it in a brief and accessible format we hope to engender the broadest possible discussion of constitutional issues. To that end, we will establish a further web survey to seek the views of members of the public on the status quo and on the alternatives we have sketched out. *We recommend that the successor committee of the House with a remit to consider constitutional issues in the 2015 Parliament should collate and evaluate the responses and maintain an ongoing consultation with the public on our constitutional future. (Paragraph 64)*

## Annex: A draft accessible summary constitution, with options for reform<sup>52</sup>

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### *CHAIR'S FOREWORD*

Parliament, through the Political and Constitutional Reform Select Committee of the House of Commons, has spent the full fixed five-year term of the 2010 Parliament looking at the path to possible codification of the United Kingdom's constitution. In a unique collaboration with a team from the Centre for Constitutional and Political Studies at King's College London, led by Professor Robert Blackburn, we published 'A new Magna Carta?',<sup>53</sup> a seminal and comprehensive work offering three options for codification.

We then embarked upon an unprecedented public consultation. While the responses to the consultation broadly favoured a written constitution, they also raised many views and options on what should be its content. We make no pretence that there is a consensus view either among the public or the committee. Instead, we feel the debate and discussion should go on.

Therefore what follows is a further draft of a much simplified, popular version. It contains—in black text—a brief description of our current constitutional arrangements and reference to the relevant sections of the third blueprint published in 'A new Magna Carta?' and—in italic text to facilitate comparisons—a number of options which emerged from the consultation. These options are illustrative and not exclusive. They are designed to initiate further discussion, and perhaps fierce argument, to inform the 2015 general election campaign and to continue to the end of the year of the 800th anniversary of Magna Carta, into a possible constitutional convention and beyond.

A refreshed Parliament will collate your further ideas on a codified constitution and, when our political leaders are ready, they will have a ready-crafted document and set of responses to help them to deliver to the British people - should they wish it - a codified constitution of their choice.

### **Graham Allen MP**

Chair of the Political and Constitutional Reform Select Committee

Send your response, comments and contributions on the debate to [pcrc@parliament.uk](mailto:pcrc@parliament.uk), contribute to the debate on social media using #UKconstitution or complete our online survey at <http://www.smartsurvey.co.uk/s.asp?i=150290KVDWR>.

### *PREAMBLE*<sup>54</sup>

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<sup>52</sup> The Committee acknowledges the work of Dr Elin Weston in the preparation of this draft.

<sup>53</sup> Political and Constitutional Reform Committee, Second Report of Session 2014-15, *A new Magna Carta?*, HC 463

<sup>54</sup> Below is the winning entry in the Committee's competition for the public to find a suggested preamble for a future UK Constitution. It has been drafted by Richard Elliott. If you are inspired to do better, please send your own suggestion to [pcrc@parliament.uk](mailto:pcrc@parliament.uk).



United, we stand in celebration of the diverse voices that make up the great chorus of our nation. Confident in our individuality, and steadfast in our shared values and common purpose, we—the citizens of the United Kingdom of Great Britain and Northern Ireland—have come together in the spirit of self-determination in order to establish the principles of our law and governance.

By this act, we create for ourselves a sovereign state, animated by many spirits, accountable to all. Conscious of the responsibility that we bear to future generations—and of their role in defending and regenerating this Constitution—we lay down maxims crafted to promote civic harmony, mutual tolerance, universal wellbeing, and social and political freedom.

We embody these ideas in democratic government, and enshrine them in a system of law. And we empower each citizen to reform this design, by democratic process and political debate. By popular mandate, we establish this Constitution:

To recognise every citizen as an equal partner in government—at a local, regional, and national level.

To affirm that each citizen is entitled to fair and equitable treatment under the law.

To establish the principle of equality of opportunity for all citizens.

To eradicate poverty and want throughout the nation.

To protect and cultivate community identities within the four great countries of the union: England, Scotland, Wales, and Northern Ireland.

To preserve our common environment, and to hold it in trust for future generations.

To safeguard freedom of thought, conscience, and assembly; and to facilitate peaceable dissent.

And to protect these fundamental rights against the encroachment of tyranny and the abdication of reason.

Through this undertaking, we remind one another of the benefits and duties of citizenship enshrined in membership of the United Kingdom, challenging ourselves to enact these principles throughout society.

Let our example stand as an inspiration to the peoples of the world, and to their rulers and their governments.

Let our principles animate our dedication to peace and justice in international affairs.

And let our united resolve grow ever-stronger under the enlightened auspices of this Constitution.

## *THE UK CONSTITUTION*

## *OUR DEMOCRATIC SETTLEMENT*

The United Kingdom is a constitutional monarchy.<sup>55</sup>

*Possible alternative:*

*The United Kingdom shall be a democracy where the people are sovereign.*

*There shall be a separation of powers guaranteeing an independent and elected executive and legislature, and an independent and impartial judiciary.*

*The United Kingdom shall operate as a Union of nations with power devolved to the lowest appropriate level.*

## Status

The United Kingdom constitution is composed of the laws and rules that create the institutions of the state, regulate the relationships between those institutions, or regulate the relationship between the state and the individual.

These laws and rules are not codified in a single, written document.

Constitutional laws and rules have no special legal status.

*Possible alternative:*

*The Constitution of the United Kingdom shall be the basic law according to which the United Kingdom shall be governed. The Constitution shall have the highest legal status and all other laws and rules must be consistent with it.*

## Amendment<sup>56</sup>

Constitutional laws and rules may be enacted, amended or repealed by Parliament using its ordinary legislative procedures.

*Possible alternative:*

*There shall be a Commission for Democracy, which shall keep under review the operation of the Constitution.*

*Amendments to the Constitution may be proposed by the Commission for Democracy, by the Government, or by either House of Parliament.*

*The Constitution may only be amended following approval by:*

- *Two-thirds of the members of both the First and Second Chambers of Parliament, and*
- *The majority of people voting in a referendum.*

## THE HEAD OF STATE<sup>57</sup>

The Head of State of the United Kingdom is the hereditary Monarch.

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55 [A new Magna Carta?](#), p 285

56 [A new Magna Carta?](#), pp 354-356

57 [A new Magna Carta?](#), pp 285-287

Possible alternative:

*The Head of State of the United Kingdom shall be directly elected by the people.*

OR

*The Head of State shall be nominated and approved by both Houses of Parliament.*

*The Head of State must be a British Citizen, and must be over 18 years of age.*

*The Head of State's term of office shall be [10] years, which may be renewed once.*

**Powers**

The powers of the Head of State are formal, ceremonial and non-political, and include:

- Granting assent to legislation approved by both Houses of Parliament;
- Appointing the Prime Minister;
- Appointing Ministers of the Crown;
- Granting honours and titles;
- And any other powers as may be accorded to the Head of State.

The Head of State must act with strict political neutrality. The Head of State exercises these powers on the advice of the Prime Minister.

**THE EXECUTIVE<sup>58</sup>****THE PRIME MINISTER**

The Prime Minister is the Head of the United Kingdom Government.

The Head of State appoints as Prime Minister the member of the House of Commons who can command the confidence of the House of Commons.

The Prime Minister remains in office until either:

- Following a General Election, the Prime Minister is no longer able to command the confidence of the House of Commons, or
- The Government loses a vote of no confidence in the House of Commons and a replacement government cannot be found within 14 days, or
- The Prime Minister resigns.

Possible alternative:

*The Prime Minister shall be directly elected by the people [in a two-round ballot].*

OR

*The Prime Minister shall take office following nomination and confirmation by the House of Commons.*

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58 [A new Magna Carta?](#), pp 290-302

*The Prime Minister's term of office shall be 5 years, renewable.*

## **CABINET**

The Cabinet consists of the Prime Minister and senior Ministers and is the collective leadership of the United Kingdom Government.

Ministers must be members of either House of Parliament and are appointed and dismissed by the Head of State, acting on the advice of the Prime Minister.

The maximum number of holders of ministerial office entitled to sit and vote in the House of Commons at any one time is ninety-five.

### Possible alternative:

*Ministers shall be appointed by the Prime Minister and hold office at his or her discretion. Cabinet level appointments shall be ratified by Parliament.*

## **Powers of the Executive**

The Executive exercises powers on the basis of an Act of Parliament, the common law or convention.

The common law powers of the Executive include, but are not limited to:

- Declaring war and committing troops to armed conflict;
- Signing treaties and international agreements;
- Granting passports;
- Issuing pardons.

The Prime Minister and Ministers are responsible to Parliament for the exercise of these powers.

### Possible alternative:

*The powers of the Executive shall be listed in a Prime Ministerial Powers Act, which may only be amended by a majority of two-thirds of the members of each House of Parliament.*

*The Act shall specify the Prime Minister's duties in respect of all matters including war-making, treaty-making, and initiating legislative action for the public good.*

*The Prime Minister and Ministers shall be accountable to Parliament for the exercise of these powers.*

## **THE LEGISLATURE<sup>59</sup>**

### **PARLIAMENT**

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59 [A new Magna Carta?](#), pp 303-313

The United Kingdom Parliament has two chambers, the House of Commons and the House of Lords.

The United Kingdom Parliament may pass laws on any matter, without restriction in law.

Possible alternative:

*The United Kingdom Parliament shall have two chambers, the First Chamber and the Second Chamber.*

*Laws passed by the United Kingdom Parliament must comply with the provisions of the Constitution. Any laws that do not comply with the Constitution shall be invalid.*

## THE HOUSE OF COMMONS

The House of Commons is the First Chamber of the United Kingdom Parliament.

### Membership

The House of Commons has 650 directly elected members, known as Members of Parliament. Members are elected by simple majority system, also known as First Past the Post.

Possible alternative:

*The First Chamber shall have [500] directly elected members, known as Members of Parliament. Members shall be elected by an electoral system agreed by the people in a referendum.*

### Functions

The main functions of the House of Commons are:

- To represent the peoples of the United Kingdom in all matters;
- To hold the government to account;
- To scrutinise and approve Bills as part of the legislative process;
- To authorise taxation;
- To scrutinise and approve the Government's budget and planned expenditure on an annual basis;
- To debate the public policies of and for the Government of the United Kingdom.

Possible alternative:

*The main functions of the First Chamber shall also include:*

- *To confirm the appointment of the Prime Minister and other Ministers;*
- *To act in accordance with the values of this constitution.*

The role of a Member of Parliament includes, but is not limited to:

- Participating in the work of the House of Commons;
- Representing and furthering the interests of their constituency;
- Representing individual constituents and taking up their problems and grievances.

Possible alternative:

- *Making judgements balancing the interests of public, party and conscience free from influence or coercion.*

It is for each MP to decide how best to balance these tasks.

## THE HOUSE OF LORDS

The House of Lords is the Second Chamber of the United Kingdom Parliament.

### Membership

The House of Lords is composed of Life Peers, 92 Hereditary Peers and 26 Lords Spiritual.

Life Peers are appointed for life by the Head of State on the advice of the Prime Minister.

The 92 Hereditary Peers hold office for life. When a vacancy arises, it is filled following a by-election, governed by the standing orders of the House.

The 26 Lords Spiritual include the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and 21 other Bishops of the Church of England according to seniority of appointment.

Members of the House of Lords may resign their membership.

There is no limit on the number of members of the House of Lords.

Possible alternative 1:

*The Second Chamber shall be subordinate to the First Chamber. It shall have [500] voting members, directly elected to represent in proportion the nations and regions of the United Kingdom.*

*Members shall be elected for a period of [fifteen] years and [shall/shall not] be re-elected. The electoral system for elections to the Second Chamber and for vacancies shall be decided by each of the nations and regions of the United Kingdom.*

Possible alternative 2:

*The Second Chamber shall be a Chamber of Experts, with [350] members.*

*Its members shall be appointed by the Head of State on the advice of an independent commission.*

*Members shall be appointed for a period of [fifteen] years.*

*Members shall be appointed on the basis of recognised expertise in their field. Members may be members of a political party, but may not form party political groupings within the Second Chamber.*

## Functions

65. The main functions of the House of Lords are:

- To hold the government to account;
- To scrutinise, amend and approve bills as part of the legislative process.

The House of Lords has no power to veto legislation approved by the House of Commons, save to veto any Bill which seeks to extend the life of a Parliament beyond 5 years.

### Possible alternative:

*The primary function of the Second Chamber shall be to scrutinise and amend Bills approved by the First Chamber.*

*The Second Chamber shall pay special regard to Bills that would reform the Constitution. Such Bills must be approved by a majority of two-thirds of the members of the Second Chamber.*

*The Second Chamber may also veto a Bill that has been approved by the First Chamber if the Bill is considered to be contrary to the independence of other institutions including Local Government, human rights or any other provisions of the Constitution.*

## DEVOLVED GOVERNMENT OF THE NATIONS, REGIONS AND LOCALITIES<sup>60</sup>

### *Devolved Government of Nations and Regions*

There are devolved parliaments and assemblies in Scotland, Wales and Northern Ireland. There is an assembly in Greater London.

The powers and functions of these devolved parliaments and assemblies are determined by laws passed by Parliament.

These laws may be amended or repealed by Act of Parliament.

### *Local government*

There are directly elected local authorities in all areas of the United Kingdom.

Local authorities are bound by Acts of Parliament in respect of powers to raise taxes, and to promote the economic, social and environmental well-being of the areas that they represent.

The powers, funding and responsibilities of local authorities are determined by law.

### Possible alternative:

*The United Kingdom shall operate on the basis of the guiding joint principles of union and devolution.*

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60 [A new Magna Carta?](#), pp 321-326

*Permanent devolved parliaments and assemblies in Scotland, Wales & Northern Ireland shall be established as parts of the Union, and they may make national constitutions which respect this federal Constitution.*

*Devolution in England shall be in the form of independent local government, to which shall be assigned a proportion of national income tax.*

*The freedoms and duties of local government in England shall be defined in an Independent Local Government Act. Such an Act may only be amended with the agreement of two-thirds of the members of each House of Parliament, and of the majority of people voting in a referendum.*

## THE JUDICIARY<sup>61</sup>

### GENERAL PRINCIPLES

The judiciary is independent and impartial.

Ministers must uphold the principle of judicial independence.

There are separate courts systems in England and Wales, Scotland and Northern Ireland.

The most senior court in the United Kingdom is the United Kingdom Supreme Court. The Supreme Court is the final court of appeal on all matters, except criminal appeals in Scotland.

### Appointment of judges

Senior judges are appointed by the Head of State on ministerial advice. The procedures for selecting candidates for judicial office are set out in Acts of Parliament.

Appointment to judicial office must take place on the basis of merit.

When selecting candidates for judicial appointment, regard must be had for the need to promote diversity among the judiciary.

### Functions

The primary functions of the judiciary are to:

- Uphold the rule of law and the rights of individuals;
- Adjudicate on any disputes that are brought before them, and;
- Maintain the administration of civil and criminal justice.

The judiciary is responsible for the development and application of the common law.

The judiciary must interpret and apply laws enacted by Parliament.

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61 [A new Magna Carta?](#), pp 339-347



There is no power to strike down laws enacted by Parliament.

Possible alternative:

*The judiciary shall have the power to strike down laws that are found to be inconsistent with the Constitution.*

OR

*The judiciary shall have the power to issue a declaration of unconstitutionality in respect of a law that is found to be inconsistent with the Constitution.*

### *BILL OF RIGHTS*<sup>62</sup>

The following rights, deriving from the European Convention on Human Rights and expressed in the Human Rights Act, are available without qualification to all persons within the United Kingdom:

- Everyone has the right to life;
- Everyone has the right to be free from torture, inhuman or degrading treatment;
- Everyone has the right to be free from slavery and forced labour;
- No-one may be found guilty of a criminal offence if their actions did not amount to a criminal offence under national or international law at the time of their commission.

The following rights, deriving from the European Convention on Human Rights and expressed in the Human Rights Act, which may be qualified by law, are available to all persons within the United Kingdom:

- The right to liberty and freedom from arbitrary arrest and detention;
- The right to a fair trial;
- The right to respect for private and family life, home and correspondence;
- The right to freedom of thought, conscience and religion;
- The right to freedom of expression;
- The right to freedom of assembly and association;
- The right to marry and found a family;
- The right to peaceful possession of property;
- The right to education;
- The right to take part in free and fair elections, held at regular intervals.

The enjoyment of these rights is secured without discrimination on any grounds.

*Possible alternative 1:*

*There shall be a Bill of Rights which sets out the rights to be protected and enforced within the United Kingdom.*

*Possible alternative 2:*

*All persons shall be equal before the law and shall be entitled to the equal protection of the law, without discrimination.*

*Possible alternative 3:*

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62 [A new Magna Carta?](#), pp 327-338

*The rights of certain groups within society shall be given special regard, in particular the rights of:*

- *Children;*
- *Older people;*
- *People with disabilities.*

*Possible alternative (additionally):*

*The following social and economic rights shall be available to all persons within the United Kingdom. These rights may not be enforced by the courts, but instead shall be principles to guide the work of the Governments and Parliaments of the United Kingdom and of the devolved assemblies:*

- *The right to an adequate standard of living, including adequate food, clothing and housing;*
- *The right to social security;*
- *The right to receive adequate healthcare, free at the point of use;*
- *The right to work in an occupation freely entered into, in a safe environment;*
- *The right of workers to resort to collective action, including the right to strike.*

### ***Status in law***

The rights protected in the Human Rights Act apply as follows:

- It is unlawful for public authorities to act in a way that is inconsistent with the protected rights;
- As far as it is possible to do so, courts must interpret legislation so that it is consistent with the protected rights;
- Where a compatible interpretation is not possible, a declaration of that incompatibility may be made. Such a declaration does not affect the validity or application of that legislation.

*Possible alternative:*

*The rights protected in this [Constitution/Bill of Rights] shall have a special legal status. Any law which is not consistent with the protected rights shall be invalid.*

# Appendix 1: Winning entries in the Committee's competition to find a preamble for a written constitution for the UK

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## Winner in the Open category: Richard Elliott

United, we stand in celebration of the diverse voices that make up the great chorus of our nation. Confident in our individuality, and steadfast in our shared values and common purpose, we—the citizens of the United Kingdom of Great Britain and Northern Ireland—have come together in the spirit of self-determination in order to establish the principles of our law and governance.

By this act, we create for ourselves a sovereign state, animated by many spirits, accountable to all. Conscious of the responsibility that we bear to future generations—and of their role in defending and regenerating this Constitution—we lay down maxims crafted to promote civic harmony, mutual tolerance, universal wellbeing, and social and political freedom.

We embody these ideas in democratic government, and enshrine them in a system of law. And we empower each citizen to reform this design, by democratic process and political debate. By popular mandate, we establish this Constitution:

- To recognise every citizen as an equal partner in government—at a local, regional, and national level.
- To affirm that each citizen is entitled to fair and equitable treatment under the law.
- To establish the principle of equality of opportunity for all citizens.
- To eradicate poverty and want throughout the nation.
- To protect and cultivate community identities within the four great countries of the union: England, Scotland, Wales, and Northern Ireland.
- To preserve our common environment, and to hold it in trust for future generations.
- To safeguard freedom of thought, conscience, and assembly; and to facilitate peaceable dissent.
- And to protect these fundamental rights against the encroachment of tyranny and the abdication of reason.

Through this undertaking, we remind one another of the benefits and duties of citizenship enshrined in membership of the United Kingdom, challenging ourselves to enact these principles throughout society.

Let our example stand as an inspiration to the peoples of the world, and to their rulers and their governments.

Let our principles animate our dedication to peace and justice in international affairs.

And let our united resolve grow ever-stronger under the enlightened auspices of this Constitution.

## **Joint winners in the under-18 category: Harrison Engler and Jake Kennedy**

### ***Entry by Harrison Engler:***

We, the citizens of the sovereign state of the United Kingdom of Great Britain and Northern Ireland, henceforth hold this Constitution to be the written embodiment of the previously un-codified Constitution, made up of ancient common law, ordinary statutes, conventions and traditions.

For reasons to be explained, we now feel it necessary to entrench and codify our constitutional principles and protections, so they are amended only by the special constitutional process afforded to higher law, which will hereby be made judiciable by the state.

The constitution shall determine the nature of elections to a representative House of Commons and the makeup of the House of Lords, as well as the practice by which constitutional sovereignty can be exercised through the Supreme Court in order to challenge authority and protect the citizens of this liberal, free democracy.

The Constitution beneath will confirm the basic principle of the rule of law, strengthen the legitimate rights of the people represented by an effective Parliament and strongly defined devolved institutions.

The constitution will limit the extent to which citizens' rights are threatened by other citizens or by Parliament's power, which is limited by this Constitution, and subject to the Supreme Court's judicial interpretations, in order to protect the human rights laid out within this document, which shall have superior authority over all other priorities of state—the people's parliament must aim to protect individual freedoms and privileges, as far as possible without threatening the collective and individual rights of citizens.

Furthermore, the constitution shall lay out the functions, limits of, and relationship between, different state bodies defined within, including the sovereign, judiciary, government and the bodies associated, and finally, our representative parliament, which shall continue to function and be fully committed to the advancement of the people of this nation, who make up the aforementioned parliament, in all forms.

The words above define the fundamental values and principles of the citizens for whom this charter is written and shall be enshrined within this document, and given authority through royal assent, and the necessary super-majorities of Parliament and citizens, through a legally binding plebiscite.

***Entry by Jake Kennedy:***

We the citizens of Her Majesty's United Kingdom of Great Britain and Northern Ireland, hereby declare this document legally binding, which outlines the rights of us citizens, and the power of government.

This document will protect and enshrine in law the following principles, key to our modern democratic nation:

1. A system of checks and balances, through a system of separation of powers between the various branches of government, whereby each branch is accountable to the others, but also to the citizens through the election process, which would grant suffrage to all over 18, all with the goal of protecting the citizens from tyranny.
2. The protection of the natural rights of any and all citizens, without discrimination.
3. That each and every citizen is entitled to protection from harm, provided by the state, and where the state fails, a due process of law to resolve it.
4. To ensure this, that the principle of the rule of law is upheld, in order to give fair protection to all citizens, without discrimination.
5. The establishment of the three branches of government in a way that benefits the citizens. The executive and legislature being set up in respect of one another in their sharing of powers, and that the judiciary is wholly independent so as to check the other branches of government effectively.
6. The principle of devolution and the continued existence of the devolved bodies that currently exist within the United Kingdom, in Northern Ireland, Wales, Scotland and Greater London.

With these key principles upheld and enshrined, the Constitution that follows will achieve the goal of upholding our modern democratic nation's key values, and ensuring that society will continue to flourish, and all citizens without discrimination have the ability to do so also.

As such we the citizens of the United Kingdom do declare that the following document and any future amendments will form the constitution that will govern our nation and us the citizens.

## Appendix 2: Proceedings of the Committee's conference *A new Magna Carta? A constitution for the 21<sup>st</sup> century*, held in Portcullis House on 11 December 2014

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### Morning session: 2015—time for a 'constitutional moment'?

*Graham Allen, Chair, Political and Constitutional Reform Committee, took the Chair.*

#### **Welcome and opening remarks**

**Chair:** Welcome, everyone. Thank you for coming to the House of Commons today. This is the most important of a series of seminars, consultations, social media exercises and written evidence on the question of a new Magna Carta. Way back when, before Martyn was the Clerk, I remember the Clerk telling me that you never get a written constitution unless there is a crisis. Of course, some people think everything in the garden is lovely at the moment and we do not have a crisis—I feel sorry for those people. When 23 million people do not vote at a general election—more than the Liberal, Conservative and Labour vote added together—we may have a crisis. When, 10 weeks ago, we came within 400,000 votes of the Union dissolving, I think we may have a crisis. When a party of the right appears from pretty much nowhere—from a historical view—and is clocking up 15% in opinion polls, we may not have a crisis but we are getting a strong warning signal. When the public completely disengage from politics and hold all things political in contempt, we have a crisis.

It falls to us to address that crisis. I have to say that I had not quite realised when I set out on this road that a five-year, fixed-term Parliament allowed me, as a new Chair, elected for the first time by my peers in the House of Commons, to set out a stall. I had anticipated that we would be crafting a document, rather like James Cornford did in 1991, that would stand the test of time and be there as a work of reference. I am glad it is implementable, but I had not realised that it was possible for it to be implemented even in short order, either in whole or parts.

Things have moved on considerably in the past five years. The work we are doing—essential, hard, background preparatory work—has the opportunity to become something very real and pertinent in our current political climate. It is appropriate that we are talking about this as we run into the manifesto and general election period, when it might become even more relevant. It might not; the first past the post system might deliver another term of certainty or possibly even majority Government. However, those undercurrents will still be there and will need to be addressed.

We fail to address them, as we failed to address Scottish devolution, at our peril. It may require effort, energy, inflammation, nationalism to drag us to a proper constitutional settlement that will last for another 100 or 200 years. This has become quite pertinent.

This occasion is a rounding-up, if you like, of the consultation that we have had since publishing *A new Magna Carta?*. I always say to people that this is not the whole written constitution; there is a little bit in here at the back that is the written constitution. In order to ensure unanimity, which is very important in Select Committee reports, we have put in several options, some of them rather lengthy—necessarily so. For my part, I will be quite blunt that the hard core of this is about the written constitution.

I want to begin by putting on record the Committee's thanks to Robert Blackburn, who produced heroic amounts of commitment and hard work to make this document what it is. It was nice that what we added was something very important, though easy to do. That was the symbol of the portcullis on the front, which gives it a strength and novelty in that Parliament has produced this consultation. Virtually all the hard work was done by Robert and his team and we owe them an immense debt. Robert will speak shortly with his view on where we go.

There were three blueprints, and Robert will talk about that. The other context I should put into play is that we are a matter of weeks away from the year in which we will celebrate the 800th anniversary of old Magna Carta. Some people do not think that we should put any changes forward because it is only 800 years. This is the House of Commons; we do not want to rush and trip up, and perhaps it needs to mature a little bit longer. I hope that my remarks underline how important it is that we take some real action rather than linger.

Colin from De Montfort university will tell us, no doubt, that 750 years ago today, Simon de Montfort issued his summons to the burgesses and aldermen in every borough to elect—not appoint—two representatives to attend a Parliament in Westminster Hall. That is another anniversary that we need to celebrate.

The conference will be divided into two halves. The first half will look forward to 2015 and ask, I hope in the affirmative, whether we are at a constitutional moment when this document becomes ever more relevant. After lunch, we will look at some of the issues that a written constitution raises for our democracy, what kind of body might prepare a written constitution, whether we can find agreement on a Bill of Rights to be included in that constitution and how we can engage the public in the issue of constitutional change.

I think that people are more ready for this than they have ever been in the past. We have had a fantastic and optimistic adventure in democracy in Scotland, which in many senses narrowly produced a result that those of us who believe in the Union were happy about. It was a signal to address the problems which created that drive for devolution—over-centralisation and executive power in the United Kingdom—and it produced something that can make a serious contribution.

There is talk about a constitutional convention, and this will feed into that. There are lots of possibilities for what Government or potential Governments may or may not want to offer the electorate. I should prepare you, perhaps, for a little disappointment in



terms of what Mr Hague's Cabinet Committee will come out with. I have attempted to see the Cabinet Committee and have been rebuffed on every occasion. I was attempting to put forward the view of the Committee of Parliament that oversees political and constitutional reform, so I was rather surprised that it was not included in the evidence-taking that Mr Hague's Cabinet Committee has been doing. However, on we go.

I should briefly mention the seminars that we have had over recent weeks, which have produced some very interesting additions. I have a script which gives me a list of all the things that have come forward on executive power, local government, the second Chamber and the judiciary. I am pleased to be able to share those notes with you rather than read them out; I think that that might be a better way. I know that Robert is taking copious notes throughout this process and will no doubt refer to those as the day goes on.

In a sense, this is still a work in progress. I would like to see contributions throughout the day on how we can hone and refine our document on a written constitution. I suspect that the best people to do that will be the people in this room and, above all, Robert, who will be here taking notes throughout the day. May I also thank IPPR, which provided support and publicity for the conference and has been willing to help us all the way through this process? Finally, I thank my fantastic team from the Clerks Department, and I single out Nerys Davies, who has put immense amounts of work into organising the day. The team have been absolutely fantastic right the way through this process.

We are not quite at the end of the first five-year fixed-term Parliament, but I hope you think that we have used our time wisely and thoughtfully, as well as working on lots of other issues. Despite our time scale, we have been able to produce this document. We also now have a rather hectic schedule. We need to continue to influence the process and the politics to try to bring forward something that will be debated and perhaps even enacted in the not too distant future.

I will now hand over to Professor Robert Blackburn from King's College, London. I have one final thank you. Robert, this would not have been possible without the immense effort that you and your team have put in. On behalf of everybody in the room, I thank you and welcome you.

**Robert Blackburn:** Thank you for that, Graham. Many thanks for the opportunity to do this work, which has been tremendously rewarding and enjoyable. In a sense, it takes into account everything that I have learnt throughout my 30 years in academic life. Time is too short for me to thank and acknowledge the help and assistance of the other people who have supported the project, but the funding support of Joseph Rowntree and the Nuffield Foundation has been invaluable. Andrew Blick and Vernon Bogdanor have been a tremendous help throughout the whole project, as have other people in this room, including Dawn Oliver and people on the advisory committee.

I have tried to make the project as inclusive as possible. The blueprints that I have produced reflect that. Rather than produce something entirely different from what anybody else has done before, I have tried to subsume and take the best parts of those model constitutions that have been written before to provide a synthesis that we can all contribute to. As Graham has said, although this project is time-limited to the Parliament,

my work on this and my work with Graham will continue until there is a written constitution. I am not an ardent advocate of a written constitution per se, but I think it is an idea whose time has come and there is a certain inevitability to the whole process. My role has been to provide impartial research into this exercise and, if a decision were taken by a Government to implement a written constitution, to show the way in which it could be done.

We have a great political system in this country that we often take for granted. Whatever we may say about low public esteem in our politics, the truth is that we have probably got the highest level of integrity in our public life of any country in the world, and a highly robust culture of democratic discourse and accountability that has served us well. Nothing in the work that we are discussing today would detract from that. A written UK constitution would buttress and strengthen the best of British traditions and institutions, but would modernise their form so that they are better equipped for conditions today and in future. Clearly, there are cracks that need to be plugged and problems that need to be solved. We will be dealing with those, and Vernon and Andrew Blick will be looking at particular weaknesses that need to be addressed.

So, why might a written constitution be thought desirable? This is important to articulate, because the reasons should be borne in mind when drafting the document. First, there are the dual problems of political leadership and trust in government. Today's malaise in this respect is a sociological phenomenon to a large extent. It is a cultural phenomenon aggravated by the implosion of our old social class culture and the decline of deference, creating a chippiness generally towards institutions and people in authority. Whatever the causes, people today want to know and want to be involved in how they are governed to a greater extent than ever before. The most basic thing that is required is a rulebook telling them what this is, what their expectations and rights are, and what the purpose, powers and responsibilities are of the branches and agencies of state.

Another desirable factor is what has been called "taming the prerogative". In other words, properly constitutionalise the ancient relics of monarchy and make the exercising of them dependent on parliamentary support. A few piecemeal steps have been taken already in that direction, signposted by Tony Benn many decades ago. A few changes were made in the Constitutional Reform and Governance Act on treaty making and the civil service, but there is a case for a comprehensive reform of the whole subject, as advocated by Tony Wright's Public Administration Committee in an earlier Parliament, and a written constitution would precisely do that.

A third point—the need to stabilise the constitutional law reform process—has troubled many people since 1997 with the advent of new Labour and the constitutional revolution that has taken place since then. It also troubled the Lords Constitution Committee in one of its reports. Constitutional reform seems to have become a rolling process of continual change, which in turn has made it much easier than ever before for the Executive to push through quite fundamental changes to the constitution without due process—a standard, sensible set of procedures that all major constitutional reforms should go through. The need to set down a standard procedure on major changes to the constitution requires a clear distinction to be drawn on what legislative subject matter is to be regarded as being of a constitutional nature. The content of a written constitution would answer that question.

Finally, although not exhaustively, of all the reasons that would make a written constitution desirable: the preparation of a written constitution would resolve many of our intractable constitutional and political dilemmas. A rationale for the second Chamber could be found, a British Bill of Rights would have a natural home, our relationship with Europe could be clarified, and a fair settlement could be made for the Union of the four nations of the United Kingdom.

On the drafting of the document, my work owes a huge debt to the pioneering work of those who have gone before me, particularly: the Institute for Public Policy Research and James Cornford, whose commission I was on along with Dawn and one or two others here today; Vernon Bogdanor and the work he has done at Oxford on the subject; and others such as Richard Gordon QC, who will be speaking later. They have kindly allowed me to draw heavily on their draft constitutions.

My intention, as I stated earlier, has been to provide a synthesis and sense of continuity around the work, even if in substantially revised form. Similarly, when departing from the status quo and including measures of reform, particularly in the third blueprint—the key one that we will be focusing on today—I have provided what I believe is the solution that would command the widest possible consensus. On Lords reform, for example, I am aware that a convincing case can be made for a nominated Chamber; debates about that can go on for ever. However, it seems clear to me that the argument for electing Members of that legislature has been one across the political parties, and the idea of democratic elections carries support among the public at large.

One of the most difficult issues is judicial power under the constitution. Conservatively, and consistent with the report of the Political and Constitutional Reform Committee earlier this year, I provided for a non-legal declaration of unconstitutionality, analogous to the declaration of incompatibility procedure in the Human Rights Act 1998. However, in article 4, I have left open the question of whether there are any matters in the constitution of such fundamental importance that their violation under statutory powers would require the Supreme Court to declare the offending Act of Parliament invalid. Views from the audience, now or later, on what those most fundamental articles are would be extremely useful.

On one or two matters, I have indulged myself on proposals that I have advocated in the past. Article 19 provides for the continuing existence of Parliament rather than, in my view, the anachronism of dissolution and summoning of Parliament which continues even following the Fixed-term Parliaments Act 2011. The five-week hiatus during election campaigns always worries me, just in case there might ever be some national emergency when Parliament should be recalled to discuss executive actions needing to be taken.

Let us look at the three blueprints together—the constitutional code, the constitutional consolidation Act, and the written constitution proper. If a consolidation Act was thought a preferable way forward, considerable improvements could be made to the blueprint quite easily—I can see that—simply by modernising and shortening the language of the statutes in the same way that the Law Commission carries out its work when embarking on codification exercises. Sophie Boyron pointed out to me last week that sections of the first blueprint—a short, non-legal code that sets out very briefly the institutions' powers and the principles of the constitution—could be inserted into the third

blueprint, a written constitution proper, in the form of marginal notes providing a succinct summary of a particular article or part of the constitution.

Taken together, the three blueprints could be seen as a building blocks exercise towards an entrenched written constitution. They first set down the basic principles and institutions of Government; secondly, they pull together in one document precisely what we have now on the statute book and in convention; and thirdly they embark on the documentary constitution proper, which would be an intelligible and coherent document for the people and public at large, as well as for lawyers and politicians.

**Chair:** Thank you very much indeed, Robert. That was a good start to the morning. I will move straight on, because the quicker we can go, the more we can get into action with the guests who have come today. Without further ado, Professor Vernon Bogdanor is going to try to answer the question of what the prospects are for constitutional reform in 2015.

### ***Professor Vernon Bogdanor: What are the prospects for constitutional reform in 2015?***

**Professor Vernon Bogdanor:** You have set me a very difficult exam question, Graham. We all owe you and your Committee a tremendous debt for these documents and the work that you have done on them. That work is remarkable and will be a signpost for the future.

I suspect, however, that it may not have been wholly welcome to the Prime Minister, who I think will have taken the view that the Scottish referendum would end the period of constitutional turmoil and debate. It was intended to resolve for good the Scottish question, but it has not done even that. Of course, it has raised another very large constitutional question: the English question. There is now discussion of English votes for English laws and, more generally, the issue of how England should be represented and whether there should be devolution to England.

At the very beginning, then, we have two constitutional problems—the Scottish problem and the English problem—that have not been resolved. We also obviously have the problem raised by the Prime Minister in his Bloomberg speech in January 2013, the European Union problem. What is to be our relationship with the European Union? As Robert mentioned in passing, we also have a human rights problem. What is to be the future role of the judges in connection with human rights?

Finally, we have a representational problem. For the first time ever in British history, we have a situation in which five political parties command over 5% support among voters in England. In Scotland, there are six such parties. We face the likelihood that the winning party in the general election may perhaps be able to form a Government on its own, but will, as occurred with the winning party in 2005 and 2010, have just over one third of the vote. In other words, two thirds of those who voted will have voted against it. Is that what we mean by majority rule?

We also face the possibility that, as in the last election, we do not have a national majority. Our system is now producing enclaves of regional majorities in different parts of

the country. One can give a striking example of that from the last election: one in five of those who voted Labour were in the south of England, but—excluding London, where the situation was different—Labour has just 10 seats in the whole of that area. In another example, in Scotland one in six of the voters voted Conservative, but the Conservatives have one out of 59 seats. That is a distortion at the regional level, and the system is in danger of yielding internal tensions between different parties and therefore between different parts of the United Kingdom, as well as social tensions. It is significant that much of the yes vote came from the west-central belt of Scotland, where people feel unrepresented, because of the prevalence of safe seats in the area. It is a serious social problem. Also likely in the election is a great malrepresentation of minor parties—people are predicting that UKIP will get a reasonable vote, let us say 10% or more, but hardly any seats.

One constant of all that is that many fewer MPs represent a majority in their constituency. In 2010, only one third of MPs represented a majority of those who voted in their constituency; 433 MPs did not. That is the largest share since the 1920s, when again the party system was in flux. There has been no MP since 1997 who has represented a majority of the electorate in their constituency. In 1997, there were just 14, while in the heyday of the two-party system, in 1951, there were 214. In 1955, again in the heyday of the two-party system, only 37 MPs did not represent a majority of those who voted in their constituency—in other words, who were elected by a minority of the vote.

For that reason, I think that the electoral system, which we all thought had been put to bed in the alternative vote referendum, will again arise, because it links up with problems about the legitimacy of British Government. After the election, in my opinion, considerable questions will be asked about the legitimacy of British Government.

It is not an accident that we have seen such political and party changes. It reflects something that David Cameron once characterised as the development of a post-bureaucratic society. I would describe it slightly differently: it is a society that has become much more fluid, more individualistic and much less deferential than it was. That is a major change in social relationships over the past 60 years, which has not been reflected in the political system. That will be a motivator of constitutional reform.

I have spoken about a number of problems—the Scottish problem, the European Union problem and the human rights problem—and they all involve, in practice if not in theory, the question of parliamentary sovereignty. Parliamentary sovereignty has been the great conceptual barrier to our developing a constitution, because there is no point having a constitution if Parliament is sovereign. To put it another way, the British constitution can be defined in eight words—what the Queen in Parliament enacts is law.

In practice, if not in theory, we are moving away from such a system. Perhaps we already have done, although it was hidden, in 1973, when we joined the European Community, as the European Union then was. Perhaps the Factortame judgment exemplified that, because we now have what I think Dicey would have thought impossible: a law-making body that is superior to the British Parliament in practice, if not in theory. In a number of areas, the British Parliament is a subordinate law-making body in Europe.

There is this process of the practical undermining of parliamentary sovereignty—not in theory, because in theory it remains, but it is like the Cheshire cat, with all but the grin disappearing. 1997 inaugurated an era of constitutional reform which replaced a largely uncodified system based on the unitary state and parliamentary sovereignty with a system characterised by codified rules, the separation of powers, in particular between politicians and judges, and a quasi-federal, though asymmetrical, system of devolution and dispersal of power. Broadly speaking, Governments are now more limited than those of the past. Much has been said about presidential government and elected dictatorship, but Britain is now in fact much less of an elected dictatorship than it was when Lord Hailsham made his famous remarks in the 1970s, because all the constitutional reforms of the 1997 period in practice limit the power of Government to do what they want.

The implication of it all is that there is a higher law over and above that of Parliament or Government, and the implication of that is a constitution. That has been recognised in perhaps a slightly cack-handed way by the Smith commission, which says that the Scottish Parliament should be permanent. How can one have something permanent if Parliament is sovereign?

The question arises of whether we are approaching, as I think we are, a constitutional moment. Most constitutions are enacted to mark a new beginning when states attain their freedom from an external ruler, from colonialism, or from an old regime and the state is reconstituted, which signifies a fresh start. Of course, the reason why we do not have a constitution is that we have not had a fresh start since the end of the 17th century, when we had what was significantly called a restoration—we tried to disguise it as not being a fresh start. But a prior question arises. It was first raised in a letter to *The Times* a few years ago by Stephen Hockman, a previous chairman of the Bar Council, who asked how we could reform our constitution if we were not wholly sure what it actually is, because it is not written down and codified. As Robert says, we need a rulebook.

We are one of just three democracies that do not have a constitution, which always strikes me as peculiar. Imagine joining a tennis club and paying your subscription, but when you ask, “Could I have a look at the rules, please?” you are told, “I’m afraid that they’re not all collected together in one place. They are the result of decisions taken over a long period of time by the presidents of the club and the committees. You’ll have to search through the archives of the club, which will take you quite a while, to find out what they are. Even when you’ve done that, your search will not be complete, because there are some rules that haven’t been written down at all. They are called the conventions of the tennis club, and you gradually pick them up as you go along. Although, I must say that if you have to ask, you don’t really belong here.”

The British people pay their subscription through their taxes and through submission to the law, and perhaps such a rationale might have been acceptable in the deferential 1950s, but I do not think it is today. It is therefore time that we began to look carefully at a constitution. We saw in the Scottish referendum that there is a strong untapped civic spirit in that part of Britain at least, and various other experiments in the provinces of Canada, such as citizens’ assemblies, have shown tremendous potential that can be tapped. The first stage should not be popular participation, however, because while people in Scotland have thought a lot about their constitution for many years since the

whole devolution debate began, but in England, people are just beginning to think about it. That is the case for a wider process.

The Government took the wrong approach in Scotland. They have taken that approach that sadly a number of Governments take on all sorts of issues. They say that when something is wrong, a businessman will fix it quickly. They took that approach with the universities under Lord Browne, the national health service, the civil service, all sorts of institutions. Lord Smith was asked to draw up a constitution in two months and has made a shocking mess of it. So I do not think that is the right way to do it.

I think we need a learning exercise with public participation. I think the old style royal commission is very good at that as a preliminary exercise. We had one on devolution, though it was called the royal commission on the Constitution, led by Lord Kilbrandon from 1969 to 1973. I hasten to add that the great and the good should not decide, but investigate and draw up the options. After that, we need to formulate the issues for a convention with popular participation.

My answer to the question—are we approaching a constitutional moment is 'Yes'. I think that will be even clearer after the general election.

**Chair:** Thank you, Vernon, that was very enlightening. I am going to move straight on to Professor Dawn Oliver, who is going to talk to us about the options and challenges of codification.

### ***Professor Dawn Oliver: Constitutional codification: options and challenges***

**Professor Dawn Oliver:** Some of you may have copies of the bullet points I provided. You do not need to have them, but some might find them useful because I have tried to set out the steps of what I want to say.

First, I want to join the general congratulations to King's, Rob Blackburn and his team on their fantastically useful and thorough work on putting together not just the three blueprints in this volume, but an enormous amount of excellent material, information rehearsing arguments for and against each proposition, over the past four and half years. It is a good, useful and valuable contribution to debates about what needs to be done or is desirable to be done to the constitution.

I want to focus on the idea that you need a constitutional moment for some big constitutional reform to take place: so that you know where I am going, my view is that it is too difficult at the moment, unless we get an enormous political crisis, which I think we are unlikely to get. So I am afraid I am a bit of a party pooper. That does not mean to say for a moment that I think our constitution is working very well.

There are lots of reforms that ought to be put in place. For every reform that I think should be put in place, there will be a heavy, strong group of the public who think that is the worst idea they ever heard and over their dead bodies will it happen. Much about our constitution is very controversial if you talk about changing it. Many changes go right against the interests of any Government of the time, and that is another reason why it is difficult to change the constitution. So we currently lack the political consensus necessary

to get a new, complete written constitution, the sort of thing that is in the third blueprint in the documents.

A few words about constitutional moments. As we have already been reminded, next year we are celebrating two important constitutional moments with important constitutional results. One is the 800th anniversary of Magna Carta. That was a response to very heavy political pressures and, in effect, a constitutional emergency. Magna Carta was not, of course, a complete codified constitution; it was not a blueprint 3 document. It dealt with a rag-bag of issues that were demanded to be dealt with by the King at the time. Of course, not all of Magna Carta has proved durable.

Next year, we will also be celebrating 750 years since Simon de Montfort's Parliament, which was also a response to very strong political pressures—in effect, an emergency. That, too, did not result in the adoption of a codified or a written constitution. The important thing about both those events is that they express values that have proved durable, and both have become important chapters in our national constitutional narrative. Undoubtedly, they are very important and, in the long run, durable.

Let me briefly compare a couple of attempts at written constitutions. There was Cromwell's "Instrument of Government" of 1653, which did not last. There was the "Humble Petition and Advice" of 1657, which did not last. Both were fairly comprehensive constitutions. They were not durable because they did not fit the national or political cultures of the time. Neither of them has gone down as an important, positive chapter in our constitutional narrative. Sometimes constitutional moments result in something durable, and sometimes they do not.

How do constitutional moments come about? My view is that they cannot be engineered by those in power. They happen because something has changed in public opinion, part of the social fabric has changed, the class system has disintegrated or whatever it is, and suddenly it is found that a need is felt to change things, which politicians respond to. The Political and Constitutional Reform Committee and other bodies are campaigning for a written constitution. However, you can campaign, but you cannot engineer it. A constitutional moment will happen or it will not.

Constitutional moments—pressures for big constitutional change—can be anticipated and accommodated. An obvious example is the introduction of devolution to Scotland, Wales and Northern Ireland in 1998. If that had not happened, we would have got into more difficult situations in the relations between the four nations of the United Kingdom.

When a big constitutional moment is anticipated, it might be avoided. That is what the vow that was made just before the Scottish referendum was about. It was made to avoid what would have been, from the point of view of many (although not of me—if Scotland wants to be independent, it is up to them; it does not bother me) a really big crisis to be avoided at all costs. The vow was made, and that moment was mitigated. I am not saying that the problem was solved, but you did not get a majority in favour of Scottish independence.



What are the preconditions for constitutional moments that result in constitutional change in this country? Other countries are different; we are, in many respects, unique. There must be strong pressure for change from influential quarters—we have all got Scottish devolution in our minds—and from powerful public or private organisations, or the general public must get fed up with something. The point is that it is about politics. Politicians do not sit around being altruistic. They have interests in what is happening around them. My guess is that if there are strong pressures from somewhere for a constitutional change, the Government or the political parties of the day will accommodate it if they foresee negative consequences for themselves unless they give in to the pressure and do something about it. It normally has to be urgent. It is amusing that we waited until the Duchess of Cambridge was pregnant before doing anything about the succession to the Crown—that really was urgent.

There also has to be—I am sure everyone here agrees—consensus or enough support for the change for it to take place, for it to go through the required procedures and for it to be durable. It is important to take account of the fact that it is highly desirable that a change should be durable.

Those are just some thoughts about what the preconditions are when constitutional moments happen. The question is, is a constitutional moment for the adoption of a written constitution imminent? My answer is no; I don't think it is. Blueprint 3 is about a complete written constitution that covers everything—the legal status, the procedures for amendment and so on.

My topic is options and challenges, of which there are too many. I do not have time—and it would be pointless—to go through the arguments about some of the issues I have listed in my note, but there are people and groups who feel very strongly about the various options.

- Do we continue with a monarchy? Do we become a republic?
- Do we keep the Church of England as it is—wholly or partly established—or do we disestablish it? (I am not suggesting that that bit of the constitution is not working very well, but people are not going to say, “I am not going to talk about it, because it is working all right.” People feel about these things.)
- Law Officers—in or out of Parliament? There was an attempt to deal with that issue a few years ago, but it ran out of steam.
- The second Chamber—should it be appointed or elected?
- The franchise—what about 16-year-olds and prisoners? (The amount of heat that can be generated by the idea that prisoners should have the vote is extraordinary, but that is just a tiny bit of the problem.)
- Elections—first past the post, alternative vote, the additional member system or the single transferable vote?
- Devolution—we all know about symmetry and asymmetry.

- The question of an English Parliament and English Executive is bound to arise. English votes for English laws is not an easy thing to sort out.
- Do we stick with the European convention on human rights or do we go for a British Bill of Rights? What would the Scots and the Northern Irish republicans say about that?
- Should social and economic rights go into a constitution?
- What about the EU? Do we remain in or do we quit?
- Should there be judicial strike-down powers or not? I think Vernon is in favour of that—for goodness' sake, that would be a disaster. There are other ways of making it not absolutely watertight, but very unlikely, that a Government, under a written constitution, would get Parliament to pass unconstitutional laws. Judicial strike-down powers would be a no-no.
- Then there are questions such as how long should this constitution be—200 pages? Six pages?

My sense is that, like it or not, it is just going to be impossible to achieve consensus about such a wide range of issues and it would be undesirable to go ahead with a written constitution in the absence of broad consensus.

My next question is, is a constitutional moment for writing a *chapter* of a written constitution imminent? I do not think that Israel is a good model for a lot of other things, but it is one of the other countries without a written constitution. It embarked on a project—I cannot remember how long ago it started—to write its constitution chapter by chapter. Over a period of years, four basic laws were passed. Then it ran out of steam and it has not completed the chapters of its constitution.

Let us just think of what might happen in the next couple of years as a chapter in what might turn out to be a written constitution. I agree with Vernon, and I think we can all agree, that, particularly if there is a very difficult balance of power in Parliament after the election next year, something—or some things—will have to be done about devolution and associated reforms. There will be pressures, of course, from Scotland and from English cities and regions—we are already experiencing that. What do we do about English votes for English laws? That is an urgent question.

It would probably be in the interests of whoever forms the Government, whether it is a minority Government relying on confidence and supply or a coalition Government, to do deals. We are going to be talking about deals and bargains in this scenario—we are not talking about rational altruism—in order to produce an agreement, or, if you like, a devolution chapter in what might in the end turn out to be a proper written constitution. That sort of thing could be made effective without judicial strike-down. We talk about making the Scottish Parliament permanent, and I think that that can be done without strike-down. Politicians are deal makers, but they are not stupid.

Of course, we all want constitutional reform to be stable—at least, I do. Stability will depend upon whether that chapter in the process of writing a constitution turns out to

be fair. What worries me is that England does not have its own voice. If there is a coalition, or if deal making is done in which the parties include the Scottish nationalists, Plaid Cymru, Wales generally and Northern Ireland, but England is not represented, one could very well run the risk of having financial and other arrangements that will not be stable because they will be felt in due course to be unfair to England. It will take statesmanship to produce a stable chapter of a written constitution. If stability cannot be found, there will of course be further crises. There will be further mini or maxi constitutional moments.

We shall see what happens. I am sorry to be a party-pooper, but I am depressed.

### **Questions and discussion**

**Chair:** Thank you. Our speakers have been fantastic in sticking to time and, in fact, going a little under time. As a politician, I am going to seize this opportunity and throw in 10 minutes of questions before we carry on.

**David Howarth:** I am David Howarth from the University of Cambridge. I am a former Member of this place and an Electoral Commissioner. I was just wondering how to reconcile what Vernon said and what Dawn said. The question is whether the pending constitutional crisis that Vernon described is big enough and ugly enough for people in politics to have to suspend the normal ideas of consensus, bargaining and acting slowly.

If you go back to the original academic work on constitutional moments, it is all by my own teacher, Bruce Ackerman, in the US. His constitutional moments were all moments where there was no consensus—the founding of the republic, reconstruction after the civil war and the new deal. The question is whether the current crisis is big enough to suspend ordinary politics. Dawn thinks that it is not, but I think that it might be. It might be because of the political balance, or the lack of political balance, between England and Scotland and the possibility of a referendum on the EU in 2017, which could cause an enormous crisis. At the moment, the political situation is only stable because the Scots are threatening to leave if the English do something foolish. That is not a bargain that can hold through a consensus.

**Duncan Hames:** I am Duncan Hames, the Member of Parliament for Chippenham and a member of the Political and Constitutional Reform Committee. I wonder if you could say a little bit more about what prospect there is for access to the constitution agenda in such a moment for civic society. A lot of the problems and points of crisis which might precipitate it feel very much to be problems of the political establishment and of what gets called the Westminster bubble. If it is seen to be addressing some underlying problems with our democracy, surely it will need to have some ownership from the rest of civic society.

**Nicholas Baldwin:** I am Nicholas Baldwin, Wroxton college. I am not sure whether I have a question or two, but there are a couple of observations that I would be interested to hear observations on.

First, when you look at the broad spectrum on the agenda at the present time—whether we are to be in or out of Europe, or have votes for 16-year-olds, or English votes

for English people—how on earth could one introduce a formal, written codified constitution, with so much disagreement?

Secondly, I am always a bit confused by the view that one can introduce major constitutional reform only by consensus, because my reading of history is that we usually produce major constitutional reform in the teeth of opposition. Votes for women, votes generally and reform of the House of Lords—it has usually been forced through in the teeth of opposition. To get a written constitution only by consensus—I find it difficult to see the picture.

**John McEldowney:** I am John McEldowney, university of Warwick. One of the difficulties in the discussion, I think, is the level of detail that a constitution might have. Rob, I think, has identified a scoping exercise, and the miscellany of relevant issues has been clearly outlined; but we must be clear as to why there might be a useful debate today.

The one thing that strikes me as not having been mentioned, which to me is the overarching issue, is what I call the relationship between the state and the citizen in terms of public finance. We are going through a crisis financially. It has not abated. In the interim term it is being looked at, and institutional reforms to banks and so on are being put into cold storage, but without doubt the mapping exercise that Government will have to deal with—the real cuts in public expenditure on public services—defines the citizen.

It equally defines another element, to which I think little attention has been given in the discussion so far, which is local government. Local government is a constitutional item on the agenda. It is part of a discussion that encompasses devolution and, dare I say it, federalism, but we are at the cusp of needing a new road map to take us to the next stage of how we debate, over the next 10 to 20 years, questions about the polity—cuts in our budgets for public services, the definition of the role of the citizen and the state, and the relationship between regions, including local government. That, I think, needs a different road map from simply the one that has rested exclusively with the political system. We have a political constitution that has served us extremely well, and we want to preserve that, but at the same time we need an anchor on which to build the foundations of the next stage.

**Chair:** Thank you, John. A couple more people have indicated they want to speak. I just squeezed those in to get people warmed up for the serious session. I shall now ask the panel to come back in for no more than one minute.

**Professor Vernon Bogdanor:** I think one needs to distinguish between the constitution as it is and the constitution as we might like it to be. I think the first step is to write down what the rules actually are. We have already done that in a number of areas, for example on hung Parliaments. All that we had in the past was a letter from the King's private secretary in 1950 as to what should happen with a hung Parliament. Now the rules are written down in a Cabinet manual, and there is no reason why they should not be brought together as they are now and put in one document. Then we can argue about constitutional reform—about how we might like to alter the system.

Duncan Hames is right that constitutional reform is in no sense a popular issue, but some of the discontents that people feel are matters that can be remedied by

constitutional reform. When people say, “I am not represented. I live in a safe seat. No one takes any notice of my views,” that is a matter that raises constitutional issues. When people say, “I would like certain things done locally that cannot be done,” that raises constitutional issues. That is how they come about. A long learning exercise is required. Let us produce a document, on paper, detailing how we are actually governed now, and then see how we might want to alter that.

**Professor Dawn Oliver:** A lot of what was said was comment, to which I do not particularly feel I need to respond. It is inevitable that civic society will become involved. There are organisations and pressure groups for and against everything that is going on. Of course, there are a lot of ordinary people who are not involved, but they would have the opportunity to be.

On the question of whether consensus is necessary, a degree of consensus is necessary if a change is going to prove durable. Let us say, for the sake of argument, that a majority party in government pushes something through in the teeth of strong opposition from another big party or parties; that might very well have to be reversed, which is not a good thing. For stability, it is necessary to have not complete consensus, but sufficiently wide and strong consensus.

**Robert Blackburn:** I agree with Vernon. Dawn and Nick are far too gloomy about the problems involved in drafting a written constitution for the UK. In the search for constitutional ‘moments’, as part of the work I produced for the Committee, I gathered a large number of comparative case studies, looking not only at other countries but at particular issues within them. In some countries—a good example would be Switzerland—they just thought that it was a good idea. They felt that their identity needed to be reinforced by a document that reflected modern values or whatever, they had a referendum about it—“Do you think this is a good idea?”—and went ahead and did it.

Furthermore, yes, there are a lot of problems involved, but I disagree that major reforms are always pushed through in the teeth of opposition. Votes for women was mentioned: that was conducted in an extraordinary spirit of reconciliation. After first world war it was felt there must be a land built for heroes and resolution on franchise reform. This was a controversial issue, but there was need for reform and parliamentarians addressed it a spirit of concord and an overriding need for reconstruction. There is now a need for resolution on Lords reform, a UK Bills of Rights, the state of the Union, and other matters. A written constitution would be an opportunity to resolve those issues.

I sometimes think that difficulties are raised by politicians and academics as though they own the subject. This is a question that needs to be opened up to civil society—not only the lobby groups, but people at large. If one speaks to ordinary people—and one can do market research by simply asking friends as well as pollsters—overwhelmingly people think it would be an obviously good idea to have a written constitution so that everyone knows what the rules of the political game are.

**Chair:** I will not take any further questions right now, but I will draw in everyone else in due course.

If we had a system that was fit for purpose and doing pretty well, then why bother changing? But for some time it has been evident to many people that Parliament does not work effectively as an institution and the Executive in both its political and administrative forms is less capable than it has ever been. Possibly only the judiciary is fit for purpose—a while ago I would not have thought that I would ever hear myself say that. It is broke, and we have to fix it.

We have free will; we do not have to wait for some divine or supernatural intervention before we get off our derrières and do it. Politicians can have altruism, but it is possibly a little easier for them to have vision and leadership, and to say what needs to be done when our society is disengaging from our politics.

We have a democracy, which is a messy form of governance, but, as someone said, it is the best form out there. We need to cherish it, work on it, maintain it, polish it and hone it. If we do not, I think that the three threats with which I opened my contribution could become existential.

John, you made a point about the shape of a constitution. It has been evident through the seminars and consultations, and indeed last week when we spoke to all five party leaders in Wales, that there is a stronger drive right now for a territorial constitution—something that describes a federal structure, with what the independence of the individual nations within that might look like—rather than a highly detailed one. I think that was evident in the seminars we did together, John, on the judiciary and local government. That is a growing undercurrent, in a sense—if we had had the prescience, perhaps we should have commissioned a fourth blueprint.

Perhaps that is where the immediate and constitutional may combine in and around an election, particularly if, as Vernon said, we have a Government of the country who are not regarded as legitimate in a time of quite severe economic crisis. Oddly, we would need to support that Government—and rally to the Executive, for heaven’s sake—possibly even in order to maintain public order in such a situation.

The other point I wanted to make was about demand. If I want to create an early-intervention foundation to help children grow effectively, or if I want to create something that looks systematically at how to tackle sexual abuse of children, Whitehall always says to me, “Where is the demand?” Have we got to organise people to go out on the streets to protest? Sometimes we should do these things because a lot of people feel that that is appropriate.

We saw the letter in *The Times* a couple of weeks ago from English local government across all parties, from the Mayor of London at the top of the food chain right down to the people who represent parish councils, neighbourhoods and community councils, asking for English devolution. The demand is definitely there.

We will break for tea at around 11.20, so that gives us bags of time to make comments and to ask questions, but if you can keep them relatively brief, I will be able to get more people in. We have a colleague over here.

**Michael Clancy:** Good morning. Thank you, Chair. I am from the Law Society of Scotland. I have a few observations.

I was interested in the observation that Lord Smith had been given two months to design a constitution. Actually, I think he would say that he had been given two months to get a heads of agreement between the political parties and to pass that on to them to make of it what they could. As we know, draft clauses are supposed to be presented at the end of January, which might give us food for thought. Whether that carries on past the election to something more substantive will depend on the composition of the Government after the election.

My second observation is in relation to judicial strikedown power. As you know, under the Scotland Act, if law made by the Scottish Parliament is not within the competence of the Scottish Parliament, it is not law and the judges may strike it down. Since 1999 quite a number of actions and litigation have been taken on Acts of the Scottish Parliament, and I do not think that the Supreme Court has yet struck down an Act, although subordinate legislation under the Agricultural Holdings Act or something like that—the sort of thing that you are interested in if you are an agricultural holdings anorak—has been sent back to be thought about again.

The last point that I want to make is about participation in constitution making. The constitutional convention that eventually led to discussions resulting in the Scotland Act 1998, for example, began in 1989, so a long lead-in time is appropriate before one arrives at the finished product. If one takes the Scottish constitutional convention as a model, that would encompass many of the participants who have been spoken of before—civic society, the Churches, the trade unions, the political parties and interested bodies from across the spectrum. That is perhaps easy enough to do in a jurisdiction of 5 million people, but in a jurisdiction of 65 million people it is slightly more difficult, possibly more fractious and certainly not an easy task.

**Alan Renwick:** I am from the university of Reading. I thought Dawn Oliver got the matter of defining the constitutional moment pretty much right. It seems to me that if we look at the evidence of the past and try to build expectations on the basis of that evidence—taking account of [the] wholly justified point that we have a limited ability to predict the future—there is no reason to think that there is a constitutional moment that would allow us, in the short term, to produce a whole written constitution.

Robert Blackburn mentioned polling evidence that shows support for a written constitution, but we know that people do not think about this sort of issue. We also know that opinion polls on issues that people do not think about do not give us any useful evidence at all on what those people will actually think if the issue moves up the political agenda. The useful polling evidence on this issue is on the question of what people think the important issues are that face the UK today. Constitutional reform issues have never figured in those sorts of polls, and that situation has not changed remotely in recent years.

Graham Allen said that the system is broken. I completely agree, but what then matters is that those of us who agree on that point think about how we can utilise the existing circumstances to get some kind of fix for that broken system. Dawn Oliver pointed out that there seems to be a constitutional moment at the moment, around the issue of devolution and the governance of England. That seems very clear to me. If we care about the constitution, it therefore seems important that we take advantage of that constitutional moment and focus on getting a process for addressing that aspect of the constitution that

may serve as a model for the ongoing process of constitutional reform that I think most of us here agree should take place.

Several of you have hinted at a process involving some form of citizens' assembly in order to get popular participation in the process of constitutional reform. If that can take place as a model on this issue, I would hope that in future it can take place on other issues as well, and that we can gradually go in the direction of a better constitution.

**Chair:** A quick question for you: if you are in a moment of crisis, which some people seem to feel we need to precipitate this, is that the moment—when the columns are collapsing around the empire—in which you can have a 10-year debate and a citizens' convention?

**Alan Renwick:** Well, we are not in such a crisis.

**Chair:** So we wait until that moment, and then that is the big moment to strike and have a long-winded debate that perhaps we could hold consciously now, before the crisis?

**Alan Renwick:** If it did not have a vast agenda looking at all aspects of the constitution, a constitutional convention could perfectly reasonably take place in the space of something like a year. That would allow engagement with a very wide section of society.

**Chair:** I hope so.

**Alan Renwick:** There is a greater prospect of achieving something if what you try to achieve is more tightly defined than something that goes across the whole constitutional agenda, for the reasons that Dawn gave earlier.

**Chair:** I am sorry for lapsing back into Committee Chairman mode there. I should have done that when you gave evidence.

**Robert Orchard:** I am a postgraduate student in politics at King's college and a former BBC parliamentary correspondent. I have two questions on specific areas of constitutional reform. Looking at the House of Lords, first of all, what kind of political crisis does the panel think it will take to get any substantive reform in the Lords—will it have to be an expenses crisis?

Secondly, Professor Bogdanor talked about Labour getting one in five votes in the south of England but only 10 seats, and the Tories getting one vote in six in Scotland but only one seat. The Liberal Democrats have been getting about 20% of the vote for several elections, but have only 50 seats instead of the 150 they might have under PR. There is no groundswell of public opinion that that is unfair. Why would it be different on the points you pointed out, Professor Bogdanor?

**Chair:** I will take two more points, and then I will do a second round.

**Sir Malcolm Jack:** I am a former Clerk of the House of Commons and am now at the Constitution Society. I want to make an observation rather than ask a question. Going back to the tennis club example, which I enjoyed very much, whether or not you have a written constitution, you will still have conventions. I have worked in many Parliaments



around the world, with systems with written constitutions, and there are plenty of conventions. It is not a case of written constitution versus conventions.

**Colin Copus:** I am from de Montfort university—it is not our 800th anniversary next year, unfortunately. I am very concerned about the position of local government. If we look at the experience in Scotland and Wales, we can see that devolution can also lead to centralisation. The treatment of local government in Wales, particularly at the moment, with the proposals almost to slash in half the number of Welsh councils, indicates that devolved bodies can Hoover up powers, which is something that we need to be very concerned about. It also shows that a constitution needs to protect the independence of local government from the centre.

I was very grateful to hear the closing comments from Professor Oliver. I am one of a group of people who are terrified by the prospect that, at the end of the next general election, the SNP may be kingmakers—or indeed, even worse than that, members of a coalition Government. That should send a shiver down the spine of every English person in the country. What I am hearing is an avoidance of the obvious solution to an English question. I very rarely say this, in deference to Graham, because I know his position, but there are people who support the formation of an English Parliament. I am one of them. I have got some mates and we are not all far-right nutcases. The imbalance in the system at the moment will only lead to greater and greater problems. If you saw the Scottish referendum as a threat to the Union, an imbalance in the constitution as it is at the moment is an even greater one. I think that is something that needs serious debate rather than, at the moment, being the elephant in the room that it often is.

**Professor Dawn Oliver:** I do not know which of those points to respond to. There are lots of troubles with the House of Lords, but the trouble with reforming it is that it does some of what it does extremely well. If all its Members, or most of its Members, were elected, it would not do those things so well, particularly the work of the Constitution Committee, the Joint Committee on Human Rights, the Delegated Powers and Regulatory Reform Committee, and so on. We should be thinking about whether another body could be invented that would do those things—an independent constitutional or legal scrutiny commission that could do the skilled, often technical, non-partisan but politically savvy work in the legislative process. If I was satisfied that there was another body that could do that, I would feel much more relaxed about abolishing the House of Lords, having it all elected, or whatever. Having one House full of politicians is probably enough, unless the other House had a completely different role of representing the regions and nations. I don't think we want another House of elected people without any special remit.

**Chair:** Avoiding any riposte on behalf of the people who were elected by the population, I move on to Vernon.

**Professor Vernon Bogdanor:** In reply to Mr Clancy, I think the Smith Commission is a good illustration of how not to go about constitutional reform. The points it is dealing with affect not only Scotland but the whole of the United Kingdom. In any case, the constitution does not belong to the Scottish political parties. The fact that you may have a common denominator of agreement does not mean it follows that this is a suitable outcome either for Scotland or for the United Kingdom as a whole. It is very ignorant. At one point it says that this is a kind of federal solution to devolve control of income tax to

Scotland, but I know of no federal system in which one of the sub-units has control over the whole of income tax. The normal pattern is for income tax to be widely shared. There are huge implications for the devolution of the basic principles of the welfare state and whether the benefits you secure are based on need and not on where you live. You need to go through those things, and it is a very ignorant—I think damaging—report that is in danger of undermining the cause that won the referendum, the Unionist cause. I think the report has done a lot of harm.

On the point that Robert Orchard makes about why people bother, I think there are two answers. First, there is a cumulative growth of resentment about malrepresentation, but I think the UKIP factor does bring something new into British politics, because there is a huge emotional and grass-roots force behind its support. People will feel more strongly if UKIP gets, say, 10% or more of the vote and hardly any seats than they did when it happened to the Liberal Democrats. It is a grass-roots, insurgent movement that we have not seen before. The Liberal Democrat-SDP alliance was a top-down movement, so it was different.

The third point about Lords reform—Ed Miliband has put this forward, too—is that the Lords should represent the nations and regions of Britain. I think that should come after, and not before, a constitutional settlement in the UK. The danger of doing that now is that you would import the West Lothian question into the House of Lords. Should Scottish peers be able to vote on English legislation? Reach a deal on that first, otherwise an elected Lords would threaten the UK even further.

**Chair:** We have focused a lot on the question of crisis. A classic way not to do it is to wait for the crisis, because, by definition, everyone is very excited and is desperate to get a solution. That is not the way in which you want to draft something as long-lasting as a constitution. Although I personally think that the Smith agreement was excellent in handling that difficulty and excellent in taking devolution further—there will be teething problems on lots of things, not least welfare—it was a response within eight weeks to a threat that the Union would break up because of the polling that took place a week or so before polling day. That is not the way to do it.

Let us do it on a more rational, free-will basis, on the basis that we believe in devolution. If your political class believes in devolution, you can plan how you are going to do this. If it does not, and if it is dragged every inch of the way, you are going to have a great difficulty producing something sensible that goes across four nations and one umbrella union. People were asking us to do this, in the political classes. Scotland did not suddenly happen when they decided on the date of a referendum. We go way back to John Smith and the false devolution that we had at that point. This is several decades of Scotland saying, “Hello, we have got a difficulty here. Can you help us out?” In the end, we forced them, ultimately, in essence to create a vehicle to get a sensible debate on devolution, and that was the SNP. What I would like us not to do in England, which is arguably a bigger problem, is to recreate that and actually create an English nationalism because we are not listening to people.

Of course nobody talks in the pub about the constitutional documentation, but every time you go there or every time you knock on doors when you are out canvassing, people are fed up with our political system. They do not put it into words about

constitutionalism, but they have got problems with the council, the MPs and the Government, and it is a regular thing. People are telling us, if we are prepared to listen and not to tell them, “You are not putting it in the right words, so my opinion polling does not show it as a big issue.” Listen to people, otherwise there could be the very crisis that will precipitate something that will not be carefully thought through and will not be sustainable. That would be my response to some of the comments here. We have got a really quick-fire round now. Let’s go.

**Stephen Hockman:** This is a terrific debate, if I may say so. May I say something about the relationship between the political crisis or near-crisis on the one hand, and the constitutional programme on the other? I very much agree with the Chairman that if we are not yet in a state of political crisis, it is quite possible that we will be very soon, either before or after the general election and particularly with reference to Scotland. Although that political crisis involves constitutional issues, in the end keeping the Union together will be for the politicians to achieve.

That is a relatively short-term political crisis, but the relevance of the constitutional discussion that we are having, and of the work that people on this panel and others have done, is that if there is a growing sense of confidence that a more comprehensive and rational political framework will evolve, that will make it easier to solve the more immediate political crisis. The solution to the Scottish question is likely to involve a political compromise on some issues, and the need to defer other issues that simply cannot be solved in the short term. It seems to me that we are going to need, at that point, a mechanism and an ongoing conversation into which those problems that need to be deferred can, so to speak, be delegated. If we do not have that ongoing conversation, and we do not have a steady movement towards a constitutional settlement, that will make the shorter-term political problem much harder to solve.

**Nicholas Baldwin:** I do not want to be considered Scrooge at a Christmas party. I actually believe in a formal written codified constitution based on devolution for the nations and regions of the country, but people seem to forget that there are problems with a written constitution. A written constitution does not, in and of itself, solve anything. Take the American constitution: if there are 10 Americans in a room, there are at least 15 views about what their constitution means. It does not solve some of the problems that some people seem to be indicating that we have.

**Chair:** A very last one and then I am not going to take panel comments; I am going to let you go for a coffee. Is that debate and interaction not good or do you want a nanny state where we all know exactly where we stand?

**Nicholas Baldwin:** The debate is good. It gives me a job.

**Michael Clancy:** Just to continue the debate a little, I am not an apologist for the Smith commission. I recognise that two months to get to grips with the issues around devolution of further powers to the Scottish Parliament was an almighty and near impossible task to land on one person—the Smith commission consisted of one person. The political parties were the interlocutors to that. The problem is that the Smith commission is the result of an agreement between political parties, not a discussion between those who are experts in constitution building. John Swinney, Michael Moore and

others might say, “Hang on a minute; we are experts in constitution building because we have done it.” A small correction to an earlier comment, it was not subordinate legislation that was struck down, but a section of an Agricultural Holdings Act.

Going back to the expertise point, we heard earlier of the entrenchment of the Scottish Parliament as an example of how the Smith commission has got it wrong. That emanated from a Labour party document that was published last summer. It is something that we see sometimes in things such as the Canada Act, where the UK Parliament says it will not legislate. I think also that in the Home Rule Bill of 1890, which Mr Gladstone did not get through, there were provisions about entrenchment. We can approach entrenchment but I agree that the Smith commission might not necessarily have been the best way to achieve that.

**Chair:** Okay. We are going to have coffee. I am then going to move you from what has been an interesting retrospective, in some ways. You are working with, by your very presence, a political process, not a “waiting to comment once its happened” process. This is helping to make stuff happen. What do we want to make happen? How does this document work to help to make stuff happen? How do we take the whole process forward? When we come back we will go into that slightly more futuristic mode. For now, thank you very much.

*Professor Robert Blackburn, King’s College, London, took the Chair.*

**Chair:** Welcome back to the second part of today’s conference. I am very pleased to introduce Andrew Blick and Richard Gordon, who will be speaking in turn for 20 minutes. Andrew has been closely involved in the preparation of the work for the report from the outset. In fact, without him, I do not think that the work could have been done at all, because he has been a crucial part of it. He has written widely on political reform for many years, working for various organisations. Currently, he is lecturer in political and constitutional studies at King’s College London. He has many particular interests, but one in which he has taken a special interest, apart from a written constitution itself, is the state of the Union and arguments for a federal structure of government. Without more from me, I will pass you over to Andrew.

### ***Dr Andrew Blick: How should democratic principles and a settlement for the Union be reflected in a written constitution?***

**Dr Andrew Blick:** Thank you very much, Robert, and thank you, everyone, it is good to see you all here today.

This is an important event. As Graham said, no parliamentary Committee has published a report on this subject, which is rather shocking. A lot of Select Committee reports have been published over the years, but none dealing with this subject, which is incredibly important, whether you agree with a written constitution or not. To have got to a stage where this document has actually appeared with, as Graham said, the portcullis logo on it, is a significant historical development. If we get a written constitution, people will look back and say that this was an inevitable stage in the inevitable progression towards getting a written constitution, and we will all have a real job explaining to our children or

grandchildren exactly what the UK was like when it did not have one. If that comes true, this will be seen as an important moment in that process.

What are the reasons why a written constitution might come true? How does that relate to the subjects that I was asked to talk about, settlement for the Union and democratic principles? When we talk about whether we are to have a constitutional moment, in many ways we have been passing through a prolonged constitutional moment that goes back a lot further than some people might think. I think it goes back about six decades. This is an area of historical controversy, but it partly has to do with the collapse of the British empire, which triggered various changes in British society and British global outlook and caused a succession of constitutional arguments, discussions, reform proposals and changes.

If you had tried to tell someone in 1950 what our constitution was going to be like today, I do not think they would have believed you. We hear the argument, “It is all too complicated. It all cannot be done. It is all too much to take on board”, but there have been many changes. We joined the European Union and the European convention on human rights, later adopting the Human Rights Act 1998. Devolution other than in Northern Ireland is all new, and there have been many other changes, such as the rise of judicial review on a vast scale, which would have been unthinkable in 1950. Across the whole range of the constitution, things have been changing massively, but it has all gone on in a very unstructured way and in a way that I do not think is fully democratically legitimate, leading to the problems that we have now.

The first problem is pressing at the moment and was unleashed by the Scottish independence referendum, although it was building up before, and that is an immense pressure for devolution, the decentralisation of power in the UK. Scotland is leading the way on that; other parts will follow, Wales certainly, and that leaves the unanswered question of England, to which I shall return, and how we devolve power to, in or within England. It creates immense pressure, an irresistible pressure, but at the same time how do we counterbalance that pressure? If we are to continue with a United Kingdom, if that is what is desired, how do we maintain coherence at the centre? How do we still have a State? As we heard from Vernon Bogdanor earlier, some of the powers now being devolved to Scotland go beyond what would be available under a federal system. There is an immense decentralisation, which is necessary and good, but we also have to bear it in mind that, at the end of it all, we need to have a coherent centre. That is a problem that needs addressing, and a written constitution is a way forward in that.

Another problem is democratic legitimacy. We have been bringing about change and creating mechanisms for change, and they have certainly brought about a lot of change, but they do not have the democratic legitimacy they need to do the job properly. Perhaps poor Lord Smith is in the audience—I do not know what he looks like and his ears may be burning if he is not here. I am not casting aspersions on him, but I suspect that if a constitutional expert such as me was put in charge of organising the Commonwealth games, it would not go very well. Some of you can see where that might be leading.

The problem with the Smith commission was not that it did not deliver on its remit because it delivered effectively on its remit, but the problem was the remit and the legitimacy behind it. Part of what the commission was delivering on was the vow. We all

know that the vow is what the three main pro-Union parties signed up to. We can speculate as to whether they will be the three main parties after the next election, but they signed up to that agreement as a panic measure shortly before the referendum. Whether they needed to do that and whether it changed the result of the referendum, we can only speculate. They signed up to these agreements with far-reaching constitutional consequences, but they did not have the democratic legitimacy to do that. They did not even have the backing of their parties to do that, let alone Parliament or the country as a whole.

The Smith commission, although it had been planned before in some form, was delivering on the vow. The Smith commission did not add any democratic legitimacy to what was already an illegitimate agreement. That is where we are and that is an example of the problem. Equally, the Cabinet Committee running under William Hague does not have proper democratic legitimacy. I am shocked that they did not even humour Graham by giving him an audience. As we heard earlier, he has been seeking to talk to that Committee. Standard operating procedure would be to at least invite someone in and pretend to take their views into account, but it has not even bothered to do that. Ideally, we would like it to do a lot more. I find it shocking.

Serious constitutional measures are being drawn up in secret without any proper consultation. David Cameron, the day after the referendum, although he did not use the words, seemed to announce, “We are going to introduce English votes for English laws. That is the conclusion we have come to.” The general remit of the Cabinet Committee seemed to be, “We are happy to take your views on the conclusion we have already come to.” That is where we are, and we await its conclusions.

There is an interesting contradiction between English votes for English laws and what is in the Smith commission report. The Smith commission is making recommendations or whatever they are in this area that go well beyond Scotland, as if that was not important enough in itself, and that impact on the whole UK constitution. The Smith commission appears to rule out English MPs voting on an English budget. It seems to say that all UK MPs will vote on the Budget. How that will be reconciled with English votes for English laws, I do not know. We will have to wait and see. Those are some of the problems.

We have downward pressures on the Union, plus the need to reconcile with some coherence at the centre. We also have the problem of democratic legitimacy in how the constitution changes. I was pleased to hear Dawn mention the Cromwell constitution of 1653. Later on, I will rehabilitate it a bit, but a problem with it was that it did not have enough support and consensus. It was a constitution for an area larger than the UK today—it covered the whole of Ireland as well—but the problem was that it was drawn up by a small group of army officers, and it did not have popular consent. An insufficient basis of social consensus is a problem for any constitution. That is my first point about a written constitution. We need a convention that shows that it commands consensus and can actually speak for the people as a whole. Obviously, in reality, it cannot speak for every single person, but it has to at least command some democratic legitimacy that shows that an effort was made.

I do not want to pre-empt later discussions, but the best way of doing that today is by having at least some of the people on it chosen by lot—sortition. That was a good enough method for choosing people in ancient Athens. I know that we have Anthony Barnett here today, who has written about that. It is also a good enough method for putting people on juries who can lock people up in prison, so why can it not be used for a constitutional convention? It is a good method. If we go down the route of appointing people and having different civil society organisations represented—faith groups, business and various other assorted notable figures—that sounds to me a bit like the House of Lords. That is not the way forward for a legitimate constitutional convention.

Another thing we need if we are going to properly reflect the issues of the Union in this constitutional convention is representation of the different components of the United Kingdom—of Wales, of Northern Ireland, of Scotland and, somehow, of England, which I agree is a difficult question. That is the model we need. It needs to speak for the whole of the UK, not just the centre. It needs to speak for those different national and regional components of the UK. That model was used, for instance, by the parliamentary council that devised the German constitution in 1949 and for the body which devised the US constitution. There is plenty of good historical precedent for that approach.

What should be in the constitution devised by this body? One thing it probably cannot do is take anything away from the existing devolved components. Whatever is there at the moment has to be left intact. All it can really do is build on what already exists in respect of the territorial division of powers within the UK. One improvement, for instance, could be that the powers devolved to Wales are defined negatively in the same way that they are to Scotland; in other words, that which is not reserved to the centre should, by definition, be devolved. The powers that Wales possessed would therefore be a lot broader because it would have to be specified that Wales did not possess a power for Wales not to possess it. That is an example of an increase of decentralised power which could take place.

The constitution will also need to deal with the issue of England and how we represent it. I am sure that everyone is aware of the complications, given the size of England. All this leads towards my central point: the constitution will need to be federal. We need to get over our fear of the F-word and of the idea of federalism. For some reason, the concept has become contaminated in UK political discourse, partly through association with the European Union. I do not have any particular problem with the idea of a European federation, but that is a discussion for another day. People are afraid to use the word. Whether we use it or not, I suspect that it could well be where we are headed.

If we are going to come up with a federal system for the UK, it needs to be embodied in something that looks like a written constitution. If you do not have a written constitution or entrenchment, you do not have a federal system, because federal systems involve the sharing of power between different tiers of government. There is not much room there for the idea that one body—in this instance, the UK Parliament—is all-powerful and limited only by convention and its own self-restraint. That cannot really work. If we are going to try to settle or at least manage some of the tensions in the Union, we need to do it through a federal system which is put into a written constitution.

There is nothing to be afraid of in any of that. For those who are worried about precedent and whether we have done things before—I am not as worried about that—there

is plenty of precedent in the constitutional past of the UK and of England for doing such things. We have a long history in intellectual traditions of promoting the idea of federalism. In many ways, the English or the UK could claim that they invented the idea of federalism. Many of the leading federal thinkers come from the UK and from England. Indeed, the British empire spread federalism around the world; we had no problems with gifting federal constitutions to former colonies or other countries under our influence. The general idea seemed to be, “They need a written federal constitution to keep them in line, but we don’t need one because everything works perfectly here without one.” In my view, that argument is starting to break down. Some of the things that we have spread around the world might come back here.

I will go on to the historical argument. I was pleased to hear Dawn Oliver talk about Magna Carta as having some of the elements of a written constitution. It was not a full written constitution, but it made a major contribution over time—partly through being misinterpreted, wilfully and otherwise—to the development of the concept of the written constitution, particularly in America. When the American colonies issued the declaration of independence, and then later produced a constitution and the Bill of Rights that amended it, they thought they were asserting the values they had taken with them from England—the rights they had, as English people, under Magna Carta. That is what they thought was going on. Clearly, Magna Carta had a massive influence on the development of the concept of a written constitution, so in that sense English constitutional tradition very much fed in to the whole idea of a written constitution.

With later documents, we see the same thing. Many people would argue that the Instrument of Government of 1653 is probably the world’s first written constitution. In fact, a little earlier, at the Putney debates in 1647, the Levellers had proposed what many people would say that that was the beginning of the concept of the written constitution, certainly in the western tradition; I am aware of an Islamic tradition, as well, that I will not go into. Interestingly, when it was brought forward at Putney, Oliver Cromwell gave a long list of reasons why it cannot be done, which may very well sound familiar to us today: there are too many different ideas; there are too many different things to deal with; there are too many complicated matters to be resolved; how do we know another bunch of people are not going to come forward with another bunch of ideas that will make things even more complicated? He talked the idea out—it was a stalling tactic. Then someone else moved for a prayer break that slowed everything down even further. Those things all sound familiar.

Funnily enough, after six years of prolonged constitutional chaos, change, violence, people getting executed and complete constitutional instability, Oliver Cromwell realised that perhaps a written constitution was not such a bad thing, and did one in the form of the Instrument of Government. We can see that there may be some value in that. Perhaps he would have been better off taking the idea on board in 1647 rather than waiting six years. Perhaps he could have got more democratic legitimacy for the idea—although I hesitate to use the word “democratic” because I do not want to be anachronistic.

When we look at our own constitutional history, written constitutions are not at all alien to us. The Bill of Rights is the same—it was produced in 1689 by a body that was at first called the convention. Later it decided that it had been a Parliament all along, but that was not entirely clear at the time. The idea of a convention—using the word “convention”—begins in the period of the so-called Glorious Revolution. There is nothing



to be afraid of in any of this. We have done it before. In my view, a federal settlement definitely necessitates a written constitution or something that looks a lot like one.

Moving on to the democratic bit, it is clear that if we get the right body to draw it up—if we have a body with democratic legitimacy—that will infuse the constitution with more democratic legitimacy than it has at present. It will also make it much more democratic. We heard Robert talking earlier about the royal prerogative. That is a very good example. The Cromwell constitution dealt with the royal prerogative powers by placing them on a constitutional basis, and some came under the control of Parliament in a way that they were not before. There are clearly lots of opportunities for democratic enhancement in a written constitution, and a more democratic, legitimate amendment procedure so that when we are changing the constitution in the future—unlike the way that we have been doing it for the past 60 years—we do so in a way that does not create some of the problems that we are facing now.

**Chair:** Many thanks, Andrew. We will move straight on to Richard Gordon. Richard is a leading QC specialising in constitutional administrative law. He is involved in various initiatives in the field and, above all, published a work a couple of years ago entitled *Repairing British Politics*, in which he produced his own blueprint for constitutional change.

***Richard Gordon QC: Reform or continuity: should a codified constitution include elements of reform or attempt to describe the UK's current constitutional arrangements?***

**Richard Gordon:** I have a very simple topic to discuss, which is whether we should have the third version of the excellent King's publication—the reformist version—or whether we should go for some element of continuity. What I am going to say can be wrapped up in two sentences. Although our current constitutional arrangements have a lot to commend them—they promote incremental change, we have conventions and, somehow, we seem to get through—there is simply no possibility of principled constitutional reform other than by two mechanisms, neither of which seem likely at the moment: either we have consensus as to how we should go forward or we have a codified constitution. It seems to me that if we put the problem that way, there is only one way forward. If we want to discuss the issue, and at the moment we are simply trying to trigger a debate, we have to have a document that contains reformist proposals that can be debated and discussed.

I was particularly struck by Andrew's talk, in which he mentioned what we will be telling our children or grandchildren about the validity of a written constitution when we have one. Interestingly, the historian Linda Colley alerted me to the fact that we only started debating the virtues of an unwritten constitution in about the 1850s, after we had promulgated constitutions for two thirds of the world and were then asked why we did not have one ourselves. That is what I am going to say but I am going to put it in a slightly more structured way by referring to a text that I have prepared and that I will zip in and out of.

I began approaching questions of constitutional change quite late, trying to draft a constitution for the UK but, unfortunately, with the demerit of not having Graham's logo

on it. Since then I have learnt to be circumspect. It is now clear to me, as it was perhaps not clear even a few years ago, that it is entirely possible to find proponents of almost any constitutional position, but virtually impossible to locate any argument that, by virtue of being an argument and an idea, has ever succeeded in triggering a principled reform in the United Kingdom. To say that is not to deny the existence of constitutional change or even reform. The history of new Labour from 1997, continuing through the Brown Administration and on to the present coalition is testament to the shifting—some might say, rather too much—of several constitutional tectonic plates. However, that shifting—randomly or, more recently, perhaps as a knee-jerk political response to events—cannot be equated with principled reform.

I will pursue for a moment what I see as the disconnect between constitutional ideas and arguments, and actions that affect the constitution, before seeking to articulate what might best be done with proposals for a codified constitution. There is no shortage whatever of constitutional ideas in our democratic institution. We can see that on Parliament Live any day of the week. The same witnesses flit in and out of constitutional and Select Committees. Their evidence is nearly always interesting and usually valuable. One cannot fail to be impressed by the quality and, in the case of the Political and Constitutional Reform Committee, quantity of reports reflecting the evidence that emanates from the august Select Committees. Yet, despite the proliferation of new and important constitutional ideas, they are routinely—I think that Andrew made this point in a different way—given scant consideration by the Government of the day in terms of actually changing anything. Indeed, constitutional action, often of a far-reaching, and sometimes of a potentially divisive, nature seems to come about as a result of other dynamics. The creation of the then new Supreme Court in 2003 is but one example. There were undoubtedly some principled reasons for creating the Supreme Court. The key constitutional reason, perhaps more in theory than in practice, was that the presence of Lords of Appeal in Ordinary in the House of Lords as well as in the Appellate Committee, which formed our highest court of appeal, might be seen as infringing the separation of powers.

Whatever its merits or demerits, the Supreme Court was created without any parliamentary debate at all. It was simply announced in June 2003 as part of a package of far-reaching reforms—indeed, I think as part of a Cabinet reshuffle. The reforms were implicitly viewed as solely an aspect of Executive policy making and therefore, in consequential terms, as no more or less independent from Government control than any other aspect of policy.

Properly analysed, the reason that constitutional ideas have lost out to pragmatic politics can be seen to be closely related to our prevailing doctrine of parliamentary sovereignty. It is not, to quote Jimmy Porter's lament in "Look Back in Anger," that "There aren't any good brave causes left," but rather, as any social constructivist will tell you, that ideas are only as good as their effect or, if you prefer, their capacity to affect.

Ideas about constitutional change cannot have social—indeed, any practical—effect unless they are adopted as Executive policy, even if that Executive policy is, in any particular case, a policy decision to let the people decide in a referendum. It is precisely because parliamentary sovereignty, as it has evolved, looks only to Executive policy as the fulcrum of constitutional change that ideas, however good or brave, will be dashed on the

rocks of Executive insouciance unless they resonate with what the Executive sees as being in its self-interest.

That brings me to the codified constitution. As we know, an enormous amount of work has been done by the Political and Constitutional Reform Committee, in conjunction with King's College London, to draft various possible visions of a codified constitution. The three blueprints proposed by Professor Blackburn, as referred to in the Committee's most recent report, are being used in a unique fashion to stimulate debate. My view is that a principled case can and should be advanced for adopting the third of the options, that of a written constitution. The report tells us what, in exemplary form only, that might be, which is "a document of basic law by which the United Kingdom would be governed, setting out the relationship between the state and its citizens, an amendment procedure and elements of reform."

Why do I suggest that as opposed to the more modest proposal of a constitutional code? The Cabinet Office telling us what we already have in simple form has its own dangers. If we remember the journey to the Cabinet manual, quite a lot of the common law was misrepresented in that document and it triggered two parliamentary inquiries. That is version one. Version two is a constitutional consolidation Act, which would be a detailed statement from the Law Commission of what we already have.

I have three basic reasons for suggesting version three. First, the fact that—and the way in which—the PCRC has produced these three impressive documents has itself created a dynamic that can and should be used to seek to influence the Government to introduce measured constitutional change or at least to organise some form of public debate. As its report states, the Committee has adopted an unusual approach from the outset in putting its report before the people as opposed to merely making recommendations to Government. It might be that the people will opt for a diet 5:2 or, hopefully, something more generous than what only offers us the food we already have on our plates, but I doubt it.

If we are, as the report invites us, to journey on a voyage of discovery to some form of codified constitution, it makes little sense to restrict the content to codifying that which was, on the logic of parliamentary—or rather Executive—sovereignty, never intended to be codified. Put another way, the virtues of codification, unlike our current constitutional arrangements, are that it reflects principle rather than expediency. However, if one sticks to that which has been grafted on to our constitutional arrangements by successive acts of Executive policy, we risk ending up with something that was never intended to be a constitution at all.

My instinct is that when the PCRC has ended its consultation, it is likely to find a strong majority favouring something that is worthy of being called the first step to a codified constitution. Assuming that happens, a new—albeit probably still low-key—dynamic will have been created with a considered set of views on all the options short of doing nothing. Whether it succeeds or not is anybody's guess at the moment, but there can surely never be a better place from which to try. We can call that first reason the creation of a unique institutional dynamic.

My second reason for favouring a document that includes elements of reform is that if we are, as we inevitably are now with the PCRC report, into the arena of possible constitutional reform, we can only talk about it in an evaluative way if we have reform proposals as the touchstone for debate. There are aspects of the new constitution in Professor Blackburn's third way that I may not like. My skim read yesterday showed me, for example, what I think is a somewhat outdated idea of a director of civil proceedings. That what first mooted by Harry Woolf nearly three decades ago at the inaugural meeting of the Constitutional and Administrative Law Bar Association. It did not work then and I do not think it is going to work now, for reasons I would be happy to elaborate on later. You need to ask only one social action group to get a feeling of why it will not work. However, that is hardly the point.

When I came up with my own fledgling draft constitution, I was not met with the principled arguments about a written constitution, but with the defects of my own proposals. It is hardly the point whether I agree with everything in this document. No one will ever agree on every proposal in a draft model constitution, but a mere recitation of what we have can spark little evaluative debate at all. To JAG Griffith, the British constitution was what happens. The same kind of circularity is present in the first two prototypes that Professor Blackburn canvasses as theoretical options. In those versions, the constitution is what we already have and not what we should have. If we want, as we must, to extend the debate to discuss what we should or might have, we can only do that if we are presented with models of what we might have.

There is perhaps also a more fundamental objection to simply documenting what we have. It is this: whoever drafts a model constitution of what we have in codified form, an immediate problem arises. How are truly constitutional documents capable of being selected, even by the Law Commission, from among the vast amalgam of laws and other materials that some will say are constitutional in nature, but others will not? Attempts have been made by distinguished scholars—I see some of them in the room—to devise a logical system for achieving constitutional differentiation, but it is a logic that has escaped the House of Commons. Although there is a procedure for debating so-called Bills of first-class constitutional importance—it sounds tremendous—before the full House, there is no obvious rhyme or reason as to what is claimed to constitute such a Bill as a matter of principle.

My final reason for believing that if the debate is now upon us we must embrace it fully and with a codified version that contains elements of proposed reform, is that we are reaching, indeed may already have reached, the time when such a debate is inevitable. By that I do not mean that this is a good time because we are celebrating the 800th anniversary of Magna Carta, although that is undoubtedly an added bonus and opportunity. What I mean is that rarely have our constitutional arrangements been so unsettled. On that point I have a minute disagreement with Andrew, who talked about a six-decade constitutional moment. That is a pretty long moment.

Professor Bogdanor is no doubt right when he says that new constitutions have usually had a constitutional moment that has triggered the drafting of such a constitution. But I wonder whether, in a typically British way, we are not now experiencing our own constitutional moment. We are in danger of suffering the fate of the lobster in the boiling pot failing to realise its imminent fate until it is too late.

The constitutional tensions that beset us at the moment are almost too obvious to be stated, but they are considerable and they are growing apace. As Professor Neil Walker demonstrated in his excellent 2012 lecture, “Our Constitutional Unsettlement”, we are witnessing the attrition of our current constitutional arrangements on an increasingly volatile scale. Very quickly we are witnessing the gradual weakening of the doctrine of parliamentary sovereignty. Not its erosion; it is still our prevailing constitutional doctrine, but it is now competing with a number of other doctrines. For example, the doctrine of supremacy of EU law; see the recent HS2 case in the Supreme Court where apparently the doctrine of supremacy of EU law gives second place to our principle of constitutional sovereignty. Not everybody would now agree with that.

The second attrition, the practical weakening of parliamentary sovereignty, is the undisputed agent of constitutional change. Professor Walker demonstrates, convincingly to my mind, how a number of commissions, some of which Andrew has talked about, are now looked on for a degree of democratic legitimacy in triggering change.

Thirdly, and this links in to what Andrew was saying, there are doubts about the sustainability of our constitutional settlement in the long term. I think that the Scottish referendum threatens, even after the referendum, to destabilise our constitutional arrangements in England and Wales. It is naive to think we can just have a federal English Parliament, partly because it will affect the balance of the political parties. If one talks about democratic legitimacy, it has more than one source.

On the other hand, if you do not have some form of constitutional innovation in England, there will be an increasing sense of resentment. For many years, I thought the West Lothian question was an academic question, but it is now actually beginning to become real. Therefore, there has probably never been a more important time to discuss the merits of a codified constitution, and within that debate, to discuss in as reasoned fashion as possible the possibility of specific reforms.

I will end where I started. Given the constitutional arrangements that we possess, the omens are not ideal for ideas to play a role in fashioning constitutional change. However, if ideas are ever to win out, they are only likely to do so on a battleground that has been chosen in advance, and where, as may be happening with this Committee’s report, proposals are being allowed to develop a head of steam and where support for them is being gradually and strategically accelerated.

### **Questions and discussion**

**Chair:** Many thanks, Richard. There are a large number of views and opinions on the work that have been expressed by Andrew and Richard, so I will now open proceedings up to discussion and comments from the floor. There is a rich variety of people in the audience. It is striking that two persons present have been undertaking PhDs in the subject—Vince Pescod is doing one on entrenchment and Craig Prescott is doing one on the written constitution. We are very lucky to have Sir Malcolm Jack here as well. I would be interested to hear from him which Standing Orders he thinks should or might feature happily in a written constitution for the UK, and/or which ones might be changed in the process to improve the operation of parliamentary practice. Who would like to comment?

**Vince Pescod:** I just want to make one observation on the codification, version two, where the constitution would be codified as a statute. As you said, I am dealing with entrenchment for my PhD and one thing that strikes me, with regards to entrenchment from my investigations, certainly into Australia, is that a codified statute would be liable to the doctrine of implied repeal. A lot of it could be undone by subsequent enactments. Without moving to the third version at some stage, which seems to be suggested as the preferred model, and which Andrew referred to where there is a constitution that is more refined, where you have special amendment procedures, but the constitution is then fixed, or at least fixed to the extent that it cannot be easily changed, a consolidating statute kind of becomes self-defeating in a way. Although it was a very good exercise to bring it all together in one document, it could still be subject to the same constitutional changes that are going on now, and even worse, there could be implied repeal within what we codify. That is really more of an observation.

**John McEldowney:** I am John McEldowney from the university of Warwick. Let me just read two bits of your third draft of the constitution—the codified bit, which as Richard has explained is about reform as well as setting out where we are. First, you say: “The United Kingdom is one sovereign democratic state, founded on the values of liberty, equality, tolerance, and the rule of law.” Just think about those words. They do not specifically deal with human rights or the Human Rights Act, but implicit in these values will be human rights issues. My point is that having that in a constitution helps us decide on the Human Rights Act itself—the charter and so on—as we progress to that debate, because it gives us a constitutional framework in which to take the debate that any political party might wish to have about human rights a bit further. It does not, in a way, allow the answer to be entirely based on a political party. It is based more on the incorporation of the values thus enshrined in the constitution.

Let me briefly go on. On the issue of federalism, you do not actually say that the constitution is federal. In fact, it appears that it is one sovereign democratic society. Rather neatly, article 31(3) says that “the exclusive powers of the national legislative authority...make laws for the peace, order and good government of its territory”. In other words, the devolved Administration would have those powers. That is quite interesting for this reason. It recalls the period from 1920 to 1973 in Northern Ireland—the Government of Ireland Act and the British North America Act. Quite simply, you can have sufficient authority within the legitimacy of the political arrangements, subject to that debate about what is politically legitimate, but you can have within that quite large encompassing powers that do not require the national sovereign Parliament, the UK Parliament, to intervene.

The argument about Northern Ireland is that that was a mistake and Westminster should have intervened. But, looked at the other way, it is a model of not intervening and allowing day-to-day governance to go on. We can debate the merits and demerits of that kind of government, but it shows exactly how a federal arrangement can consist of these elements in a written constitution.

Where does the difference arise? It arises in the sense that with this document you have an element of debate that is missing from the current party political discussion and the ping-pong between different views. It frames the agenda. I am not saying that that always has positive outcomes, but it certainly provides a different way of discussing the

issues. It could be tested out. It is a good way of trying to see what would be the benefits and disadvantages of what you propose.

Those are just some thoughts on it. I thought it would be useful for us to think today, as we are discussing and thinking about the various codes, where we might go.

**Chair:** Many thanks. Would you like to respond to those?

**Richard Gordon:** The first question was about implied repeal. The doctrine of implied repeal undoubtedly could apply to version two. It could apply less to version three once you have got entrenchment. That undoubtedly is true. That does not necessarily mean that we should jettison version two if the consensus is that that is what we should go for.

If I can, I will just talk about something that Andrew mentioned—I will miss out the democratic part of it—which is legitimacy. With the Human Rights Act we had a clause that made it absolutely clear that Parliament remains sovereign and that, although the courts could make a declaration of incompatibility, there was absolutely no legal constraint on Parliament to follow what the court said. There has not been, with one arcane and theoretical exception, any case under the Human Rights Act where Parliament has not made a remedial order. Why? Not because of a legal constraint, such as implied repeal, but because of what I will call a creeping legitimacy. So do not ignore the fact that once you start with a piece of paper, you can get an accretion of legitimacy. It is rather like the post-narrative validation that Andrew talked about. Once you have something in place, people are much happier to go from stage A to stage B.

**Chair:** If I may interrupt, perhaps you could continue in a moment, after Andrew has had a chance to respond as he has to leave in a few minutes.

**Dr Andrew Blick:** It was an interesting point about Northern Ireland, devolution and the old system there. A benefit of the type of constitution that we are talking about now is that we would have a Bill of Rights. I am aware that that is probably where you were leading, anyway. In many ways, if you have got a Bill of Rights in place, and if it also encompasses economic and social rights, the basis for decentralisation becomes a lot more strengthened. Particularly from the point of view of parties of the left, they can be a lot more comfortable about decentralising, which is something they have not always been entirely comfortable about, if there are protections in place. Indeed, that might apply for all parties. There is an important case that you can do a federal system a lot more effectively if you have got a Bill of Rights. I think of Australia without a Bill of Rights as a federal system. I would rather see a federal system like Germany's, which is heavily entrenched. While we are thinking about entrenchment, bits of the German constitution are unamendable, and that is one of the fundamental rights.

**Chair:** Thank you. Richard, please continue.

**Richard Gordon:** The second question is very interesting, and it has two parts. First, there is value in having a framework for debate. That echoes my view exactly. Once you have a framework for debate, it becomes much easier to enter into rational discussion, even if you reject the alternatives.

On the point about decentralisation or day-to-day governance—I think that is the phrase you used—it seems to me that that is a very important concept that should go into any constitution, and it should certainly go into any debate. I have some experience of that with the National Assembly for Wales, where we have just had a Supreme Court decision based on the narrow wording of an Act. One has to be very careful not to enter into sterile debates where the drum of parliamentary sovereignty prevents day-to-day governance on a practical level.

The one question I wanted to ask Professor Blackburn is actually slightly different, and it emerges from my reading of the third version, which talks about state sovereignty. I found it very interesting that it didn't talk about parliamentary sovereignty. I was rash enough in my constitution to abolish parliamentary sovereignty in the preamble, which might just have given the game away. Talking about state sovereignty, I wondered whether that was sophisticated drafting or whether it was just rhetoric.

**Chair:** I am very wary of the expression “sovereignty” altogether, but I was really using it in an international sense.

**Richard Gordon:** So you did not intend to erode or talk about parliamentary sovereignty as such?

**Chair:** Not as such, but perhaps the more obtuse a word becomes, the more it is used in different contexts, which dilutes the horror, or the tyranny, of “parliamentary sovereignty” as an expression, which is so misleading in many respects.

**Richard Gordon:** I must say that when I read that, like reading Oscar Wilde, I thought, “I wish I'd said that.”

**David Howarth:** I disagree with Richard's point about the creeping legitimacy of judicial human rights. Although it is not technically correct to say that the prisoner voting issue is not yet resolved, in reality we are seeing defiance of the court and, above all, the notion of human rights. It strikes me that if you were to start with one area in which to establish judicial supremacy to try to move away from parliamentary supremacy, it wouldn't relieve that. If that were the most difficult and controversial thing to do, it wouldn't solve an immediate problem that was happening—the immediate problem would be worse. If you want to go for that one area, it would indeed be the area of devolution and the structure. You can see a deal being done where the various parties would agree to freeze the deal by handing ultimate power over to the courts to ensure that the deal was kept. That is a politically possible deal to make.

**Anthony Barnett:** I am Anthony Barnett from openDemocracy. I would like to ask a question of Richard, Andrew and Robert. There is a crucial point that this discussion is in danger of missing. Quite rightly, Andrew Blick said that any process has to draw upon legitimacy and, therefore, has to engage with the public, and the public has to see a formulation of the framework within which it is being governed and is governing. We saw in Scotland a release of energy that comes when real issues are put to a public for that decision-making process. The danger is that the discussion of the constitution here is too concentrated on the issues of the federal contradictions, the territorial contradictions and the legal contradictions, which have basically broken the existing constitution. So we are



dealing with the aftermath of a constitutional framework which, on its own terms, is the famous dead parrot.

Let us take the vow, which Andrew mentioned. The vow opens with the three party leaders saying that the Scottish Parliament is permanent. Now, obviously that was written by Gordon Brown. He didn't sign it but drove it through, and he would have been very conscious that that commitment actually ends the "absolute sovereignty of Parliament", because nothing is permanent—that is the whole point. The three party leaders have made this vow to the Scottish people and, in fact, they were right to do so. That is, it is inconceivable in fact that the British Parliament could abolish or replace the Scottish Parliament in the way that Jack Straw says it could do, technically, because it has supremacy unless that was the will of the Scottish people. So we are in a breakdown situation at that technical level, but a lot of people don't feel this.

There are a number of issues that need to be part of any constitutional reformulation of the framework of government. Take what is going on at the moment: the British Government were clearly complicit in torture. That is a fundamental issue for any constitutional framework. It must be seen as being addressed. It can't just be said, "Well, it's all somewhere in the Human Rights Act." The way in which the Prime Minister yesterday simply said, "I am satisfied our system is looking after it"—well, that's an issue that people will get quite hot under the collar about.

The whole question of surveillance and liberty, and the nature of the surveillance state and whether you can survey people without a warrant, is part of what citizenship is—what are your liberties, what is a constitution for? These things have to be part of any reformulation, if taking it to a convention is going to work. The same goes for freedom of speech, and for public service broadcasting. To widen that, the NHS, which is seen as somehow a central institution in legitimising the British state, has as its fundamental principle the right to receive medical health care free at the point of need. While the sovereignty of Parliament has de facto collapsed without anybody even noticing or even bothering to talk about it—it is dismissed by our leaders—the sense that the NHS is now a constitutional principle, a right that people have, has grown. It seems to me that this discussion has got to have a much more far-reaching sense of the politics of a new constitutional moment than the discussion that I've heard so far. Maybe this was addressed by Professor Oliver and the others in the first session, which I'm afraid I missed.

**Chair:** From what you say, having a Bill of Rights within a written constitution is absolutely essential. I think most people believe that. It is quite interesting that as part of my research in preparing the work, there were those who thought it would be best to keep a Bill of Rights out of a written constitution and just have a road map explaining the architecture of government because of the controversy a Bill of Rights would arouse. I absolutely agree with you, however.

**Colin Copus:** Hi, I'm Colin Copus from De Montfort university. From listening to the last speaker, and reflecting on what some others have said as well, there seems to be a tendency emerging to want to deal with every single issue in the constitution: the age of voting, the question of the NHS. I don't think the constitution itself is a place to deal with those sorts of issues. A constitution will say, "The United Kingdom is a democratic state and has a Government selected by the people." How you then go on to develop who is a

citizen and who has voting rights is something outside the constitution, I think. The other thing I'm reflecting on is that I think it would be almost impossible to start a constitution for this country with the opening words, "We the people", and "We the people, in order to form a more perfect union", because our Union is imperfect in the extreme. So I think those two issues are particularly difficult.

I suppose that this is a plea for brevity. If we are going to get the public engaged in this process, the constitution has to be readable and accessible. I reflect on the fact that a lot of the constitutions I see are those that every English council has to have; every English council has to have a written constitution. Most council leaders would give themselves a hernia trying to lift those constitutions above their head. They are massive documents, because there is a tendency to want to collect everything in one place. In drafting this document, that would be an error. It has to stick to basic principles. It has to stick to those issues that people can grapple with and understand, and the rest of it must be dealt with through other political processes.

**Sir Malcolm Jack:** I am Malcolm Jack, a former Clerk of the House and now in the Constitution Society. I agree that a constitution cannot do everything. I want to come back to Richard's point about sovereignty and the demise of parliamentary sovereignty. He listed a lot of things that have circumscribed EU law—the effects of devolution and all the rest of it. What exactly do we mean by parliamentary sovereignty? We mean executive control, because the Executive control our Parliament.

I want to link this to another thing about constitutional reform. Culturally and politically, we are a country that expects the Government and the Executive to do something. This is going to be a big step away from that. We are not used to Government and Executive decisions being challenged in the courts as they are in countries with great constitutional structures. What about the cultural change that will be necessary?

**Anthony Barnett:** The issue of the culture is absolutely fundamental. However, I want to be clear about the point that the previous speaker made. As far as I am concerned, the principle of access to the NHS free at the point of use is something that people really understand; it means a lot to them. They can see that that is a kind of constitutional principle. That is very brief and it is very simple. I totally agree that a constitution should set out the principles and should be a push-back against the over-legalisation of constitutions. It should be very simple, and it should try to push material back to having proper political and democratic decision-making. People could then see that how things are delivered and how they come about must be flexible and must be where people's judgment is.

The point that I am making is: what is the culture of a constitution? One should not look to replicate the formulation of "We the people" and American political culture here. I do not think that the Supreme Court should have been called the Supreme Court, but I do think that there has to be some way in which a constitution is about making us a people. If you back away from that, it will not be a document that makes sense to anyone. There is a big cultural issue here, but that is what this process is about; it is not simply a legal or political process.

**Adam Ramsay:** I am Adam Ramsay, and I am also from openDemocracy. This is almost an addendum to what Anthony said. It is worth remembering that three months ago, a Government in the UK produced a written constitution for the first time. The Scottish Government wrote a constitution for Scotland. It was brief and easily readable, and it included popular things such as the right to health care and the right to education free at the point of use. Those things are entirely plausible. It was a widely read and very popular document, and a lot of people voted yes because they read the proposed constitution and liked it. I would recommend that people read it as a potential draft version of something that we could have in the UK instead.

**Richard Gordon:** I totally agree with David Howarth that human rights is the wrong place to start. I need only refer you to the Nicklinson case in the Supreme Court. We only have to read nine different judgments and Neuberger saying that it is impossible to know where to draw the line. As a thought experiment—tomorrow, I am speaking at the Hart judicial review conference—I am imagining a dialogue between myself and Grayling, trying to defend judicial review. If you try to defend judicial review by reference to that case, you are in trouble—in quicksand—so do not start with human rights.

Secondly, I agree that the Scottish experience has demonstrated the visceral nature of political issues when the people really get hold of them. Therefore, I agree that ideally, if we ever get to a written constitution, it should reflect direct public involvement. Therefore, it begs the question of whether the public would want a long or short constitution. My sympathies are for a short constitution with a framework, precisely because it would be incredibly difficult to flesh out.

Some points put by Anthony are not necessarily points that would appeal to everybody—for example, the NHS. Yes, there is a strong emotional attachment to a free NHS at the point of delivery, but I have done enough cases trying to delineate the border between health and social care to know that it all depends on what we mean by the NHS and continuing health care, and on what we mean when we get to difficult questions of target duties under the National Health Service Act 1977. We do not have a legal NHS, from which everybody from cradle to grave is entitled to medical treatment; it is as simple as that. However emotionally attached we are to the idea—it is a bit like the Magna Carta—we cannot actually look at it. Those are my brief responses. I am sure that I could say more if I had time, but we do not have time.

**Chair:** Finally, I have two points about the work that I conducted for the Committee, which arise from comments that have just been made. First, on the structure of government across the UK, I hesitated for a while before leaving English regional government out of the draft. It would be much neater and more symmetrical, given the imbalance in size between England, Wales, Scotland, and Northern Ireland, to have regional English assemblies. Of course, that was a proposal of the Labour Government in 1997 but it did not have popular support. Whether it could gain popular support at some point as part of a new constitutional settlement, I do not know; views on that would be welcome.

On the point about the level of detail within the documentary constitution, and the idea that it must be a people's constitution—something intelligible—as well as being a legal document that is enforceable in the courts, that is quite a difficult balance. I have tried to

strike it as best I can and one technique that I have used, which was borrowed from James Cornford, was to have the basic matters within the written constitution and then make provision for a separate class of constitution—halfway, as it were—that might be called quasi-constitutional legislation and would be subject to a special status and form of entrenchment in the document itself. In that tier of constitutional legislation, we could deal with issues such as the age of voting and the details of election law. These are difficult lines to draw, and written constitutions tend to reflect the preoccupations of politicians and people at the time at which it is drafted. I was struck, in the series of seminars that we had following publication of the report, that although people would be saying, “It mustn’t be too detailed”, when they came on to a subject on which they had a special interest, they thought there was inadequate detail.

Many thanks, everyone. We will now break for lunch and reconvene shortly.

### **Afternoon session: British democracy and a written constitution**

*Graham Allen, Chair, Political and Constitutional Reform Committee, took the Chair.*

**Chair:** Welcome again, I hope you enjoyed the lunch. This afternoon we will continue talking in general terms about British democracy and a written constitution. Michèle will speak to us about what type of body or convention should prepare a written UK constitution. You have 20 minutes—you have seen how strict we are—and then Ian will speak on whether agreement can be reached on a Bill of Rights for the constitution. There will be some interaction with you—time for your comments and questions—before another break for networking and tea and coffee at 2.40 pm. We will have a final session after that.

Without further ado, Michèle Olivier, would you like to lead us off this afternoon?

#### ***Dr Michele Olivier: What type of body or convention should prepare a written UK constitution?***

**Dr Michèle Olivier:** Thank you, Graham.

When considering the appropriate body to draft a UK constitution, legitimacy at a popular, symbolic and legal level plays a crucial role. A national constitution is very important at a symbolic level. It is the metaphor for national unity, a token of solidarity. That was evident from a recent symposium organised by students at the University of Hull, at which students, speakers and participants highlighted their understanding of what a constitution should do for society. It is clear that the thinking of many young people is shaped by the only constitutional experience they have been exposed to: the status quo. They think it is working. The view taken by me and my colleague Diana Wallis, who also participated in the symposium, was that the existing constitution might be working more or less, but that there is a much better way of doing things and that now is the time to upgrade.

To enjoy legitimacy—and we heard from various speakers this morning how important the legitimacy of a constitution is—it is important that the constitution writing exercise should reflect the historical context and myths of our particular society, especially

those surrounding the Magna Carta. A constitution should also present a secure road into the future, thus binding the past, present and future in a way that is unique to the UK, but can stand its ground in the face of global challenges. A written constitution should inspire the same national pride as the national Olympic team, but at a legal and political level.

To inspire pride, confidence and public ownership, public interest and participation are imperative. The myth needs to be fostered that the people have spoken. How to generate such interest when the constitution is low on the public agenda and the old ways are considered adequate? That is the question to be answered. It is particularly problematic when there is no imminent political crisis giving a sense of urgency to the process, as we have seen this morning. I agree, however, with the view that the best possible constitution can arise from circumstances in which there are a few subtle pushes, but not when we have our backs against the wall and it is a matter of life and death.

While new constitutions are usually born in societies emerging from conflict and where political reform is imperative, constitutional reform in essence is a constant process that happens in all modern societies. It should be viewed as an inevitable part of the democratic process in all democracies.

There are certain good practices on constitution drafting that have emerged from the nearly 200 new constitutions adopted in countries transforming into multi-party democracies between 1975 and 2003. Against that background, I have looked at the question—it is the topic of my talk—“What type of body or convention should prepare a written UK constitution?” I have drawn on that research and looked at the important role of process in ensuring a legitimate outcome.

Firstly, the process must be regarded as both inclusive and credible. It should take a wide range of community interests into account. The metaphor of collective drafting is often used in that regard. There are various ways of doing it. It could consist of oral evidence or written submissions to a Committee. Also important is the perception that plain legal language is being used, making the outcome publicly accessible and user friendly. Secondly, there must be various stages to the process and the public must be informed and involved in all of them. There is an onus on Government to assist and empower civil society groups to participate effectively in the process. It is not good enough to say that there is an open invitation; the Government should take responsibility for facilitating that participation. Finally, there is the crucial importance of the ratification process. Once there is a draft, ratification needs to be conducted at a representative level.

As far as the phases are concerned, there are different ways of structuring the process. One suggestion is that the first step is the negotiation of ground rules or constitutional principles. Once those are agreed, an initial text can be developed and prepared to form the basis of deliberation and comments from stakeholders. That should include civil society organisations and various interest groups, such as the judiciary and governmental law advisers. Working from those principles, a text can be developed, on which input is invited and then a final text can be produced, adopted and ratified.

As far as a constitutional convention is concerned, there are various ways to facilitate participatory constitutional writing. It is a metaphor for different models of participatory drafting, and it can be coloured in a way that suits our approach. One

suggestion is an Executive-driven process, where the Executive sets the agenda. The initial text or working document can then be prepared by a broadly representative commission or task group on the request of the Executive. Such a commission can then conduct public hearings with interest groups and civil society before producing a final text that will be presented to Parliament for deliberation.

An alternative approach would be to begin the process with a national convention tasked to develop the guidelines. Then Parliament might approve a commission to prepare a text.

The approaches vary in respect of where and when public consultation will take place, and that question must be carefully organised and managed. In models adopted elsewhere, the representative nature of the body that chooses the ground rules showed that it can make or break the process.

Also crucial is the legitimacy of the body that finally ratifies the constitution. Fortunately in the UK there is representative Government in place—there is no question about proving the democratic legitimacy of Government. But there are other stumbling blocks, as we all know—the great conceptual barrier referred to this morning: The question of parliamentary sovereignty plays an important role in deciding on the process for constitution drafting. The central question should be whether parliamentary sovereignty is retained or replaced by constitutional supremacy. That question will determine the brief of the constitutional writers.

If parliamentary sovereignty is to be retained, constitution drafting will in essence be a technical codification process, including perhaps clarification and streamlining practice. There will be no real need for public participation outside the regular political process, because the public will already be involved. If it is not retained, the first question to be considered is how to terminate parliamentary sovereignty. That has been the topic of much academic discussion.

Constitutional sovereignty will then replace an Executive-minded Government with governance by democratic or constitutional values. Depending on the role envisaged for the courts by a new constitution and whether it is decided to move away from parliamentary sovereignty, the construction of a clearer separation of powers and judicial independence might even give a role for courts in endorsing the new constitution on the grounds of whether it complies with the ground rules that have been adopted, possibly, by Parliament.

There are various ways to bring an end to parliamentary sovereignty. In some manner or other, Parliament will have to terminate its sovereignty by dissolving itself. That process could involve a referendum. This challenge has been dealt with effectively by many Commonwealth members that inherited the system of parliamentary sovereignty. Parliamentary sovereignty should not be seen as something that is for ever. No legal document is for ever as it reflects the current values of the society that it operates in.

In conclusion, I will highlight some important factors. The character of the main deliberative body is important, because the whole idea of public participation should be developed around this process. Secondly, there is the role of Government. We do not have

a political crisis in which there is no Government in place—in fact, there will be a democratic Government in place, who will have to play a role in adopting the new constitution. Then there is the establishment of ground rules, whether it is to be a mere codification exercise or vehicle for constitutional change. Legality and legitimacy of the final products are of equal importance.

The process of constitutional codification will further blur the boundaries between law and politics. It is a process that has been going on for a while and one that, to my mind, will do much to restore the credibility of political office bearers and the political process.

**Chair:** I want to move straight on to Ian, but I will take comments—not questions—if there is something that you want to put on the record, quite briefly, just to keep the juices flowing after Michèle’s contribution. Again, will everybody repeat who they are, for the sake of the *Hansard* writers?

**Adam Ramsay:** I am from openDemocracy. It is interesting that we are talking about the end of parliamentary sovereignty. Gordon Brown wrote in *The Guardian* a few months ago that parliamentary sovereignty is already over, certainly in two of the four countries in the UK. The Good Friday agreement effectively signed away sovereignty from Parliament to the people of Northern Ireland and the Republic. The vow, if not the agreement, to have the constitutional Edinburgh agreement in the first place signed over sovereignty to the people of Scotland, or arguably at least to Holyrood, or a mess. We will see what happens.

Maybe Parliament is sovereign in England and Wales but it is not in any real sense in the UK. It is a very interesting talk, but we need to recognise that it is not just a theoretical question about how parliamentary sovereignty is going to end. It has ended.

**Dr Michèle Olivier:** But that makes it much easier to deal with the question.

**Dr Alan Renwick:** I am Alan Renwick from the university of Reading. I thought that was very interesting. Though you were talking about public participation, you gave an extraordinarily top-down vision of public participation. I felt that your talk ignored the depth of disconnect there is between the public and our normal political processes today.

The debate about public participation in democratic and constitutional reform processes in recent years has moved on to the territory of how we get better forms of public engagement in these processes than we have had in the past. You talked about engaging civil society and interest groups. Even if you do that, large swathes of our population are not actively involved in civil society and not engaged with the leaders of civil society groups that might pop up in such processes.

There has been a great deal of talk in the UK in recent months, including from the Labour party and Liberal Democrats, the Green party and so on, of having some form of citizens’ assembly, on the model that has been used in Canada and the Netherlands, where we have randomly selected citizens. Vernon and Andrew Blick talked about it this morning. That seems to me the sort of direction we need to be thinking about at least. Everyone agrees with public participation, but it is how you do it that is important.

**Lord Steel:** I was the co-chair of the Scottish constitutional convention, so perhaps I could wait until after Professor Cram has spoken and say a word about that and lessons to be learned, for and against. My apologies for not being here this morning as I had hoped to be.

**Chair:** It is very good to see you, David. Yes, come in after Ian.

**Colin Miller:** My name is Colin Miller and I am from the organisation Compass. My background is in community development, which is about neighbourhood and community empowerment, so I kind of disagree with what you were saying.

I welcome what you had to say, Michèle: you have to set up a kind of top-down structure and plan about how you are going to do it. The way in which it is facilitated and run does not have to be top-down. You can start in the local neighbourhoods. There are vast swathes of people in this country who are completely engaged in civil society in all sorts of ways in their neighbourhoods.

If we can start there, using the right tools and techniques, you will start getting people engaging through the political process as well. What puts people in local communities off being more engaged is what happens when it reaches the town hall and further levels of government. That is a problem of government not local people.

**Chair:** I will just throw in my two penn'orth. This is part of rebuilding representative democracy, which is in such bad shape we all look for means to bypass it, whether it is social media, referendums or whatever. It could play into that agenda.

I was reading the history of my own city. In 1830, what was your means of expression? It was riot. Seriously. You could not vote for anybody who would listen to you. The way they listened to you was when “the people are revolting”.

In an odd way, if we delete representative democracy we have to make that leap now, not to the rioters but the Twitterati or whoever it may be and say, “Oh look, they are people; they are the voice of the people. Russell Brand has got 10 million followers; he must be the most popular man in the UK. Let’s listen to him.” It is a way to bring a bit more sophistication back into representative democracy and community building and how people express themselves. I was struck by your first phrase about the symbolism for nation building.

If no one else wants to chip in, I am going to move onto Ian. Michèle can come back at the end when she has had a chance to digest some of those comments.

### ***Professor Ian Cram: Can agreement be reached on a Bill of Rights for the constitution?***

**Professor Ian Cram:** Thank you for inviting me here today. Thank you also to Robert Blackburn and his team, who have put a tremendous amount of effort into these blueprints. It has been acknowledged several times already this morning, but it is right to reiterate my gratitude both for his work and for bringing me on board to contribute to this immensely important project.



I will start by saying something about constitutional moments. I suspect we are all getting a bit tired of that phrase, but I have a take on it. I think Professor Howarth talked about Bruce Ackerman and, as a comparative constitutional lawyer, I quite often go to the American text to see what they are saying about how constitutions develop. Bruce Ackerman came up with an interesting definition of constitutional moments, which did not link so much to ideas of crisis, but the nature of deliberation in society and the move away from the usual politics. The usual politics are those times when the professional politicians, organised political parties and mainstream media organisations dictate the terms of discourse and the rest of us are sort of passive onlookers who might occasionally mutter things.

Constitutional moments seem to be defined, if we follow Ackerman, by the idea that at those times, citizens are transformed into active deliberators with their fellow citizens. They are engaged in serious political argument in the workplace, at home and in the pub. In more normal times, citizens' other obligations to, say, family, work and leisure activities predominate. In the constitutional moments, they put those to one side and give greater priority to political discussion. They surprise themselves, but they engage and try to persuade other citizens round to their perspective while listening to alternative points of view.

Scotland has been through that moment. There will be supporters here of the no campaign, but I was struck by what I thought was a tremendous faux pas at some point in that campaign's political broadcast. It showed a woman complaining that all her husband wanted to do in the morning was talk about politics. That was obviously demeaning to women and a massive own goal because women were seriously engaged with the political process. It was not a clever move on the no campaign's part.

It is important to note that having gone through this momentous point in Scotland, events north of the border, as other speakers have said today, have triggered a much wider debate, stretching well outside Westminster, about the future structure of central and local government and regional powers. No sooner was the result of the Scottish referendum known than the supporters of an English parliament dedicated to purely English matters came forward. They seized the moment and started advancing their cause.

The recent evidence now points towards a constitutional moment and away from politics as usual. For those who have been working to help to reconnect ordinary voters to political debate and decision making, including members of the Political and Constitutional Reform Committee, this must be a valuable and welcome moment. The result in Scotland might have shown a serious cleft in political opinion between the yes and no camps, but if we are looking for some common ground, it surely lies in the sense that the existing division of powers between Westminster and Holyrood needs recalibrating. The cross-party recommendations in the report from the Smith commission are "explicitly designed to create a coherent set of powers that strengthen the Scottish Parliament's ability to pursue its own vision, goals and objectives, whatever they might be at any particular time."

Of course, those recommendations emerged out of a rather hurried process of constitutional reform. I find myself in agreement with critics of the pattern of constitutional reform in this country, which tends to suggest that the constitution is what

happens and is the result of short-term political pressures that gain transient political majorities. That is not the way to do constitutional reform. Any move towards an entrenched written constitution might ensure a commitment to more deliberative processes.

This is where a Bill of Rights comes in. I am going to talk in the rest of my remarks about the third blueprint that Professor Blackburn and his team have been working on for some time. If we were to write a new constitution today, it would be inconceivable for that constitution—apart from stating the new nature of the relationship between the centre and the regions, and between England or the United Kingdom and Scotland—not to set out the basis of the relationship between the citizen and the state.

In the past 30 years, a number of Westminster-style constitutions that draw heavily upon traditional notions of responsible government and parliamentary supremacy have adopted Bills of Rights—Canada, New Zealand, the UK in the Human Rights Act, the Australian state of Victoria and the Australian Capital Territory. Those signal new relationships between not only the individual and the state but also, institutionally, between the Executive, legislature and the judiciary.

Of particular interest in my discussion is the trend evident in those Bills of Rights towards conferring upon the judiciary an enhanced role in human rights disputes. It seems that there is no longer a stark choice between the polarities of Dicey parliamentary sovereignty and US-style judicial review of primary legislation. In different ways that are rightly sensitive to the distinct political cultures within which they are located, the UK, Canada, Australia and New Zealand have variously accorded the courts a greater role in the determination of rights questions. As Lord Hope said in *Jackson*, while our constitution is still “dominated” by parliamentary sovereignty, “parliamentary sovereignty is no longer, if it ever was, absolute... It is no longer right to say that its freedom to legislate admits of no qualification whatever.”

Indeed, Parliament itself has legislated in statutes such as the European Communities Act 1972, the Human Rights Act 1998 and the Scotland Act 2012, therefore passing measures to qualify the notion of unlimited sovereignty. Looking more closely at the current Human Rights Act, judges’ powers to interpret human rights allow them to read down or read in words to secure a convention-compliant reading of domestic statutes. Where convention compatibility is not achievable via the interpretation duty, a declaration of incompatibility can be issued by the court. As we all know, that does not affect the validity of the incompatible domestic statute, but it very often signals the start of a process of legislative reform in Parliament.

A lot of academic lawyers talk about section 4 of the Human Rights Act as creating processes of constitutional dialogue between the courts, the Executive and Parliament. In its blueprint for a written constitution, Professor Blackburn’s group takes the idea of a declaration of incompatibility from section 4 and grafts it on to the blueprint for a written constitution as a declaration of unconstitutionality to be available to the High Court in respect of constitution-infringing Acts of Parliament. However, like its Human Rights Act counterpart, that declaration is not intended to affect the validity of infringing Acts of Parliament.

The major and radical difference with the Human Rights Act in the third blueprint is found in article 43(3)(c). In those cases where the Act of Parliament engages fundamental, though at present unspecified, provisions of the written constitution, the court would have the power to deem those statutory provisions constitutionally invalid and grant an injunction “or other temporary relief” to the affected party pending confirmation or otherwise by the Supreme Court of the constitutional invalidity of the impugned provisions. That provision then sets the judges up as the arbiters of what is constitutional and unconstitutional in respect of those articles.

So which articles of the constitution might we expect to see being accorded this degree of judicial protection from parliamentary encroachment? An obvious starting point would be the provisions laying down the nature of central Government, national Parliament and regional Assembly relations. Perhaps another one would be the statement of rights found in any Bill of Rights that was in the written constitution.

The title of the short discussion that I was asked to talk about was: “Can agreement be reached on a Bill of Rights for the constitution?” Let me confront what I think are three considerable and difficult obstacles in the way of agreement towards a constitutional Bill of Rights, but where I think there is room for positive development. The first concerns what sort of rights we get in the written constitution. A conventional approach would be to start from the standard negative civil and political rights that derive from the Enlightenment and social contract thinking about freedom of the individual from the intrusive state. Beyond this, agreement may be harder to find.

Take, for example, social and economic rights. They are typically conceived of as imposing positive duties on the state, such as the right to health care, adequate housing and education. How much consensus exists within our constitution for moving towards a South African position, for example, where such rights find extensive constitutional protection, and, on coming before the courts, require the judges to review the state’s allocation and distribution of scarce resources?

Some see positively the incorporation of social and economic rights as a vital legitimising component of any new constitutional settlement. It points to the inherent dignity and worth of the individual. Others point to the institutional weaknesses of courts in being asked to make and second-guess decisions about the allocation of moneys between competing expenditure priorities. And I have not said anything about so-called third-generation rights, such as the rights of minorities to the enjoyment of culture, language and religion.

The second main hurdle that has to be overcome is the idea of judicially protected rights in the face of a parliamentary majority to the contrary. Most of us in this room have already formed our views on the appropriateness or otherwise of judicial determination of human rights questions. I do not expect to change anyone’s mind in the short time that we have here, but I ask you to consider the defence of judicial review offered by the American constitutional scholar, Alexander Bickel, in his book, “The Least Dangerous Branch”, in which he tackles head on what he calls the “root difficulty” of judicial review of parliamentary, or congressional, action. He said it is this: the idea that control over key issues of political morality are wrested away from the people, acting via their elected representatives, and placed instead with an elite and unaccountable group. Thus stated, it

seems that judicial review constitutes an improper encroachment into the policy-making and political sphere.

Bickel is a defender of judicial review, by the way, but he says that another difficulty, linked to the root difficulty, is the idea of the long-term weakening of democratic processes brought about by a reliance upon the judges to correct legislative mistakes. He could see that this produced a diminished capacity on the part of the people's representatives to govern themselves. The legislature would, on this view, cease to take its own view of the constitution seriously and defer to the judiciary. In response to those points, Bickel counters that, although the US system of government does call upon the Executive and the legislature to serve enduring values by articulating and defending them, too often in the past those bodies have served to undermine them. They have acted out of expediency, rather than constitutional principle.

Bickel points positively to the advantages of the courts in dealing with matters of principle. Those include their insulation from daily political affairs and their training to give expression to enduring political values in actual disputes. Moreover, in addition to its checking function, the Supreme Court of the United States performs a valuable legitimating role when it upholds the reading of the constitution given by the legislature.

Today, a major difficulty in our context of the UK constitution in arguing for a judicial strikedown power, as the written blueprint suggests, is the lack of representativeness in the composition of our senior judiciary. Until there is a more representative institution that draws upon intelligent men and women from a variety of communities, backgrounds, schooling and universities, this significant objection to giving more power to the courts will continue to resonate.

I was disappointed to read Lord Sumption's recent interview in *The Guardian* on becoming a Law Lord, in which he said he thought it would be 50 to 60 years before we achieved a more diverse and representative judiciary. I do not think we should settle for such a time scale.

An interesting contrast is to be made with Canada. In opinion poll after opinion poll in which Canadian citizens are asked which institution they prefer to determine constitutional rights questions under the charter, a consistent majority of respondents say that they prefer the judges over democratically elected politicians. The question for us is: why do Canadian citizens prefer judicially determined statements of rights? It could be that they know that, in the background, Canadian legislatures have an override power in section 33 of the Canadian constitution, but I think it may have something to do with the fact that they look to the Supreme Court of Canada and see a more representative judiciary.

My final point concerns ease of amendment in a written constitution. Unless we want to cast protections in stone for all time hereafter, thought will have to be given to constitutional amendment procedures. The challenge here is to identify a constitutional amendment procedure that both optimises or perhaps accommodates a set of core commitments and values, which I see as a valuable function of a written constitution and was referred to by earlier speakers, and yet manages and accommodates the freedom of the present day electorate to participate in the remaking of their own constitution.

We do not have to agree with Thomas Jefferson's idea of constitutional change. He believed that a constitution should lapse every 19 years and the new generation get to write the constitution anew—he wanted each generation to have that opportunity to design their constitution afresh. At the same time, an overly rigid constitution requiring supermajorities of an exacting nature should be guarded against, because that will inhibit the ability of ordinary citizens to participate in the remaking of their constitutions and take us further down the road towards politics as usual and away from the invigorating experience of active, inclusive and deliberative politics that we experience during constitutional moments.

### **Questions and discussion**

**Chair:** Thank you very much. I want to bring people in and make a few more comments. Perhaps at the end, the speakers can respond. I am going to call David—I was going to say Liberal Democrat David but that still would not be quite right. David Steel.

**Lord Steel:** Can I say a word about what happened and what should not have happened in Scotland? I was co-Chair of the Constitutional Convention. It began with the Claim of Right, which was the original declaratory document. You need something like that to start with. What are we about? We are about finding a written constitution with as much decentralisation as possible, judicial review and so on—the basic remit has to be set out before you start.

We then had a Constitutional Convention. The Conservative party and the nationalists did not take part in, but it was enormous: we had every Labour and Liberal Democrat MP; we had a representative from every local authority in Scotland, regardless of political complexion; we had the Churches, the trade unions, and representatives of civic society. The full convention was about 300 or 400 people. It only met occasionally and the work was done by an executive, but the point I want to make is that the whole process took about 10 years. I agree with Ian Cram that this is not something that you can do against a political deadline or a reaction to political events in the manner of the Smith commission, essential though that was. It is a long-term process and I do not think that you can replicate at the UK level what we did in Scotland, because the size of it would just be unmanageable.

I have come round more and more to the view that it is not a convention as such that we need, but a large and powerful constitutional commission, rather like the 1918 one that Prime Minister Asquith set up after the Parliament Act to deal with the reform of the House of Lords. A convention of that kind, which has hearings around the country—rather like the CODESA process in South Africa, which I watched and was quite effective—and is given time, is the right mechanism to approach this difficult issue. I very much hope that, politically, as we move towards a general election, we can get consensus that we need to move in the direction of a written constitution.

**Chair:** David, thank you very much. I will go for another Lib Dem David—the third one.

**David Howarth:** On a completely different issue, I think Ian Cram raised all the right issues—far too many issues, but they are all right—but some of them depend on others. The amending procedure depends on the degree of judicial power, and judicial

power over what—you can have different procedures for different parts of it. I wanted to comment on Ian’s remarks on the judiciary, because I always wondered what Alex Bickel would think of the US situation now, after several decades of a highly representative Court in a way—a Court that has become entirely political, where it is simply Republicans against Democrats. It has become a kind of third house of the legislature.

What that Court cannot do is claim to be independent and to decide cases in a way that is independent of politics. The other thing it cannot do much of is precisely the thing you rightly called for in the early part of your remarks, Ian: a process of dialogue between the judges and the democratic institutions. Alex Bickel invented that too, or rather Felix Frankfurter invented it, but the most important chapter of the book you referred to, “The Least Dangerous Branch”, is the one called “The Passive Virtues”, where the Court deliberately does not decide things; it sends things back for democratic decision. I wonder whether there is a contradiction between that and the highly politically representative Court that the US now has and that we might get if we concentrate too much on the representativeness of courts, as opposed to their technical legal characteristics.

**Chair:** Fresh from the doorstep of No. 10 Downing Street, Unlock Democracy. You might want to tell us what you have been doing this morning.

**Frances Foley:** This morning, we handed in a petition jointly organised by Unlock Democracy and the Electoral Reform Society, calling for a constitutional convention. It had very wide-ranging support from a number of different organisations, and it found a lot of resonance in civil society.

That is linked to the point I wanted to raise. There was a lot of talk this morning and just now about process and procedure, how deliberative democracy can be effected and how we can bring in a vast number of people, which is obviously the million dollar question. Key to the debate is partly the distinction between process and the more substantive political questions that are being discussed. Graham mentioned this morning that, on the doorstep, people are interested in constitutional questions, but they are not necessarily phrasing it in that language. What is key to the debate is making the linkages apparent to people and saying that the process of how we might form a constitutional convention and how that might happen—deliberative democracy—needs to be absolutely connected to the more substantive political questions people want to discuss.

Our survey, which we wrote for the PCRC to help with the consultation, included a mixture of process questions and more substantive political questions. People are vastly more interested in the standard political questions—electoral reform, devolution and reform of the House of Lords. What needs to be made clear—this is perhaps what civil society organisations, as well as elected politicians, could be doing—is how that links up with the process, how this all works and what the purpose is of having deliberative democracy. I think the only way people can get engaged in that is by having experience of it themselves. The call for the constitutional convention is intended to do just that—give people actual experience of taking part in deliberative democracy and show how that changes the nature of the political debates you are having and how they, having had this experience, might be more engaged in the political process.

**Michael Clancy:** There was a discussion this morning about the SNP’s draft constitution Bill, and I think it does repay taking a look at in the context of this discussion about building a constitution, because that Bill, as a consultative document, was meant to be the transitional constitution. We should not lose sight of that, because there are provisions later on in the Bill about how a constitutional convention should be established by an Act of the Scottish Parliament, bringing together people from various backgrounds to design the constitution. It is interesting that the discussion is around independent people. The independent people defined in that draft Bill include those who are free from the determination or control of either the Scottish Government or the Scottish Parliament, but not from any other political actors. So I think we have to view that particular Bill and what it contains with a bit of caution, although it may point the way to something around the constitutional convention that we spoke about earlier. I am delighted that Lord Steel endorsed some of the comments I made about its management on a UK basis.

The other point that I want to pick up on is about judicial appointments. The representative nature of the UK’s Supreme Court vis-à-vis the US Supreme Court is quite interesting. Might it have something to do with the fact that US justices are appointed after confirmatory hearings and are, in effect, political appointees? They then carry, or are thought to carry, with them the agenda of their political appointers into generations to come. I say, “thought to” because we all know justices who look very conservative before they are appointed and then become very liberal, and vice versa. We have to be aware of that difference, which is not just a legal difference but a cultural one. That then raises issues about the nature of our judicial appointment system and how representative the appointers are because of the way in which we want our democracy and our judiciary to reflect the people who live here.

**Chair:** I will come to you, Malcolm Jack, but I want my panellists to respond to anything that has struck them in this group of questions and the one before it.

**Dr Michèle Olivier:** I will first respond to the question on sovereignty. Sovereignty within the current context is a concept which is challenged both legally and politically. Politically, we see that state sovereignty is not absolutely regarded any more. There has been gradual erosion of state sovereignty by universal values—values of constitutionalism. The same happens with parliamentary sovereignty: legally, it is a much eroded concept, much of it is empty, but we are still clinging to this mythical, metaphorical notion describing the characteristics of the Government. Sovereignty in its absolute form cannot stand its ground within the current climate that the constitution needs to function in. That, of course, makes it so much easier to address the problem. To my mind, that is not a legal stumbling block which cannot be overcome.

The second question dealt with public participation. You do not want to create the perception that this is a top-down process; however, the process needs to be planned by Government. One cannot expect spontaneous public participation, entering into a social contract, and everyone is happy. That is why I refer to the different stages. Let us say that stage 1 is the public agreeing principles through a convention. The outcome of that public participation might determine phase 2. That is not to say that the public’s views will not be taken seriously and will not determine the process, but it cannot be left to the public to plan the process. That needs to be done by Government. Remember that, in this country, we do have a legitimate Government. The Government are the people’s representatives. It is not

that certain components of society are excluded from voting for the Government. If Government plans the process, it is just a practical way of doing it.

The other idea that was mentioned was that civil society is perhaps not as well organised in this country. I do not think we need to stand and fall by fixed definitions of civil society. To my mind, civil society is everybody not represented in official governmental bodies: it gives you a different avenue for voicing your views if you cannot feed them into the democratic process. Civil society represents professional bodies, interest groups, individuals, women, agriculture, people who are advocating prisoners' rights or whatever. All the focus areas that we have identified this morning, individual or groups with a particular, strong view on certain items that they would like to see included in the constitution. It is important that the scope should be broadened up for public participation, but it is the Government's responsibility to facilitate it, publish it and make funds available to bus people in.

I remember during the constitution drafting process in South Africa, the civil responsibility to be involved in the process was really mainstreamed. On buses we had the slogan printed, "The people on this bus are writing the new constitution of South Africa." Sometimes the buses were empty, which made us wonder, but people took ownership and everybody was enthusiastic. If people wanted to make a submission, they got a formal receipt from Government saying, "Thank you very much for your submission. It will be considered by CODESA," or whatever technical committee was looking at those issues. People really took pride in their participation.

**Professor Ian Cram:** To pick up the contrasts that have been drawn between US Supreme Court judges and our own, one of the features I like of the US system is that ordinary citizens know a lot more about who sits in judgment over them and their reading of the constitution; the judge's voting record and past political activity are out there in the public domain. US citizens might have indirect control over the Senate confirmation process, but there is nevertheless a degree of transparency and openness in the political background of the judges that get to be Supreme Court judges there.

The starting point must be that rights in the constitution are morally contested; reasonable people will disagree about what they mean in concrete settings. One of the academic defences of Supreme Court decision making is about articulating principles that then find their way into public discussion. Ronald Dworkin is perhaps a bit over-optimistic in thinking that Supreme Court decisions would form the basis of our national conversation. I am not sure that that necessarily happens, but I think we can look to our own processes of appointment and see that they are rather opaque. We do not know the backgrounds to the individuals who already have fairly important roles in determining the interpretation of legislation in the ordinary sense. I for one do not believe that there is only one woman qualified to be on the Supreme Court of the United Kingdom; there must be more talented women out there who could do that job. It is important for the court's credibility that we move in that direction.

**Sir Malcolm Jack:** I just want to come to Ian's point on the social and economic rights—the positive rights. I was a bit sad to hear about the negative enlightenment rights, which I am very attached to for other reasons. This is almost a footnote to what you said, but you mentioned the South African judges being pushed into the position of having to



decide the use of resources and things like that. Quite a few of them have started to express extreme disquiet about that, which is interesting. They have actually said, “We wonder whether we should be doing this,” and the Constitutional Court judgements contain little reservations. As you say, if those rights are written into the constitution, you are going to have this set of problems.

**Professor Ian Cram:** I am very wary of talking about the South African court with a South African constitutional lawyer sitting next to me.

**Stuart White:** I have a comment on the idea of a constitutional convention and what we think a convention is for. There seems to be quite a range of views. On the one hand, there is what we might call a minimalist view, which says that post-referendum there is a set of questions about the territorial division of power and the English question; we need to settle these problems, and a convention is the way to do that, rather than leaving it to haggling and bargaining among the political class. There is also a maximalist view, which says that a convention is to produce a full codified constitution for the UK.

There is also an intermediate view, which says that a convention right now could be seen as a response to the most urgent problems facing our political system, one of which is the question about territorial division of powers, but we might think there are other urgent problems to do with corporate power, money in politics, and surveillance. One could therefore imagine a convention that is convened to address a discrete set of particularly urgent issues that goes beyond just the territorial question, but which is not the maximalist convention that tries to produce a full codified constitution. Perhaps the intermediate convention could be a step on the way to a more ambitious convention that produced that kind of constitution. Perhaps it would be a good experience in running a convention—a learning experience that could be part of a more long-term process.

**Chair:** This might be my nasty political mind working, but having fended off codification for several generations, a constitutional convention might just be another means of putting it into the long grass. A majority Government would be in the middle of a programme of job creation, education and health care and they would not want to be diverted to this dry constitutionalism while tackling real problems of concern to people, so they might say “Let’s hold off on that for another generation.” But I am sure that is not in anyone’s mind.

**Nicholas Baldwin:** Wroxton college is part of an American university, so my ears prick up when I hear about the Supreme Court.

Going down the formal codified constitutional route, we are talking about the possibility of giving greater authority to judges to rule on judicial review, which is the case currently, but then there is the constitutionality of legislation and striking down an Act of Parliament or whatever. I urge us not to hold up the American Supreme Court, or indeed the American system, as any sort of model for us. I do not wish to bite the hand that feeds me, but it is an extraordinarily politicised system. There was a debate in the House of Lords yesterday or the day before about judicial review. Lord Howard thinks that the judges have more power than he ever had as an elected representative. We should not fall into going down the American route. It is something that would certainly need major consideration.

The American system is hardly one to hold up as an example of greater participation. Their electoral turnout is worse than ours. We claim ours is bad, but look at theirs. Our turnout for police commissioners is an exception, but that is another issue.

**Dr Michèle Olivier:** I want to comment on the interesting question about how judges perceive their role, especially in the Constitutional Court in South Africa. A strange aspect of this debate is that people are very wary and reluctant to keep parliament and the executive legally accountable—why is that? But that when it comes to judges, they should not trespass outside the scope of the law. Judicial activism, where judges form and shape policy, is part of a democratic society. That is what we have seen in South Africa. It is a matter of striking a balance. Some of our most progressive legislation has come from Constitutional Court decisions.

It is a dangerous step to include socio-economic rights into your constitution because, internationally, those rights are not capable of immediate implementation; they call for progressive implementation depending on the availability of funding. If you say, “adequate housing”—what is meant by that? That may be a right protected in the constitution but it must be given flesh within the context of what is available in society, and what the public perceive as part of the democratic values. Those are for the courts to determine. It is a matter of striking a balance. Altogether, it has played an important role in South Africa. Socio-economic rights would have remained an empty letter in the constitution if it were not for judicial activism.

**Sir Malcolm Jack:** But it would be a big step for us, for judges to make these kinds of decisions.

**Dr Michèle Olivier:** You have a different kind of welfare fabric to the society.

**Sir Malcolm Jack:** That was why I raised it. If it is in a constitution—

**Dr Michèle Olivier:** If it is in the constitution, it will not call for immediate implementation. Your international obligations will tell you that you are not obliged to enforce it to the full. You can decide whether you want to call on parliamentarians to decide on how to implement it based on legislation. It may be risky. You need to think carefully when including socio-economic rights in the constitution because it is tricky to implement wisely.

**Professor Ian Cram:** May I pick up the point about a politicised judicial system and the criticisms of the US Supreme Court? I would turn that around: do you think that we do not have politicised justice in this country at the moment? I go back to Lord Atkin in *Liversidge v. Anderson*; was that not a political judgment about subjecting the Executive to a degree of scrutiny? What about Lord Hoffmann’s speech in *Belmarsh*? There are countless instances where the judges are foursquare in the political debate. It is couched in legal terminology but proportionality seems to engage all sorts of political questions. Parliament has authorised our judges to look at the balancing and weighing exercise carried out by the Executive, so it is there already.

**Dr Scot Peterson:** I would respond to the same thing, as probably the only American in the room. The American system is very easy to caricature and easy to do so in an ahistorical way. One of the points behind what Bickel was writing is: the fact that judges

have power does not mean that they should exercise it. When there are positive rights in a constitution—as I understand it, the South African court has been very resistant to enforcing those kinds of rights, by and large, in cases involving water and where there would be substantial expenditure involved in declaring Acts of the legislature unconstitutional.

It is easy to forget about Scotland but some of the most damaging decisions by the judiciary in England were extremely partisan and usually caused absolute havoc in Scotland in the past 200 years. For details see—anyway, that is enough. It is awfully easy to dichotomise the two systems. There is an awful lot that was imported from here and there are an awful lot of tacit things that go on in the British system that are certainly present in the American system; they are just less obvious in the UK.

**Chair:** Any more people? John?

**John McEldowney:** I am from Warwick university. We should just remember that in South Africa, one of the real crises that the courts are called upon to look at is how they deal with what might generally be described as authoritarian government—a one-party state. That is a different diagram of power. We therefore have to locate the discussion about the judiciary in the context of where they are being expected—either by the population or, indeed, the constitution—to answer the question. What the Constitutional Court of South Africa is trying to do is to have it both ways. It accepts that there is a political dynamic but, at the end of the day, it needs to have its role—it has to have a say. I have looked at it over the past five or six years, and my reading is that it has done a pretty good job of preserving those little balances.

That goes back to the discussion this morning about things not being too rigid but, at the same time, framing the question so that there can be a discussion. If we put a UK Supreme Court into the middle of South Africa or Northern Ireland, it would not be the same issue. The expectations in Northern Ireland were that the judges would be able to strike a balance when the political parties had failed to do so—sorry, but they were not able to do that. They went so far—to some, not far enough—to try at least to articulate the issues. That is an important element. We should not expect so much. John Griffith said that if you do not ask too much of your institutions, you will not be disappointed, and that is a very good point.

**Michael Clancy:** Just from havoc-ridden Scotland, you have seen that. It is an important point. It tells us something about how things can be entrenched in constitutions. The Treaty of Union says that no court in Westminster Hall will have jurisdiction in Scotland. By circuitous routes, the House of Lords got civil court cases because it did not sit in Westminster Hall, simply for that reason. The criminal havoc in the recent past, if “havoc” is the word one should use—some might say that it is a course correction—has been caused by the Human Rights Act 1998 and the way in which convention rights are imported into Scotland under the Scotland Act. While we were told—and we believed—that an audit had been done to ensure that the law in Scotland was compliant with the Human Rights Act as we understood it, some lawyers represented their clients very well and showed that, in some instances, we were not compliant with the Human Rights Act. What may look like havoc when you are told that all temporary sheriffs are too close or do not have sufficient independence may, in fact, mean that we were getting it wrong and had

to have it corrected, although it did cause trouble. It was the same with the judgment in *Cadder* on a young man getting advice from a lawyer in police custody. That sort of thing had to be fixed. However, we can work those kinds of things out because our constitution sets out ideas rather than formulations. That is perhaps too simplistic.

**Chair:** We have become a little bit judicial in this section, so I want to put a little corrective in here and draw Ian back into the debate about the Bill of Rights being in a written constitution and part of the individual ownership of a written constitution—it is our rulebook; my rights are in there. I quote the Hollywood movie where even the gangster says, “I’m going to plead the fifth amendment.” It is part of the culture. It is part of their constitution, and even a member of the mafia can own it, so to speak. Unless there are any more comments, I will ask our panellists to wind up and we will then go for a cup of tea. Ian, do you want to start?

**Professor Ian Cram:** I am not sure that I have too much more to add. Let me give you an experience as a constitutional law tutor. On asking first-year constitutional law students, “What are your constitutional rights?” there was silence in the room. One reason why I look across the Atlantic is that I would not have to talk to law students to get the answer, “I have the right to freedom of speech under the first amendment,” or, unfortunately, “I have the right to carry weapons under the second amendment.” It is a matter of ordinary conversation and debate, and I think that is something we would achieve if we moved towards a Bill of Rights within a written constitution. It would be up there for discussion and disagreement, which is important, and the evaluation of competing positions. To me, that is what a deliberative democracy should be aiming for.

**Chair:** This idea—I know I am going to put words into one of our questioner’s mouths—of, “You’ve got 15 people in the room and they all arguing”—fantastic; I love that. I come from a constituency that is so beaten down and poverty stricken that it is passive and fatalistic, and does not argue in a room. It takes what comes down the pipe, whether it is housing, benefits or whatever. I yearn for this. I am not saying that a written constitution would give this to us, but knowing your rights and knowing how democracy works cannot help but make it more likely that you will enter into that vocabulary of separation and then consensus building.

**Dr Michèle Olivier:** In South Africa, we are faced with a situation where the Constitutional Court is really choosing its battles because it cannot afford to alienate Government completely. It would not be in its own interests to give judgments that cannot be enforced. It is a developing country, with huge poverty, so judgments need to take account of the budget basically.

**Chair:** When we come back after a refreshing cup of tea, we are going to talk about how we engage with the public. We will look at this interesting question: if representative democracy is withering, do you leap over it? Do you go to referendums? Does it need judges? Why not just put every case on TV and see what people think? How is that level of engagement going to take place? In a constitutional convention, will it be writing a written constitution, and drawing up and authorising a British Bill of Rights? We will cover all those things.

Katie Ghose will be here from the Electoral Reform Society to be your chair. We will have Roger Mortimore talking about constitutional changes that could engage the public in politics. Nick Pearce, one of our co-sponsors today, from IPPR, will talk about what is in a written constitution for the public. Alex Runswick from Unlock Democracy will talk about unlocking Magna Carta and the responses she has had to her consultation to this big document. A feast to finish the day. At the end, I think I have half an hour, but I will take five minutes to wish you well and try to pull it all together.

*Katie Ghose, Electoral Reform Society, took the Chair.*

**Chair:** We are kicking off at one minute past 3, which is not bad. A very warm welcome to this session. I am Katie Ghose, chief executive of the Electoral Reform Society, which is a campaigning organisation. It has been around for a very long time—since 1884—and we are still here with a passion, campaigning for a better democracy in the UK, so I am delighted to have been invited to take part in the conference. I want to say congratulations again to Graham and Robert and all the people who I know are always involved behind the scenes in putting these things together and who do all the really detailed work. I want to say thank you to them. All credit to them, and credit to the Committee, because it is an innovation for a Select Committee to work in the way it has been working with academia. That is, in and of itself, an innovation worth welcoming and drawing attention to.

This session, I hope, will be all about people, the public, public engagement and public involvement and will be very practical. I am setting us the challenge of coming up with 10 practical recommendations by 4.30—if we come up with them before then, we can go home! I am talking about recommendations for the Committee and others on how to involve people—the public—in a truly meaningful way in a written constitution and in constitution making more generally. That is our challenge—our collaborative exercise.

Let me give a very warm welcome to all our speakers. Roger Mortimore will speak first. Roger is Professor of Public Opinion and Political Analysis in the Institute of Contemporary British History at King's College London and Director of Political Analysis at Ipsos MORI, so it is fantastic to have him. We have Nick Pearce, which is great. He is Director of the Institute for Public Policy Research, a leading think-tank. He has huge expertise in public policy and an insider's view of politics, which is great. Alexandra Runswick is the Director of Unlock Democracy. As I think has already been mentioned, Alex and I had the really fun task of going to No. 10 and handing in our petition calling for a constitutional convention. It was signed by 15,000 people, so momentum is building, which is great. Alex has huge expertise on all kinds of democratic reform issues. In particular, she is very strong on the idea of how you involve the public practically in politics. Obviously, I do not need to reintroduce Robert and Graham, who will be sharing their thoughts as well.

The only other thing I will say by way of introduction is that I think there has been a quiet rise of deliberative democracy in the UK. There have been local examples of participatory budgeting and there has been anecdotal evidence about some MPs behaving in a different way with constituents. I am talking about coffee mornings for people to sit down and consider public policy issues in a more deliberative way. There is quite a lot of potential, when you look at some of the constitutional conventions and deliberative exercises around the world, for a different model of doing politics. Instead of professional

politicians retreating behind closed doors because they are always being bashed by the public, and the public growing ever more despairing of the failure of politics to deliver, there may be another way of doing things, where everybody takes responsibility for the incredibly difficult issues that face us in our society and our world, and then deliberates and makes recommendations, so that the public are involved. That is a challenge, and it brings all sorts of other challenges with it, but a more deliberative politics could be a way to go.

Now, I warmly welcome Roger, who will speak to us for no more than 20 minutes.

***Professor Roger Mortimore: What constitutional changes could engage the public in politics?***

**Roger Mortimore:** The question I have been asked to answer is, what constitutional changes could engage the public in politics? I had better say straightaway that I am not, I am afraid, going to give you a list of answers. As someone who has spent all his adult life working with opinion polls, I know that the first thing you learn about them is that you must allow for “Don’t know” answers, and I am a “Don’t know” on this.

Let me give an overview of what the public think. The first point is that most of the public say they are not happy with the present system. About two thirds of the public say the British system needs considerable improvement. Broadly, most of the public are sympathetic to the idea of a written constitution; it is not an idea that frightens people and, again, two thirds of the public say they are in favour of it.

In terms of engagement, one way of understanding the challenge we face is this: only about three people in 10 believe that, by getting involved in politics, they can change the way things work. Essentially, our challenge is changing that. That is not something that is new; we have been tracking it for 10 years or more. The figure has stayed low and, if anything, it is getting lower.

However, in a sense, all these questions—I will show you some data in a minute—are leading questions. They are not intentionally leading, and the polls are not setting out to fix the results, but they all start from the assumption that the solution to political problems is making the political process work better. Now, that may be true, but that is not the way that most of the public view things. They are prepared to be led down that path—to take the suggestion that constitutional change may make things better—but that is not necessarily the way they instinctively approach politics.

In studying public opinion, it is useful to categorise people’s views in different ways and, in particular, to divide them into what we call opinions, attitudes and values. Opinions, basically, are what you get when people give you a complete “top of the head” reaction to a poll question. They have not thought much about the issues—these are low-salience issues—and their answers can be easily affected by events or by the way you ask the poll question.

Then we come to attitudes, which are more stable and more important to the respondent. Attitudes are basically rational; they are often evidence based or formed after deliberation. They can be changed by rational argument and new evidence. These are

generally the things that drive behaviour; these are answers to specific questions, such as “What should I do?”, “What do I want the country to do?”, “How should I vote?”, “Should I go out to protest in the street?” and so on.

Thirdly, you have values. Values are deeper and more stable still. They are often formed early in life, and they rarely change. Essentially, these are the things that are hard-wired into people. Values are not really rationally based; they are certainly not something you can argue somebody out of rationally. These are the things that drive attitudes; in other words, people relate the questions that they are asked and the policy decisions they have to make to the values they hold. They work out how the two go together. Although we call them values as a convenient label, this is quite a wide thing and will certainly include emotional reactions. They are powerful and will not go away. For any part of public opinion that you want to study, you have to understand what part of that continuum people’s views are on.

Let us look at some of the questions that we ask in opinion polls about constitutional matters and the principles that we might put into a constitution. They are all almost certainly values for most people. They are the things that you would expect, and they are pretty strongly supported in general. For example, the public are in favour of the right to a fair trial. They are in favour of freedom from slavery, the right to a private and family life, freedom of speech, the right to liberty, the right not to be tortured, the right to protest, freedom of religion and—a more interesting one—the right to life. There is suddenly quite a big red block who oppose that. The more complex they get, the more we move away from pure values and towards things that people will have to rationalise to come to a decision on. Things that involve complex legal principles or consequences of principles are less likely to be absolute, knee-jerk or hard-wired reactions.

We then move on to what we call process questions. There is pretty big support for local communities having “more say over decisions that affect them”. There are a lot more “don’t knows” for the House of Lords being “replaced with an elected second Chamber”. There is pretty good support for MP recall. Most people like “none of the above” being offered on ballot papers. In terms of English votes for English laws, I should say that the poll was done in July this year, before the Scotland referendum and before this became a big thing. There is a split of opinions, but the majority see something useful in English votes for English laws. This is a selection of proposals from a wider wisdom poll. All of these are about shifting power, and most are about taking power away from politicians.

**David Howarth:** Is this a British survey?

**Roger Mortimore:** These are all British surveys. They are for Great Britain rather than the UK, although that would not be any different.

**David Howarth:** If it was England, you mean?

**Roger Mortimore:** If it was England, it would also be different. Scotland is only about 10% of the public, so it has a small effect on the percentages. With all of those questions, you have to ask yourself: are they opinions, attitudes or values? For most of the public, that sort of question is an opinion. It is something that they do not already have great knowledge about. They have not thought it through or really taken on board the

consequences of a particular decision. As new considerations come in and as they gain new knowledge, their opinions might suddenly change.

One question that we know most of the public are answering based on a complete misconception is whether “More of the money spent by local councils should be raised locally”. Most people think that the majority of money is already raised locally but, of course, it is not. Basically, current preferences about constitutional matters are a pretty bad guide because most of the time, the public have not yet thought it through. When they come to think the issues through, they may end up changing their minds. We can give you a pretty clear example of that. A poll was taken immediately after the last general election in May 2010. It showed the level of support for replacing first past the post with the alternative vote. There was a quite convincing majority in favour of the alternative vote immediately after the general election, and we all know how that turned out.

I suspect that most people in the room will not be terribly happy with the level of debate and the issues on which the debate was carried out; it was a debate in which public opinion swung on the alternative vote. Many people will feel the same about the Scottish referendum. It was a massive constitutional issue, but for many people the issues were not the constitutional ones as such; they were more practical political issues tied to that. What would be the implication for the Scottish economy of having or not having the pound? Would leaving the Union guarantee that there would never be a Conservative Government in Scotland and therefore protect the NHS?

Constitutional issues will not necessarily be decided by the public on constitutional grounds, so let us come back to the point with which I started—the general discontent with the system. That goes up and down a bit, but it has not massively changed. Going right back to the 1970s, we were getting less than 50% support for the statement that the system was working reasonably well. Let us break that down and see who is saying what. I am now showing you last year’s poll, broken down by voting intentions. The red bar is Labour voters; the blue bar is Conservative voters. Labour voters are pretty discontented with the system, whereas three fifths of Tory voters think that the system is working well. If we go back to 1991, we see a very similar picture. I guess you would say that that is in a sense not surprising. The Labour party is a left-wing party, a reforming party. You would expect its voters to be less satisfied with the system and more prepared for change.

In 2008, things were suddenly the other way round. Labour voters were happier; Tory voters were discontented. If I put in all the rest of the bars, you will see that, rather coincidentally, the red box is the period during which a Labour Government were in power and, during that period, Labour voters were less discontented. When there has not been a Labour Government in power, Labour voters have been more discontented. Basically, that discontent is not really about the constitution—the way things work. It is about what the system has produced—whom it has put into Government and what that Government are doing. And that is a very different animal altogether.

The public are not interested in process. The vast majority of them are interested in outcomes. That means that getting the public engaged involves getting them to see a link between the constitutional questions that you are asking them to decide on and the things that really matter to them, so let us consider the things that really matter to them. We do a poll every month for Ipsos MORI about the most important issues facing the country. At



the moment, the public care about immigration, the economy, the NHS and unemployment. Just 2% of them, without being prompted, say anything to do with the constitution, devolution or Scotland. This month, most of that 2% are in Scotland; it is usually 1%. That is simply not the way the public think about the political problems that they are worried about.

There is one further complication—one big attitude underlying all this. When we ask the public, “Who do you trust? How much do you trust institutions?”, we find that the public do not much trust political institutions. If I show you other ones for comparison’s sake, you can see that political institutions come far lower down than most other institutions in the country. That includes, for example, the legal system. It was mentioned in the previous session that in Canada, the public trust the courts more than the Parliament. That might be because they have a sophisticated take on how the constitution works, but I suspect that, as it would be here, they simply distrust the political institutions because they are full of politicians.

I could spend hours on the different things that show how discontented the public are with politicians and the political system, but one particular way that it is often expressed is that politicians are just out of touch. It is an us and them thing. That creates a problem when we start thinking about constitutional reform engagement. If it comes down from the politicians, the instant reaction is suspicion. If it is about shifting power between politicians, it is just moving deckchairs. Every proposal is vulnerable to being put in a new and negative light and swinging the public against it.

Unfortunately, these things will often come out in a negative light. Pick any change, put it into effect and see what happens next. That might involve 20 things being done differently and 19 of those might be neutral or beneficial, so not much will be heard about them. The 20th thing that is different and that the public do not like, they will hear everything about and it will be on the front page of the *Daily Mail*, *The Sun* or whatever newspaper is outraged by it. It is far easier for change to be portrayed negatively than positively, so there is a real challenge there.

In conclusion, if we are going to create lasting public engagement with and support for constitutional change, the test is its effectiveness, not the principles behind it. It is not an alibi to say it was done for the right reason if the outcome is wrong. An example is the passing of decisions on MPs pay to an independent body. That seemed a great idea for the public when it happened, but when that meant MPs’ pay suddenly going up, the fact that the process was right was not a defence anymore. Effectiveness rather than principles is difficult and is the same problem that Governments have with delivery; it is not just about real effectiveness, but perceived effectiveness. The public have got to see it as effective and that is a second challenge beyond making it work.

Constitutional change—yes. Do it and get it right. Do not do it because it is going to create public engagement, but if we get it right, maybe it will create that engagement. However, I still do not know whether or not it will.

**Chair:** Before we come to Nick, has anybody got any brief questions or reflections on what they have heard from Roger?

**David Howarth:** If he had shown the trust table and not said which country it was, people would now be saying, “That is a country on the edge of a military coup.” I have been doing some research on that, talking to senior officials of the British state about their attitude to the rule of law, and you will be glad to know that the group most committed to the rule of law are generals, so do not worry.

**Sir Malcolm Jack:** Graham will support the point about using that phrase “Westminster Government”. Parliament is always very keen to be seen as different from the Government.

**Roger Mortimore:** Yes, certainly. If we had asked Parliament, I think we would have found a slightly lower level of distrust, but only slightly.

**Chair:** That has set us up nicely in terms of some of the challenges there are. I was struck that Roger said quite firmly that top-down does not work and there needs to be a different approach if engagement is to happen.

**Roger Mortimore:** Unless we can find some way of first solving what the public thinks about the political establishment, top-down is dangerous.

**Chair:** I am going to hand over to Nick now. Please feel free to respond to everything you have heard.

### ***Nick Pearce: A written constitution: what’s in it for the public?***

**Nick Pearce:** I will start from where Roger left off. If people who want a written constitution and, more broadly, a new democratic settlement in the UK want to start with public attitudes, what Roger has just told us is that this will be an insufficient grounding for change. In fact, I was rather surprised by the graph we saw in which 63% of people said that they would support a written constitution. That figure seemed very high to me, and I suspect it was because the rest of the question was about constraining what Ministers and civil servants do. If you ask many people in Britain what a written constitution is, you will get very different answers compared with what would happen if you went to the Federal Republic of Germany and asked, “What is your Basic Law? What is your Constitutional Court?” There is a deep attachment to those institutions; in the USA there is obviously a deep attachment to the written constitution.

In the absence of war, revolution or a foundational moment for the state, what are the prospects for movement towards a written constitution in this country? I want to analyse two clutches of issues. One is the underlying forces that might be propelling us towards change—that might at least give an opportunity for change—that we can think about and analyse. Secondly, taking it from the other angle—what issues animate public debate and policy debate, to which a new democratic settlement with a written constitution at its heart might provide some kind of answer?

I suppose the paradigmatic case of doing things from the top, and of processes that fail to the point of farce, is the European Union process under Giscard d’Estaing—the attempt to create a European constitution that had absolutely no purchase on public sentiment in the European Union and as a consequence went almost nowhere. That was in sharp contrast to the foundation of the European Union, actually; if you read Luuk van

Middelhaar's very good book, *The Passage to Europe*, in which he describes the signing of the Treaty of Paris to create the iron and steel community, you discover that the Heads of State who signed that document signed a blank piece of paper. They had not yet agreed the final terms of what they were signing and so, as they were creating something new, they decided simply to give their names to a blank piece of paper that was subsequently filled out. The passage to the European Union is a succession of moves of that kind, none of which can be considered a foundational moment, but that through a process of incremental change have none the less created the Union that we now know. Whether that has been a success, when we look around us at Europe, is of course another matter entirely.

So what are the forces that might animate change?. One issue that seems most important in this context is the current fragmentation of the party system. Particularly because of the Westminster first-past-the-post system, our assumption has been that you can elect a party with a majority that can form a Government and then govern the state. A written constitution is a way of constraining the governmentality of the party in office.

But what happens when you do not have parties that can form viable Governments, even in coalition, or when you have a party system that looks as fragmented as ours currently does—truly the creation of a multi-party system? In those circumstances you need new rules of the game, because the existing parties cannot play the game in the same way. It is not so much a matter of asking how we can constrain the parties as of asking how we can configure our constitution and democratic system such that it is capable of governmentality in a multi-party system with a fragmentation of political parties, compared to how we knew them for the best part of the 20th century.

To give one small example, it might be that we need a written constitution to replace the Cabinet manual—the thing that says, “This is what you do when you are trying to form a Government after an election.” Why is it that the Cabinet Secretary draws that up and the rest of us cannot have any say in the matter? In a situation where we do not have the formation of a stable party Government, we might need something that anchors that process much more in our democracy. That is a small example. Fixed-term Parliaments are another, and so on and so forth. But the fragmentation of the party system is an issue that needs to be brought to the fore. It may be animating change that will need to come to pass in our democratic settlement.

The second issue is the territorial question, which I know you will have discussed a lot today: the future of the United Kingdom, particularly after the events in Scotland. Englishness and England seem to me to be at the core of where that question goes next, not only because of the obvious discontent with the existing settlement, the Barnett formula, and English votes for English laws or English Parliaments. Evidence in the Future of England Survey, which IPPR and the universities of Edinburgh and Cardiff have undertaken over the past few years—it surveys the English people, rather than the people of Britain or the United Kingdom—has shown a rise in political Englishness, or a sense of Englishness that is gaining political expression, in part as a reaction to what has happened in the rest of the United Kingdom and in part as a reaction to Europe, which I will come on to.

As a consequence of the Smith Commission, we will necessarily have to engage in further reform of the institutions that hold the United Kingdom together. . It is not simply

about what has happened in recent years, with the rise of the SNP in Scotland; the decline of Labour and the Conservative party in Scotland is a long-running and long-standing thing. The Conservative vote share in Scotland first started to decline in the 1960s; it halved again in the 1980s. It took longer for the Labour vote share to decline, but the Labour party is in deep crisis in Scotland—make no mistake about that. Some of those trends are also visible in the rest of the United Kingdom. The territorial reconfiguration that is taking place is setting off a chain of events that will provide opportunities at least for thinking about a written constitution and the renewal of our constitutional settlement.

Third, and related to that, is the European question. Certainly for the English who are hostile to Europe and to the United Kingdom as configured, questions about democracy and Europe are highly entwined. At the moment, that is given expression most forcibly by UKIP, but it is also present in the attitudes and sentiments of others across the party spectrum. That is important for the following reason: the UK emerged from the second world war with a sense of unitary sovereignty, of being a united nation in itself, and of not needing to refound itself, and in particular of not having to do what took place in most of continental Europe, which was to entangle executive power in checks and balances, and to prevent the backsliding towards authoritarian or fascist government. We did not experience that here, so we did not create written constitutions and we did not embed ourselves in relations with our European partners to overcome the division of nation states and the war that it produced throughout Europe's history.

When we joined the European Union, we were joining a single market. We were not being asked to do anything different in respect of our sovereignty and the sense of our sovereignty. That explains in large part why the political elite in the United Kingdom finds it very hard to think about Europe in terms of the pooling of sovereignty and the checks and balances that we impose on our ourselves—the compromises we make—by virtue of belonging to something bigger. It means that solving our relationship with Europe might be not only in part about a referendum that needs to take place, but also about how we govern ourselves. The two matters become intimately related, because the question of sovereignty is at the heart of both. .

Those are some of the forces at work that we might think provide an opportunity. In respect of some of the issues that animate public debate, we could say, “Look, we can take those to a constitutional, democratic debate”—bearing in mind what we have just heard from Roger. I have a handful, the first of which is the accountability of power, and that is about corporate power as well as public or state power. It is about the sense of being governed by others and the need for a Madisonian set of checks and balances to insulate political power from private and economic power. It is also that we need a different relationship to those at the centre of state power. Albeit that that is expressed in many different political arguments at the moment, it seems to me that it gives grounds for thinking that if we addressed that question, we could take people to new ways of thinking about democracy.

Second is privacy and surveillance. In the UK, we obviously have not had the same kind of reaction to the Snowden revelations of recent years that people in Germany have—with the history of the GDR and its state security apparatus—but the British people are not entirely indifferent to the question. Key issues are at stake for people in the collection and use of their personal data. Also, for example, when the Metropolitan police are able to track

down journalists' sources simply by using RIPA powers to request it from telecom companies, something deeply wrong is happening in our democracy. Such questions of privacy and surveillance might not have the resonance in our popular and political culture that they do in places such as Germany, but they are none the less important.

Third is press freedom. I found it very interesting that a lot of right wing newspapers and newspapers with a vested interest in opposing Leveson, although not just them, bemoaned the fact that we do not have a constitution that enshrines freedom of expression and press freedom. They got to the notion of a written constitution, particularly the US constitution, through the issue of what would protect a free press—for right or wrong, that was an argument that was made. In this discussion, people will come to these issues from completely different political backgrounds and for different political reasons. If people are saying, "We want constitutional protection of freedom of expression and of a free press," it seems to me to be worth engaging with that, whether or not they have a vested interest. That is an important question that does not seem to be going away.

Finally, the question of identity. If I consider the rise of English identity, the change in Scottish identity and the development of a Scottish civic identity, attitudes to the European Union, and issues of trying to knit people together in conditions of cosmopolitan diversity in places such as London, they seem to me to lead us towards the need not simply to rest upon an assumed collective identity expressed through parliamentary sovereignty or national institutions, but to create conditions whereby identities can mix and people can live together in new circumstances. Again, that points to a new kind of constitutional and democratic settlement.

I want to finish by making a couple of points. If the forces and issues that I have described are at least worth considering and might be at play, what are the processes from here? In 2007, I went to work for Gordon Brown when he became Prime Minister. His first remarks as Prime Minister were about constitutional questions, which people will remember—they got people like those in this room very excited at the time. He talked about a written constitution, as he had done before and as he has done since, but nothing much came of it. Lines in prime ministerial speeches and even in manifestos, or letters and petitions to *The Times* or other august newspapers, are not going to create change.

We need deeper processes of change, which are more likely to come either through crisis or through some process that, by leveraging the opportunities that I have described, might begin to develop some real momentum. That is why some kind of convention process of the kind that Alan Renwick and others have written about a lot—that which took place in Ireland after the crash there, for example, as well as those that have taken place in other countries—might be a reasonable way forward, or of thinking about taking things forward. Such a process would have to be very pluralist and would require people to open up to those of no party as well as of other parties, and it would have to be fallibilistic—conscious that we are not going to proceed smoothly in a predetermined direction, or to be likely to achieve change very quickly. We have to be both optimistic and realistic about the extent to which change can be achieved.

**Chair:** Thank you very much for that, Nick. You really responded to Roger's challenge and set out many different routes through which people might engage in

constitutional issues. Does anyone have any brief reflections on or responses to what they have heard from Nick?

**Anthony Barnett:** I am from openDemocracy, and we collaborated with Michael Wills in the Ministry of Justice when he was in charge of Gordon Brown’s constitutional programme. We ran a large and long-standing debate in openDemocracy with Mr Wills about how to have a deliberative process, and using the web and so on. The fundamental fact was that the Prime Minister did not let go of the process. He talked about it, as you say, but his idea of a convention was to sit down at a table of people and listen to them—what I call “daddy deliberation.”

What happened in Scotland showed that if the regime actually lets go—whether deliberately or, as with Cameron and the Scottish referendum, through complacency—and if there is a decision-making process that takes place outside the parliamentary process but is for real, not a consultation, people are capable of pricking up their ears. They will test that. There is a kind of sceptical, “nothing’s going to change” attitude among the British public, if I may talk about them in the presence of an expert from MORI, but part of that sceptical, pragmatic cynicism, if you like, is that if they have tested the coin and it is for real, the release of energy that could come about is quite considerable.

**Nick Pearce:** I agree, Anthony, although I think it raises the question of how political parties and political leaders engage in processes of the kind you described. I reject the notion that you simply pass things from politics to civil society without any engagement of the political institutions and parties; I think it is incumbent on parties and others to engage, and it is important that they do so.

There must also be ways of bringing things back into political circuits. I do not disagree at all with what you say, but in the Irish constitutional convention, for example, the parties were represented—a certain proportion of seats were reserved for them. We also need different kinds of political leaders from those who just give written statements or stand up and give speeches. We need a different kind of leadership that is much more engaged, pragmatic, decentralised and so on.

I completely accept what you said about not letting go, but I would counsel that, in most models, things do have to come back into parliamentary processes—even if you have had a referendum, you have to legislate for the outcome and to bring things back into institutional policies if you are creating changes—and it is at that point that the resistance gets incredibly strong. Michael Wills did a Ministry of Justice Green Paper on expanding human rights in the UK to social and other rights. I was sitting at the back behind the Cabinet table—as some do as advisers in No. 10—when that paper came to Cabinet, and scorn was absolutely poured on it. Michael walked away wounded. It is difficult to do these things in government. The other issue, then, is what popular depth of attachment is there to the question that will force change back through the political system?

I am agreeing with you, but I want you to think about politics on both sides of the equation—in the public engagement processes and when things come back.

**Chair:** That is an interesting conversation.

**Duncan Hames:** I am Duncan Hames, the Member of Parliament for Chippenham. One of the challenges is how to relate constitutional questions to the changes to our politics and democracy that are sought by members of the public—I hesitate to generalise about them all in one go, and there is nothing sensible about presuming that they will rally around a series of coherent positions, because there are so many different people with different attitudes, as I am sure Roger would explain to us. None the less, questions such as, “Why do politicians not appear to live the way we do?”, “Why do they behave the way they do?” and, “Why is there a difference between what people say before and after elections?” are characteristic of what people often say is broken about our politics, yet they are not immediately and obviously related—although they are related—to the constitutional changes that may be discussed in the crunch moments of a convention or during any other work on this agenda. In seeking to maintain the public’s appetite, interest, sense of ownership and drive in terms of making all these things happen, therefore, there is a real risk that we get lost in that gap. I do not quite know what the answer is, and I would welcome the panel’s advice.

**Chair:** Does anyone want to come in at this point? Alan, with your expertise on the Irish model and other models, do you want to say something about the public’s ability to deliberate on these issues and about the growing appetite for these things over time, which has been evidenced?

**Alan Renwick:** A number of deliberative assemblies have included randomly selected citizens in the process of deliberating on things we tend to imagine are abstruse and not of interest to the average voter. Ireland had its constitutional convention looking at various aspects of the constitution. Several Canadian provinces and the Netherlands also had conventions looking at the electoral system. In all those cases, we have good evidence from people who were there watching, and the academic studies based on surveys of the participants and other forms of evidence that the quality of deliberation is extraordinarily high in these assemblies. People engage effectively.

As was suggested a moment ago, that partly happens when people know that the conversation they are having is part of a real process and is not just some consultation that no one thinks will deliver anything—there is an expectation that it will lead to a referendum or some other form of genuine decision in the end. Partly it requires that the process is designed very carefully to ensure appropriate facilitation and that it is not just several hundred people in a room shouting at each other. You have to be careful to ensure that everyone can take part in that conversation and that everyone’s voice can be heard. There are lots of experts on facilitation who are remarkably good at doing that so that it works effectively.

I have been talking about this quite a lot over the past year, and I often pick up suspicion from many people on whether the public can really engage effectively in a deliberative forum such as this. The evidence we have from the forums is that the public are great when asked to think seriously about these sorts of issues.

**Chair:** Just to add to that evidence and to respond to Duncan and Nick, the Irish model—it is the model that the ERS is advocating—is one with two thirds citizens and one third elected representatives sitting as equals with vested interest hats coming off for the

deliberations. Perhaps that is a different sort of concept from the usual. I will bring in Graham, and then I am keen to hear from Alex.

**Graham Allen:** Just thinking about what Nick has been saying, necessarily the Blair/Brown years stripped out ideology and belief from the Labour party so that it could be elected in a conventional two-party system to win middle England and 100,000 voters. We were not doing it before and we had to do it in a different way, and that was the way that they chose to do it. That accounts for the lack of belief and for not having principles around devolution and Union, which could have driven lots of policy issues.

I argue that we are now in a wholly different situation. That Blairite response, good as it was at the time—I supported it at the time—is as outdated as they saw Jack Jones, Hugh Scanlon and beer and sandwiches with Callaghan and Wilson at No. 10. We need to reinvent some of the ideology, belief and vision. We do not have to do it all on day one, but we need to be able to lead and to sell to people that we actually stand for something. If you do that and are clear about your commitment to the Union and to devolution, you are the biggest antidote to nationalism. The nationalists feed on the fact that you are going to triangulate, focus group and opinion poll yourself out of existence, and they can push the agenda. If you are clear about what you want to achieve—even if you are clear that it will take some time—you will attract people to your political party. In a sense, we have to reinvent that. If we are lucky, we have probably got one election in which to do that.

**Chair:** I will hand over to Alex now. There is a huge amount to respond to. I have every confidence that you will come up with at least five practical ideas.

### ***Alexandra Runswick, Unlocking Magna Carta: responses from the public***

**Alexandra Runswick:** Thank you. One of the issues that I often have to address—it has come up in multiple different ways today—is the idea that the public are not interested in constitutional reform. We have had it in terms of the polling evidence that people do not put it forward as one of the issues that they care about. We get it in terms of people not rating it on doorsteps and not discussing it down the pub. When Katie and I gave evidence to the PCRC about constitutional conventions, we got it in terms of, “Well, you are having this conversation, but no one is sitting at home discussing what powers they want their second-tier authority to have.” That is absolutely correct. I am sure that virtually no one other than someone on a second-tier local authority has ever discussed what powers that body should have, but that does not mean that people are not having those conversations. They are having them in a different way and in a different language to how we have them in this room, but that does not mean that they are not having them. All kinds of debates that are not reflected in Westminster are going on in this country, such as about where power should lie, whether there should be some kind of Yorkshire assembly or something for the north altogether or whether we should have a north-west constitutional convention. There are all kinds of different debates in different communities about where power should lie and what decisions they want to be able to take. It is not necessarily articulated in the same terminology that we use at events such as this, but it is absolutely happening.

My first rule for how we need to engage with the public is that we need to start with where they are and with the conversations that they are having. Issues that people raise on doorsteps are about feeling powerless, about feeling that there is nothing that they can do



and that things are done to them, whether by Europe or by corporations. That is absolutely about constitutional reform, even if it is not being expressed as, “I want a written constitution” or “I want a constitutional convention.”

The other thing that I wanted to flag up is that people need skills in order to be able to participate effectively in a democracy. That is something that we often lose sight of, particularly in rooms such as this where we all have such skills. It is easy to lose sight of the fact that not everybody does. One thing that was really exciting about the Scottish referendum was the process of people getting and learning those skills. The Electoral Reform Society Scotland did some brilliant work in its “Democracy Max” programme, which I am sure Katie will reflect on more.

Equally, when it comes to constitutional conventions, there are good things that we can do in terms of having a learning phase for the public participants, so that they go into it with a sense of their own expertise. We can have joint work between the public and politicians, as Katie suggested and as happened in the Irish model, so that there is recognition of that expertise. That creates a different way of working, which is different from the daddy deliberation that Anthony was talking about involving politicians meeting with the public in a room and saying, “This is how it will work, and, no, you can’t do that.” If this is to work, it has to be done in a different way, using a different style of politics.

The other thing that I would say, which was shown by the Scottish referendum, is that the public get engaged and participate when they feel that there is a decision being taken that matters to them and where they feel that they can have a say. All too often, they feel that they do not actually know how to influence things or how to take part. Roger talked about them not liking processes. I am sure that that is true in terms of how he was framing it for the point, but when people choose to participate, the process really matters. It matters that people see what the process is and, crucially, what the outcomes will be. We all know people who say, “There is no point getting involved in this consultation. They Government already know what they are going to do. It will not make any difference.” We need to spell out the process, its independence and be honest about the outcomes. You often cannot change everything. It would be lovely if we all could, but it does not work like that. We should not raise people’s expectations that their input will do something that it cannot. We should be explicit about what they can do.

My first point was about having a conversation where the public are. The second is about giving people the skills to enable them to participate in democracy. My third point is about being clear about the process and what the outcomes are. How we do that at Unlock Democracy is by clearly differentiating our work between encouraging the public to participate in government and political processes and our campaigning. We obviously have a campaigning agenda. I want a written constitution.

I am also running a survey, taken by more than 2,000 people so far, for the Political and Constitutional Reform Committee about the “new Magna Carta” inquiry. It does not advocate one thing or another; it is about facilitating public participation, taking a report that was quite technical and detailed and picking out key, highlighted issues and allowing the public to air their views. That is not only important in terms of the public having confidence in the process and wanting to participate in it, but a fascinating exercise for us as an organisation. We sometimes learn that the public are absolutely with us on our policy

agenda. In terms of the working that we were doing on lobbying, there was pretty much universal agreement among the thousands of people who participated. We also got around 4,500 people to submit evidence on the draft House of Lords Reform Bill a few years ago. Actually, people agreed with us about the idea of having an elected House of Lords, but on some of the more detailed policy issues they did not agree with some of the things we had come up with. We took a much more compromised route and they were being much more hard line about things like length of terms: they were much clearer that they did not think that you should have long and unrenewable terms, and that that was not democratic. So you can learn interesting things by separating out our campaigning mission, our mass mobilisation campaign, from our participation exercises .

To tell you a little bit about our “Unlock Magna Carta” campaign: we started planning this over a year ago, because we were concerned that the celebration of Magna Carta would fit very neatly into a slightly nostalgic, sentimental, “Weren’t we wonderful in 1215? We came up with these brilliant ideas. Isn’t it all nice and hunky dory?” We want to make sure that there was a debate not just about where people thought power should lie in 1215, but about what they thought should happen today. Also, we wanted to have a conversation that was not just in the Westminster village. So we are hoping to run this project in a way that both educates people about what is in the Magna Carta, but also gets them thinking about what rights and freedoms they want protected today. It might be something completely different to what we would necessarily put forward as an organisation.

Although the project is being run by Unlock Democracy, it is funded by the Heritage Lottery Foundation and it is involving a very wide range of civil society organisations, including the Democracy Matters coalition, which has all kinds of community organisations, including the Workers’ Educational Association—different organisations that can take it into different communities. One thing that we know all too well is that it is really easy to run a so-called public engagement exercise, which involves a meeting in Parliament, with people saying “I can get you a few hundred people. It’s a doddle for me to do.” They are all signed up and they will raise valid issues, but it does not move the conversation beyond the people who are already committed to this as an area and as a policy issue.

One of things that we found at our launch was that a large number of people at the launch event had already written their own Magna Cartas. That’s great. I’m really pleased that people have done that, but I want the conversation to be about more than those people. If we are going to do what we want to do, which is to start a national debate about these issues, then we have to take it outside the people who are already having this debate, into communities that have not started to think about these issues in this way.

So we are doing all kinds of different events. So far we have got things planned in Bristol, Croydon, Manchester, Lincoln, Leicester, Liverpool, Durham, Edinburgh, Newcastle, Nottingham, Sheffield, Oxford, Birmingham, Cambridge and London. If your city or locality is not listed and you would love to organise an event, please do let us know.

The other thing I would just say is that, as part of the education work around—we have a quiz on our website—[unlockdemocracy.org.uk/magnacarta](http://unlockdemocracy.org.uk/magnacarta)—all about the Magna Carta, which is both fun and surprisingly tricky. Apparently, my perfect score doesn’t

count, because I help draft the questions. So obviously I'm upset about that, but I'm challenging everybody else in this room to take it and to do really well.

As Katie said, this morning we were handing in this petition to No. 10 about our campaign for a constitutional convention. It's the start of something. It's the beginning of a journey. It's about building consensus. Because we want to change the way we do politics around these issues, so it's not just a question, as Nick said and as Roger also said, about Westminster handing out powers or handing out a particular proposal, but about engaging the public meaningfully in that conversation. For projects like "Unlock Magna Carta" to work, and for our constitutional campaign to work, we need to take that conversation outside London and outside Westminster, and we need to bring it to as many different organisations and as many different people as possible. I very much hope that people will join us on that journey.

### **Questions and discussion**

**Chair:** Excellent. So any questions, comments or reflections for Alex, first of all? Then we'll have a more general discussion. Okay. In that case, we will open up for general discussion. I am keeping a list of the practical ideas that have come up. Let's have several contributions, and then we will have responses from the panel.

**Stuart White:** The theme of the panel is public involvement, engagement and participation. I suppose that one important issue in thinking about that is how the state treats people when they try to get involved or engaged. I am drawn back to one of the pieces of data that Roger presented at the start, which is the fact that 91% of the British public support the right to protest. That got me thinking about the right to protest and the status that it has currently in the UK. If you take a deliberative view of what democracy is, the right to protest and the right to assembly are absolutely crucial. They are crucial to the ability of the citizen to initiate a conversation with politicians and with fellow citizens about what is being done. I am not confident, when I look at how protesters and people trying to assemble are treated at the moment, that we have a robust right to protest.

If I look at the treatment of Occupy Democracy recently when they tried to assemble close to Parliament, and the treatment of student protesters on many university campuses, I do not see a robust right to protest. It seems to me that if you protest outside some very restricted parameters today, you run the risk of being filmed by the police, and you run the risk of your data being put on a database of so-called domestic extremists. You run the risk of being kettled—I was kettled in July—and you run the risk of being prosecuted under public order laws. So here are some of our fellow citizens who have a very high level of moral engagement with public issues. They are trying to get involved and they are trying to engage their fellow citizens and the elite with the questions that concern them, and the state treats them in what I think is a very disrespectful and intimidatory way. A starting point is: what do we do about the right to protest?

**Adam Ramsay:** Thursday last week was the 800th anniversary of the coronation of Alexander II of Scotland, who, as I am sure you all know, is a very important figure in our constitutional history. A few months later, he led an army south to support the barons against King John and helped secure the Magna Carta the first time round; in fact, he got

all the way to Dover. He also signed the treaty that drew the border between Scotland and England.

Looking forward, it is worth thinking about the trigger points that are going to come over the next year or two to shape this debate, because this is not happening in a vacuum. The reason I mention Alexander II is that there is another Alexander coming south from Scotland in the next few months and preparing to rip up the British constitution. The SNP have been very clear that in order to get support from their perhaps 30 or 40 MPs, a Labour Government will have to devolve even more powers than the Smith commission is proposing, as well as scrapping Trident, ending austerity and so on. If it is a Tory Government, we have got the prospect of a European referendum coming up. I am not going to say much more about that, but it is worth remembering that there will be some quite serious constitutional debates over the next two or three years. These things are not fitting into an abstract vacuum; they are fitting into a very high-energy context.

**Martin Smith:** A big elephant in the room—its head has poked through a bit—is the role of political parties, or really the failure of political parties. There are two fundamental problems. One is that the major parties in the UK are 19th-century organisations that were created inside Parliament; they have always had relatively weak links with civil society, and I think that those links have broken down significantly now. The problem with that is that the mechanism for ordinary people to get into politics is very much defined by parties. If parties are not functioning as transmission valves for ordinary people to stand as councillors or MPs, or as ways for them to express their interests, there is a real block on ordinary people having any say over politics beyond big issues such as constitutional conventions. Actually, what people want is a say over things that affect them every day, and if parties are not giving them that mechanism, how do they do it? In rethinking the constitution we need to think about how people can be represented in politics outside parties. Most people, as I am sure the surveyors can tell us, no longer have any strong attachments to parties, so why are parties still driving politics when people do not feel that parties are very important?

**Chair:** Duncan, do you want to say anything about political parties? This is a fundamental point that now affects all the parties because of the diminishing numbers of members.

**Duncan Hames:** I certainly accept the observation that political parties are failing. If there are other models that we could embrace, I am sure there would be plenty of people queuing up to embrace them and maybe that is part of the work that needs to be done, but there are also myths about access to political parties. In my experience, it is not difficult for someone to join my political party and find themselves standing for the council or even for Parliament—I believe there are still a number of vacancies for next May. *[Laughter.]* I joke, but the bigger barriers are often to getting elected, which is less about how parties work internally and more about questions of money in politics and about the expectations we have of people seeking to become Members of Parliament. When I say “we,” I don’t mean the expectations of the selection committees of political parties as much as some of the expectations of members of the public. Although I agree with the initial premise, I think some of the questions that poses for us about how our democracy works are questions not just for the people running political parties, but for all of us taking part in this discussion.

**Chair:** Definitely. We are to publish a report this week on the future of the political parties, doing a little scene-setting and hopefully offering some practical thoughts and reflections, so it is very relevant. I am conscious of time, so I am just going to take some other contributions before asking the panel to respond to anything to which they would like to respond. Is there anyone who hasn't contributed who wants to contribute?

**Colin Miller:** Part of the answer—this would not replace political parties but would run alongside them—is the way in which we think about how democracy functions. At the moment we have purely elective systems, and there are quite a lot of us who think that running in parallel to and having as much formal status as representative democracy is incorporating systems of participative and deliberative democracy. That is not new: it happens in Brazil, the United States, India and all around the world, and it is perhaps beginning to happen in this country. I have been involved with community development for donkey's years, so I have seen it happening and functioning in this country now. Scotland has developed the first Community Empowerment Bill—no one is talking about that, but it is critically important. I think that would be the way in which we start reinvigorating and reinventing our democracy.

**Professor Ian Cram:** I am interested in knowing the panel's views on the role of social media in encouraging a more deliberative democracy. The younger generation is clearly using that, and some of us in this room are using it, too, but I wonder whether social media gives an easy form of commitment to political movements. People can like something on a Facebook page or retweet without having to do the work and have the commitment to a cause. Formerly, they would have had to go out on a rainy night to knock on doors, and this new level of political commitment among younger people perhaps does not really represent a deeper engagement with political issues.

**Frances Foley:** Something that comes up again and again is the role of political parties. What is reflected in public opinion is often what you find is entrenched in the political system, in the political parties. In this country, the fragmentation of political parties is, I feel, partly down to the way we hold a democratic debate, which is reflective of the party system—quite antagonistic, quite confrontational, and not used to consensus and coalition building. I have lived and worked for quite a while in Germany. I have experience there of trying to do democratic debate with people and organising discussions like this one. I am not necessarily saying that all the problems are solved by a more proportional system, but I would say that the character and nature of the debate that people have, and the tone and the deliberative exercise, feel very different when people are used to a different system.

I would suggest that also rearing its head in the British system now is the breakdown of the political party system. People do not trust politicians because they do not feel there is honesty, and because of the strength of the party Whip and the corralled nature of party politics, which could also be changed by changing the political and voting system. So I would suggest there is a symbiotic relationship between the democratic debate and the nature of that debate and the party system, and that what you see coming up quite often now is the revival or emergence of single-issue parties that reflect the interest that people have in issues rather than party allegiance, which is partly to do with sociological factors such as the breakdown of the class system. They are all interlinked and the democratic debate is the same.

**Alan Renwick:** I have two points. First, I want to respond to the very interesting discussion happening in the seats behind me. It seems there are two models for how the public might be persuaded to engage in politics: the populist model and the deliberative model. The populist model basically says that you follow whatever thoughts happen to be going through the voters' minds at a particular point in time. Alas, many of our politicians have come to the conclusion that that is the only way they can engage with the public these days. Of course, these are mere opinions, to use Roger's terminology. If you follow those opinions, you get all sorts of nonsense—you do not get a focus on a process, as Duncan Hames suggested—and the processed thoughts are likely to be highly incoherent. So if we are going to save ourselves from that, it is vital to try to get public deliberation into our politics.

When we have a deliberative process, people understand how process affects outcomes and you can begin to develop coherent thinking about process. If people see their fellow ordinary citizens, randomly selected, having thoughts about process and saying that process matters, that begins to get others thinking about it. So I think it is vital that we develop public deliberation involving a random selection of citizens as a part of our constitution-making process and also our regular political process.

Secondly, Katie, Alex and Nick all mentioned the Irish model of a constitutional convention. I am probably partly to blame, because I am one of the people who have argued for it, but we should be careful. The Irish model is a really good one in terms of the composition of a constitution-making body and in terms of getting randomly selected citizens and politicians deliberating together. In terms of its process, it was terrible. They had eight constitutional issues that were chosen only because they were the eight issues that the two governing parties could not agree on, and they basically had one weekend on each issue, so there was not remotely enough time for them to engage. *[Interruption.]* They had some ability at the end to choose their own, yes. What you need is a much longer process involving a phase of learning where they hear from all sorts of different voices, then a phase of consultation, going around the country, and a phase of deliberation when they can really think about it very carefully.

**Chair:** Point completely taken. We need to take the best of what has happened elsewhere and craft something unique for the UK. There have been some fascinating themes. Stuart asked how the state behaves in relation to the right of protest. Adam rightly talked about the trigger points out there and possible catalysts for constitutional debate. We also discussed: the role of political parties; how democracy functions and the potential for a more deliberative democracy; the role of social media; proportional representation; and issues around the system before us changing and fragmenting. There was also a really interesting point: a call for more public deliberation. We will start off with Roger. Do not feel that you have to respond to everything, but perhaps make a couple of points.

**Roger Mortimore:** It is certainly important to think about social media. That is creating probably the biggest change in the way that public opinion is formed since the introduction of mass newspapers 150 years ago. We are suddenly in a position where, instead of the public being able to talk only to other people that they know and are in active contact with, they can talk to anyone, anywhere in the world, at any time. Potentially, that has great positive implications for the ability to deliberate: to find out about issues, discuss

them with other people who are interested in them and come to a sensible conclusion. It may work out wonderfully well.

The thing that makes me cautious is what is also happening as part of that process, which is that more and more people seem to be moving away from relying on the professional media and professional journalists, who, even though many have partisan views, at least to some extent rely on expert and accurate knowledge to put their cases, and moving towards the citizen journalist, the amateur journalist and the complete flake who runs a website somewhere in Wisconsin. The quality of input in this debate is by no means guaranteed to be good enough, but it is undoubtedly a massively important development that we really need to be aware of.

The other point is the important point that Alex raised. It really is important to avoid raising the public's expectations beyond what is practical. One of the big things that seems to be driving things at the moment is that the public feel that they want to have more of a say than they are having at the moment. That message is coming through in a lot of the suggested changes and reforms: ways in which we can move towards deliberative decision making or whatever.

I hope that I am wrong, but I think that a lot of what is behind, "I want to have a say," is, "I want to get my way." Those two go together, and having a say and then still not getting the right decision actually disengages people more than the system at the moment.

If you look at, for example, some of the decisions that are being decided by public consultation at the moment—look at the National Health Service consultation in London on the closing of hospitals—the people who have put their cases in those consultations and found that the decision has gone against them are even angrier than they would have been if there had never been a consultation. They are convinced that the process is fixed and that the entire thing is dishonest, so you create a dangerous, counter-productive situation.

We must be realistic about expectations and we must be aware that the public come up with these expectations themselves. They can go into things expecting far more than we can offer them, or even what we are saying that we can offer them.

**Nick Pearce:** To pick up the points on political parties, I have found Peter Mair's writings to be an indispensable guide to this issue: the analysis of the structural reasons for the decline of political parties and their gravitation towards the state both in public office-holding and in professional routes of recruitment, selection and so on. A vice exists between being parties of government that have to govern responsibility and the role of representing the authentic expressions of people's will. Populist parties can just ignore that. They can just say, "We are parties that authentically represent the people." The Five Star movement in Italy refused to enter a Government because it did not want to be responsible for implementing its manifesto; it just said, "We're not having anything to do with government." That does not lead me to think that you should seek to move beyond parties; rather, it leads to an argument for the reform of parties. In the UK, the sustained insurgency has come from people creating or growing parties—UKIP, the Greens and the SNP—not from the non-party civil society movements. Although there is an "after party" in the US created by the Occupy movement, it hasn't gone very far.

I caution against the idea that we are moving to a “beyond party” system. I think that the party system is fragmenting and changing, and that it needs much deeper reform. I completely agree with Martin that it needs to move out into civil society much more deeply. However, an absence of parties would mean that democracies become dominated and constrained more by vested corporate interests than by citizens. That is my response to that.

On the question of social media, the best example in Europe of parties existing in and using social media is the Pirate party in Germany which, for a while, looked like it would become a serious player. As you know, it won big vote shares in different Länder and it created this thing called liquid democracy, but it was annihilated in the subsequent national elections; it went nowhere, and liquid democracy went down the plughole, as it were. That is a cautionary tale about believing that you can do politics without organisation, some kinds of hierarchy, aggregating interests, and forming and sustaining the loyalties that parties represent. I agree completely with Stuart about protests. I think that the Terrorism Act 2000 has been abused and needs reform.

I agree with Adam, except that I think Salmond will come south as Charles Stewart Parnell, not as Alexander II. The confluence of Scotland, the UK and Europe is the issue that we will face next May, and it really needs thinking through.

**Alexandra Runswick:** On the social media point, I think it is fascinating that, on one level, it is far easier to contact our elected representatives than it has ever been—many have Facebook pages and Twitter accounts, as well as the usual surgeries and the more traditional methods—yet people feel a bigger disconnect between them and their elected representatives.

Can social media be helpful? Absolutely. Is it always? No. We have to be realistic about what it can and can't do. I have some MPs as Facebook friends, and their comment threads would not encourage me to participate in any kind of political debate. Trying to get messages into 140 characters will not foster deliberation, but there are other forms of social media that can do that. We need to make sure we use the different forms of social media for the things that they are good at and not try to use every single form of communication in exactly the same way, because that doesn't work. Communities form in different ways in different places.

On the points about political parties, there are two things that I want to touch on briefly. First, part of the problem is that we have lost the ability publicly to deliberate. We do not have a public sphere to explore big ideas. Yes, I want deliberative democracy mechanisms, but I don't just mean in that kind of formalised process. It is about how we debate issues and whether politicians have the space to talk about issues, not just specific announcements.

Secondly, on how political parties operate, one of the challenges is what they ask their members to do. We always quote the figure about there being three members of the RSBP for every member of a political party, but to be a member of the RSPB you hand over money, you get a newsletter that you want to receive, and you have to look out of your window once a year and count the birds. To be a member of a political party, you start more enthusiastically because you care about your community and a particular policy



agenda, and you get leaflet delivery rounds, canvassing in the rain and committee meetings. That is not necessarily an inspiring model of participation. Yes, there are big problems—Nick has already talked about them—about the factoring of political parties, our electoral system and those kind of things, but we also need to think about what the offer from political parties is.

On the fear of protest, yes, absolutely that is a problem. In terms of the points you raised, the fear and likelihood of violence is hyped up before any kind of protest event, so they are seen to be a bad thing, rather than people having a say about their country and what they think should happen. It is going to take a big culture change to challenge attitudes. One of the things we are trying to do in looking at these more deliberative models is find ways that can bring about that culture change.

Lastly, on Alan's point about the Irish model, I completely agree it is not perfect. One reason I like the Irish model is that it did quite well, despite all the things it was given. There was a lot of scepticism, from me included, at the beginning of the process, about the fact that, as you said, it was the issues that political parties could agree on and was a very tightly controlled agenda. Actually, they made something out of it. It has gone further than certainly the political parties expected. That is one of the things that I find optimistic about these processes: they can achieve much more than people think. Because of their legitimacy, they take on a life of their own and go further than people think.

**Chair:** Great. It is 4.25 pm, so we have done well in terms of time. I am going to read out the 10 practical ideas that I have gathered—I do not know how practical they are, but they are certainly ideas that I gathered from this discussion—and then I shall hand back to Graham.

The first was touched on by Nick and is identifying the concrete issues—the openings, the paths, the things that people do care and want to talk about. You talked of privacy and surveillance, and others had other ideas, but it is the way of getting people engaged in where power lies and making sure there is a deeper more meaningful process of change that people feel is worth their while. Alex also touched on stuff being worth your while when it comes to modern ways of parties opening up.

We had the point about avoiding daddy or mummy deliberation, which I suppose is another way at looking at the same thing. It has to be meaningful and treating people as equals. We had Graham's rallying call to bring ideology, belief, passion and vision back into this. That is very much linked to Alex's idea of having a public sphere and a place where big ideas can be discussed, not just the machine announcements and the top-down stuff that, for completely understandable reasons, we have seen with the professionalisation of politics.

There is the point about starting with where people—the public—are at and things that people care about. There was a very practical suggestion around skills building and whether deliberative processes can help people not only meaningfully to participate in something now but, if they are a 25-year-old taking part, is that then a skill they have for life? Would they carry on as a different kind of democratic citizen?

There was a point about spelling out the process and the outcomes with any of this stuff, making it really clear from A to Z what will happen and what will come next. Linked to that was a point about translation—translating White Papers and some of the stuff that comes from our political institutions so that people can have their say when it is put into bite-sized bits. I know Graham’s Committee feels strongly about making huge efforts to reach out and do that kind of translation. Civil society organisations have a role in that.

I think, if I have done that right, that makes nine. Something practical that you could all do is the quiz—it would be a fun thing. This has been a really rich discussion with many themes and points of interest. I hope it has been valuable in thinking about the bigger piece around a written constitution. It has been fascinating. I want to say a warm thank you to Roger, Nick and Alex, and to hand back to Graham.

### **Closing remarks**

*Graham Allen, Chair, Political and Constitutional Reform Committee, took the Chair.*

**Chair:** Thank you, Katie. I will not keep you long but I will add No. 11, which is the possibility of winning a bottle of House of Commons champagne if you write a 200 to 300-word preamble to the written constitution. We have deliberately left this blank in order to reveal a Jefferson or Hamilton lurking in the audience. We went to Cardiff last week and made the same offer. There was a room with about 50 people around a board table. I said, “I want you guys to do this. Are there any great users of prose or poets in the room?” All the hands went up. So they have all got a letter asking them to fill this in. That would be good fun. Life, liberty and the pursuit of happiness; what is our resonant, ringing demand, clarion call for a written constitution?

I am not going to make a long wind-up. I think everyone has had a great day. It has been a tiring day because we have all been on the ball and interacting. We have had some tremendous contributions from the top table and a lot of really good comment and questions from the audience. I hope we have had some good breaks with some good networking going on.

We will carry on. As far as we are concerned the partnership, which is a unique one, with our Select Committee working with King’s, is unprecedented in the history of the House of Commons. The fact that we produced a report and then campaigned on it is unprecedented in the House of Commons, as is the fact that we employ someone who is there just to campaign and get the message out. We have linked to all the great organisations, many represented at the top table and with us today, to do a survey on a written constitution. That and the fact that we have conducted a voter-engagement exercise show that we are committed and determined to do something.

I will end as I started. We thought when we started on this journey that it would leave a legacy and at some point somebody somewhere might pick it up. However, recent politics indicates that that day may come sooner than we thought. What we are going to do to help that happen is continue to keep our deliberations open and continuing through the new year, with the manifesto process, the election process and, now let us add, the possible coalition-making process. We are ready because we have such great friends as we have seen today in the room.

One last thing. This has been hard work today in the nicest sense, but we are going to have a little party in the new year. I hope you will come. No one will need to make any comments or speeches. We are just going to have a sausage on a stick and a glass of wine, and we hope you will all join us. We will let you know about that. Thank you for a great day.

# Formal Minutes

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**Tuesday 3 March 2015**

Members present:

Mr Graham Allen, in the Chair

Mr Christopher Chope  
Tracey Crouch  
Mark Durkan  
Duncan Hames

Fabian Hamilton  
Paul Flynn  
Chris Ruane  
Mr Andrew Turner

Draft Report (*Consultation on A new Magna Carta?*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 64 read and agreed to.

Annex agreed to.

Two Papers were appended to the Report as Appendices 1 and 2.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available in accordance with the provisions of Standing Order No. 134.

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[Adjourned till Monday 9 March at 4.15 pm

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/new-magna-carta-consultation](http://www.parliament.uk/new-magna-carta-consultation). AMC numbers are generated by the evidence processing system and so may not be complete.

- 1 Mills ([AMC0001](#))
- 2 Isaac Ingram ([AMC0003](#))
- 3 Donna Walker ([AMC0004](#))
- 4 Luis Peraza Parga ([AMC0005](#))
- 5 Professor Linda Colley ([AMC0006](#))
- 6 Rosemary Cantwell ([AMC0007](#))
- 7 Joseph John Ward ([AMC0008](#))
- 8 Alec Morand ([AMC0009](#))
- 9 Trevor Pipkin ([AMC0010](#))
- 10 Matthew Cervera ([AMC0011](#))
- 11 Rubyann Park ([AMC0012](#))
- 12 Lorenzo Obligacion ([AMC0013](#))
- 13 Vittorio Banez ([AMC0014](#))
- 14 Ms Marguerite Garling ([AMC0015](#))
- 15 Jeremy Fox ([AMC0016](#))
- 16 David H Smith ([AMC0017](#))
- 17 D Macdonald ([AMC0019](#))
- 18 Ryan Doyle ([AMC0020](#))
- 19 Charles Thomas Ashton ([AMC0021](#))
- 20 British And Northern Irish Constitutional Federation ([AMC0023](#))
- 21 Barbara Fleming ([AMC0024](#))
- 22 Frank Vibert ([AMC0026](#))
- 23 Kenneth Macarthur ([AMC0027](#))
- 24 Frank Palatnick ([AMC0028](#))
- 25 David C.B.Cooke ([AMC0029](#))
- 26 Hannah Hewson ([AMC0030](#))
- 27 Richard Elliott ([AMC0031](#))
- 28 Rich Hannam ([AMC0032](#))
- 29 Malcolm Morrison ([AMC0033](#))
- 30 National Council for Voluntary Organisations ([AMC0034](#))
- 31 Colin Mcculloch ([AMC0035](#))
- 32 Stephen Barber ([AMC0036](#))
- 33 Anthony Chieppa ([AMC0037](#))
- 34 Katie Dubowy ([AMC0038](#))
- 35 Ryan Tobin ([AMC0039](#))
- 36 Jessica Akpan ([AMC0040](#))
- 37 Mr and Mrs A Wasdell ([AMC0041](#))
- 38 Matthew Cervera ([AMC0042](#))
- 39 Nadine Iskandar ([AMC0043](#))

- 40 Leslie Rodriguez ([AMC0044](#))
- 41 James Bosworth ([AMC0045](#))
- 42 Robert Whitfield ([AMC0046](#))
- 43 Ioana-Noemy Toma ([AMC0047](#))
- 44 Dr Paul Cousins ([AMC0048](#))
- 45 NOTA UK ([AMC0049](#))
- 46 Gareth Robson ([AMC0050](#))
- 47 Andii Bowsler ([AMC0051](#))
- 48 The De Borda Institute ([AMC0052](#))
- 49 Richard Ede ([AMC0053](#))
- 50 Alex Daye ([AMC0054](#))
- 51 Mark Harrison ([AMC0055](#))
- 52 David Weaver ([AMC0056](#))
- 53 Gary Ilsley ([AMC0057](#))
- 54 S.J.Mcnamara ([AMC0058](#))
- 55 Honey Malone ([AMC0059](#))
- 56 Peter ([AMC0060](#))
- 57 Jason Holt ([AMC0061](#))
- 58 Joe Hawkins ([AMC0062](#))
- 59 Baz La ([AMC0063](#))
- 60 Clifford Mitchell ([AMC0064](#))
- 61 Robin Walmsley ([AMC0065](#))
- 62 Matthew Simpkin ([AMC0066](#))
- 63 Andy Kelsey ([AMC0067](#))
- 64 Wayne Brock ([AMC0068](#))
- 65 Susan Mezzano ([AMC0069](#))
- 66 Dave Russell ([AMC0070](#))
- 67 David Harper ([AMC0071](#))
- 68 Daniel Thorn ([AMC0072](#))
- 69 Ian Bullimore ([AMC0073](#))
- 70 William Macpherson ([AMC0074](#))
- 71 Jason Holt ([AMC0075](#))
- 72 Rob Gambling ([AMC0076](#))
- 73 Dawn Shaw ([AMC0077](#))
- 74 Mark Ryan ([AMC0079](#))
- 75 Keith Of Albien ([AMC0080](#))
- 76 Linda Lauderdale ([AMC0081](#))
- 77 Lewis Murray ([AMC0083](#))
- 78 Austin Buxton ([AMC0084](#))
- 79 Andrew Brown ([AMC0085](#))
- 80 Zelda Bailey ([AMC0086](#))
- 81 Dr. Andrew Blick ([AMC0087](#))
- 82 The Constitution Society ([AMC0088](#))
- 83 Life ([AMC0089](#))
- 84 The Sixth Form College, Solihull ([AMC0090](#))

- 85 Michael Mccarthy ([AMC0091](#))
- 86 Sophie Jenkins ([AMC0093](#))
- 87 Rt Hon Lord Owen ([AMC0094](#))
- 88 Manchester Metropolitan University ([AMC0095](#))
- 89 School Of Social And Political Sciences ([AMC0096](#))
- 90 Daniel Goodwin ([AMC0097](#))
- 91 Dominic Brown ([AMC0098](#))
- 92 Suffolk County Council ([AMC0100](#))
- 93 The Convention Of Scottish Local Authorities ([AMC0101](#))
- 94 Canterbury Christ Church University ([AMC0102](#))
- 95 Solace ([AMC0103](#))
- 96 Professor Ron Johnston ([AMC0104](#))
- 97 Ed Straw ([AMC0105](#))
- 98 Inlogov ([AMC0106](#))
- 99 John J Blanche ([AMC0107](#))
- 100 Democracy Matters ([AMC0108](#))
- 101 Matthew McCormick ([AMC0109](#))
- 102 Northumbria University ([AMC0110](#))
- 103 Nicholas Allen ([AMC0111](#))
- 104 Jack Steiner ([AMC0112](#))
- 105 Better Government Initiative ([AMC0113](#))
- 106 Elkie Myers ([AMC0114](#))
- 107 Finley Sterry ([AMC0115](#))
- 108 Pupils 2 Parliament ([AMC0116](#))
- 109 Carly Elizabeth Of Clan Douglas ([AMC0117](#))
- 110 Eloise Rix ([AMC0118](#))
- 111 Alexander Newton ([AMC0120](#))
- 112 Richard Harrison ([AMC0121](#))
- 113 Green House ([AMC0122](#))
- 114 Roger Cartwright ([AMC0123](#))
- 115 Christopher Casson ([AMC0124](#))
- 116 Daniel Warburton ([AMC0125](#))
- 117 Susan Hedley ([AMC0126](#))
- 118 University Of Liverpool ([AMC0127](#))
- 119 Patrick Butchard ([AMC0128](#))
- 120 Dr Michael Gordon ([AMC0129](#))
- 121 Kenneth Campbell QC ([AMC0130](#))
- 122 National Secular Society ([AMC0131](#))
- 123 Hasan Turkel ([AMC0132](#))
- 124 Eric Fripp ([AMC0133](#))
- 125 Simon Cramp ([AMC0134](#))
- 126 Vince Pescod ([AMC0135](#))
- 127 Malcolm Ramsay ([AMC0136](#))
- 128 Professor Justin A. I. Champion ([AMC0137](#))
- 129 Republic ([AMC0138](#))

- 130 School Of Law, University Of Greenwich ([AMC0139](#))
- 131 Nicholas Gould ([AMC0140](#))
- 132 Ellie Cleaver-Lyen ([AMC0141](#))
- 133 Rory Broomfield ([AMC0142](#))
- 134 Oxford Pro Bono Publico ([AMC0143](#))
- 135 Lawrence Serewicz ([AMC0145](#))
- 136 Sir Stephen Sedley ([AMC0146](#))
- 137 Malcolm Morrison ([AMC0147](#))
- 138 Olivia Walsham ([AMC0148](#))
- 139 Dominic Watts ([AMC0149](#))
- 140 Sir Stephen Laws KCB, QC (Hon), LLD (Hon) ([AMC0150](#))
- 141 Professor John McEldowney ([AMC0151](#))
- 142 Paul Nugent ([AMC0153](#))
- 143 Unlock Democracy ([AMC0154](#))
- 144 Nigel Siederer ([AMC0155](#))
- 145 Shu Sun ([AMC0156](#))
- 146 Christopher Stockdale ([AMC0157](#))
- 147 Dr. Anwen Elias ([AMC0158](#))
- 148 John Robertson ([AMC0159](#))
- 149 Peter John Ellis ([AMC0160](#))
- 150 Christopher Chantrey ([AMC0161](#))
- 151 The Law Society Of Scotland ([AMC0162](#))
- 152 Anthony Barnett ([AMC0163](#))
- 153 Wayne Stimson ([AMC0164](#))
- 154 The Harrogate Agenda ([AMC0165](#))
- 155 Tyler Joe Harris ([AMC0166](#))
- 156 Maranatha Community ([AMC0167](#))
- 157 Anthony Tuffin ([AMC0168](#))
- 158 James Webb ([AMC0169](#))
- 159 Michael C. Owens ([AMC0170](#))
- 160 University Of Hull ([AMC0171](#))
- 161 Robin Wilson ([AMC0172](#))



# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/PCRC-publications](http://www.parliament.uk/PCRC-publications).

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2010–12

First Report	Parliamentary Voting System and Constituencies Bill	HC 422
Second Report	Fixed-term Parliaments Bill	HC 436 (Cm 7951)
Third Report	Parliamentary Voting System and Constituencies Bill	HC 437 (Cm 7997)
Fourth Report	Lessons from the process of Government formation after the 2010 General Election	HC 528 (HC 866)
Fifth Report	Voting by convicted prisoners: Summary of evidence	HC 776
Sixth Report	Constitutional implications of the Cabinet Manual	HC 734 (Cm 8213)
Seventh Report	Seminar on the House of Lords: Outcomes	HC 961
Eighth Report	Parliament's role in conflict decisions	HC 923 (HC 1477)
Ninth Report	Parliament's role in conflict decisions: Government Response to the Committee's Eighth Report of Session 2010-12	HC 1477 (HC 1673)
Tenth Report	Individual Electoral Registration and Electoral Administration	HC 1463 (Cm 8177)
Eleventh Report	Rules of Royal Succession	HC 1615 (HC 586)
Twelfth Report	Parliament's role in conflict decisions—further Government Response: Government Response to the Committee's Ninth Report of Session 2010-12	HC 1673
Thirteenth Report	Political party finance	HC 1763

## Session 2012–13

First Report	Recall of MPs	HC 373 (HC 646)
Second Report	Introducing a statutory register of lobbyists	HC 153 (HC 593)
Third Report	Prospects for codifying the relationship between central and local government	HC 656(Cm 8623)
Fourth Report	Do we need a constitutional convention for the UK?	HC 371

## Session 2013-14

First Report	Ensuring standards in the quality of legislation	HC 85 (HC 611)
Second Report	The impact and effectiveness of ministerial reshuffles	HC 255 (1258)
Third Report	Revisiting Rebuilding the House: the impact of the Wright reforms	HC 82 (HC 910)
Fourth Report	The role and powers of the Prime Minister: the impact of the Fixed-term Parliaments Act 2011 on	HC 440 (HC 1079)

Government		
Fifth Report	Pre-appointment hearing: The Chair of the House of Lords Appointments Commission	HC 600
Sixth Report	Introducing a statutory register of lobbyists: Government Response to the Committee's Second Report of Session 2012-13	HC 593
Seventh Report	The Government's lobbying Bill	HC 601 (801)
Eighth Report	Parliament's role in conflict decisions: an update	HC 649
Ninth Report	House of Lords reform: what next?	HC 251 (1079)
Tenth Report	The Government's lobbying Bill: follow up	HC 891 (HC 535)
Eleventh Report	Impact of Queen's and Prince's consent on the legislative process	HC 784 (HC 224)
Twelfth Report	Parliament's role in conflict decisions: a way forward	HC 892
Thirteenth Report	Fixed-term Parliaments: the final year of a Parliament	HC 976 (HC 874)
Fourteenth Report	Constitutional role of the judiciary if there was a codified constitution	HC 802
<b>Session 2014-15</b>		
First Report	Role and powers of the Prime Minister	HC 351
Second Report	A new Magna Carta?	HC 463
Third Report	Pre-appointment hearing: Registrar of Consultant Lobbyists	HC 223
Fourth Report	Voter engagement in the UK	HC 232 (HC 1037)
Fifth Report	Revisiting the Cabinet Manual	HC 233
Sixth Report	Voter engagement in the UK: follow up	HC 938
Seventh Report	Consultation on A new Magna Carta?	HC 599