Parliament and the Governance of Modern Nations

Ferdinand Mount

I should start by confessing that I am here under false pretences. I can make no claims to being a qualified constitutional lawyer, let alone to being a professor of public administration. What little I know, I have learnt from scratching around the edges of British politics for a period that is now frighteningly close to thirty years: from outside as a parliamentary columnist and leader-writer; and from more or less inside as a party official, a think-tanker and temporary civil servant. The best I can offer is one eyewitness's account of how the British are governed in the second half of the twentieth century, in the hope of identifying some of the nagging problems and even one or two of the answers and, finally, very tentatively, enquiring what, if any, relevance there may be to your own situation here in Australia.

This is not an easy task to carry out, since so much of our constitutional history has been written by people who wish to smooth things over, who wish to emphasise the continuity of our institutions at the expense of the substantial and often violent change which has taken place. Theorists of our present constitutional arrangements are in cahoots with this. They too are unashamed of resorting to what A.V.Dicey and Sir Ivor Jennings both call 'useful fictions' to disguise the violence of the change.

What Dicey and Jennings fail to describe is the *thinning* of the system. Not only do we see the gradual whittling away of the rights and privileges of outside institutions — whether local, professional or clerical — by the claims of the central government, we also see the simplification and streamlining of the group of central institutions. Parliament, originally seen as an external check on royal power (indeed, it first met outside the boundaries of the royal palace) becomes internalised. 'Parliament-and-the-King', so to speak, becomes 'Parliament-in-the-King' and then, finally, after the struggles of the seventeenth century, 'the King-in-Parliament'. And then, over the succeeding two centuries, the House of Commons itself becomes a monolithic power, as the House of Lords drops down to become an assistant, subordinate chamber.

In recent decades, it is true, certain restive stirrings have been noticed. Lawyers like Lord Scarman have become discontented with the total subordination of the courts to parliament. In his 1974 Hamlyn lectures, *English Law: The New Dimension*, Scarman harks back, somewhat wistfully, to the days when judges were not so compliant, such as the declaration of Chief Justice Coke in *Doctor Bonham's Case* (1610) that 'the common

law will control Acts of Parliament, and sometimes adjudge them to be utterly void'. Scarman records too the verdict of Sir Frederick Pollock that 'the omnipotence of Parliament was not the orthodox theory of English law, if orthodox at all, in Holt's time'.

From the point of view of public debate, these strands in English constitutional history are now almost forgotten. Coke, after all, is now remembered in the orthodox history as a defender of the rights of Parliament against the Crown, not of the rights of the judiciary against Parliament. Scarman, of course, has an ulterior motive for reminding us of them. The gleam in his eye is for a new constitutional system of checks and balances: 'I would hope that a supreme court of the United Kingdom would be established (we already have its embryo in the judicial committees of the House of Lords and the Privy Council) with powers to invalidate legislation that was unconstitutional and to restrain anyone — citizen, government or even Parliament itself — from acting unconstitutionally'.

And even the most complacent glorifiers of the *status quo* have been unable to disguise their disquiet about the growing power of the Prime Minister. As far back as the 1860s, we find Bagehot declaring that 'we have in Britain an elective first magistrate as truly as the Americans have an elective first magistrate'. Morley, in his life of Walpole, twenty years later, asserts that the Prime Minister's power is 'not inferior to that of a dictator, provided that the House of Commons will stand by him'. Laski deduced from the political dramas of 1931 that 'our government had become an executive dictatorship tempered by the fear of parliamentary revolt'. So you will see that Lord Hailsham's view, expressed in his 1978 Dimbleby Lecture, that we were suffering from the perils of 'elective dictatorship' has quite a long ancestry.

My friend Professor Kenneth Minogue of the London School of Economics, who is not unknown to many of you in these parts, believes that on the whole there is nothing much wrong with our present constitutional arrangements and, indeed, that more perils are involved in the present mania for devising fresh arrangements than in leaving the *status quo* alone, adjusting it now and then to meet this or that inconvenience. In particular, he believes that this fear of an elective dictatorship is misplaced; to him the idea is a contradiction in terms: dictators do not get properly elected or, if they do, they then make damn sure they do not get unelected.

I am not sure quite how accurate this is as modern history; surely dictators do sometimes get legitimately elected only to start dictating later on. Be that as it may, we should surely get down to cases, and for us the most recent spectacular case which gave rise to the accusation of elective dictatorship has been the poll tax, or community charge as it was officially known.

As it happened, I did briefly sit in on the Cabinet discussions on the reform of local government finance back in the early 1980s. The option of a poll tax — that is, a flat rate local tax to be paid by every single adult in a locality — was ruled out instantly. Its defects were so obvious as to be scarcely worth debating: if everyone was to pay such a tax, then it would have to be set at too low a level to make a worthwhile contribution to the town hall treasury, and even then there would have to be dozens of concessions and exemptions: for students, the elderly, the unemployed, the sick, the mad, nuns and monks, and so on. There was no example in our history of such a universal flat-rate tax being workable. Worse still, high-spending loony left authorities would be quite happy to set high poll tax rates and watch the government take most of the blame.

Now all these points were made to the Prime Minister, Mrs Thatcher, over and over again, by officials and ministers in small meetings, in Cabinet committee and in Cabinet itself, not least by the then Chancellor, Nigel Lawson — and the opposition of a chancellor to a new tax normally is and ought to be enough to scupper it. But Mrs Thatcher persisted, largely for reasons which dated many years back, when as Ted Heath's spokesman on these matters she had been saddled with a pledge to abolish the domestic rates. Ironically, at the time, as the daughter of an alderman, she was rightly sceptical of the wisdom of abolishing such an ancient and easily collectible tax. But she had to go on record with the pledge, and she was damn well going to fulfil it, whatever the wimps and faint-hearts said.

And she did. The result was catastrophic. The Government's popularity — and her own with it — sank to near zero. Anti-poll-tax riots disrupted the sleepiest of our cities. Local government revenue was ruined for a generation thus necessitating huge increases in both financial contributions and legal control from Whitehall and helping to pump up the Budget deficit to its present alarming height. Mrs Thatcher never recovered and was defenestrated. Without the poll tax, she might well have clung onto the leadership and perhaps even won the general election.

Now the defenders of the *status quo* say: well, there you are, you see, in the end, the system worked: both she and the hated tax were thrown out. Public opinion acted as an external pressure. Just as effective as any finicky separation of powers.

But this seems to me a grotesquely low expectation to have of a constitutional system. Do we really not need to worry about the prime minister's power to ram through a foolish law in defiance of public and parliamentary opinion, simply because that law will be reversed five years later, after, in this case, having undermined the civil peace and destroyed a large part of the tax base — not to mention, disposed of a prime minister who was perhaps the most successful domestic reformer since Sir Robert Peel? Surely we want to do better than that.

Since we are paying for all these elaborate pieces of deliberative apparatus — the Cabinet and the Cabinet Office, two Houses of Parliament and all their flock of select committees — do not we want them to perform part at least of the work of scrutiny, criticism and amendment which has been allotted to them? If we are to restore that thicker texture of political decision which has been thinned out over the past century, we need to look at what parliaments can do and what they cannot, what they used to do effectively and where they have lapsed into relative impotence.

As remonstrators, for example, the modern members of parliament equal if not surpass any of their predecessors; backed by the inflammatory power of the modern media, strengthened by the ammunition provided by the new array of select committees (now covering virtually the whole range of departmental activities), they have a variety of opportunities to ventilate the grievances of their constituents and those of other people and interests; they can put an oral question, hand in a written one, demand an adjournment debate, weave the rehearsal of the grievance in a speech (although there the competition of 600 members of parliament trying to catch the Speaker's eye is keen), they can buttonhole ministers in the lobby, or write to him at the ministry, or suborn one of the minister's quiverful of junior ministers or the parliamentary private secretary.

Meanwhile, back at the ministry, the civil servants know that to deal promptly and effectively with any problem rising out of parliament is the shortest way to the minister's ear; if they keep a minister out of Commons' scrapes, the minister will be all the readier to listen to their advice on policy. Thus what might be called the 'machinery of remonstration' is pretty well greased these days, and this is not to be undervalued. Remonstration was, after all, one of parliament's earliest functions. It is one that continues to give life and spirit to the Commons of today, and it constitutes a useful avenue of justice to supplement the regular courts and tribunals. If Parliament has declined, it is not in this respect.

When we turn to the scrutiny of legislation, the picture is quite different and a good deal more discouraging. The principle that the government of the day has the right to use its majority to get its business through without impediment has made a mockery of all the subtle machinery of the committee and report stages of bills. Only a somewhat shamefaced conspiracy between the front benches and the parliamentary press lobby prevent the scandalous spectacle of committee proceedings being more fully brought home to us: the ministers wearily reading out their briefs, the opposition spokesmen trotting out the same old amendments purely for the purposes of party rhetoric and without any serious hope of improving the bill, the government backbenchers — pressed people present merely to make up the government's majority — reading the newspapers or answering their letters; it requires only a few top hats, brocade waistcoats and cigars to complete a tableau of almost Regency sloth.

Occasionally, the government whips do make a mistake and nominate to a committee on a bill a couple of unreliable backbenchers who, out of boredom, spite or, now and then, a genuine desire to improve the bill, vote with the opposition to pass an unwelcome amendment: however, nine times out of ten, the government will insist on the amendment being reversed at the report stage.

Nor, except on uncontroversial matters, do amendments passed by the House of Lords suffer a happier fate, no matter how exhaustive and expert the debate in the upper house may have been. Once again, the Government will steamroller the bill back into its original shape. Even when acting within the constraints of the 1911 and 1949 Parliament Acts and the 'Salisbury Rules' (the convention by which the upper house restrains itself from wrecking bills which the country has, by implication, approved at a previous general election) the Lords now know that the Commons will automatically overturn its verdict. The War Crimes Bill of 1990 was not a money bill, nor had the question come up at the preceding general election, and yet the Commons was outraged by the Lords' rejection of the bill, and Mrs Thatcher did not hesitate to reintroduce it; nor did Mr Major, when he became Prime Minister, despite the fact that he had originally voted against the bill. No incident could more clearly demonstrate the Commons' view of the unchallengeability of its wisdom.

Oppositions may use the weapon of delay, either for purposes of party advantage or because they genuinely believe the bill is a bad bill. But here, too, the government has become increasingly impatient of opposition. The most ludicrous episode in this particular erosion of tolerance was the decision of the Major Government to impose a 'guillotine' on discussion of the Dangerous Dogs Bills; in fact, they forced the Commons to take all the stages in a single evening, 10 June 1991.

There is clearly an ever-increasing tendency for government to resort to the guillotine. It is sometimes said that there is a vestigial safeguard in the existence of the custom that the government does not guillotine bills of 'a constitutional character'. This custom seems one recently more honoured in the breach than the observance: the Callaghan government attempted, unsuccessfully, to guillotine the Scotland and Wales Bill 1976 (the only occasion since World War Two when a guillotine motion was lost) and, undeterred and unashamed, tried again with the similar bill the following year and had better luck. Other bills of an important rule-making or constitutional character which have been guillotined in recent years include the British Nationality Bill of 1981 and the Local Government Bill of 1985 (which abolished the Greater London Council and the six metropolitan counties) and, most spectacularly, the bill which passed into our law the Single European Act of 1986 as the European Communities (Amendment) Act 1986.

There *have* been occasions on which the Commons has, by luck more than calculation, happened to intervene at a decisive moment. On the Falklands, for example, it was the savaging of the Foreign Office Minister, Mr Nicholas Ridley, by the 'Falkland Islands lobby' on the back benches which deterred the British Government from pursuing the idea of a lease-back solution to the dispute with Argentina over the sovereignty of the islands. Then, later, it was the bellicose indignation with which the Commons received the news of the Argentine invasion which helped to cause the sending of the task force. More significantly, the defection of so many Conservative members of parliament in the vote of 8 May 1940 on the Norwegian fiasco did tip the balance and bring about the resignation of Neville Chamberlain and the accession of Churchill.

But these are rare exceptions in which members of parliament, with the wind of public opinion filling their sails, have had the chance to intervene at a decisive moment. They are not typical of the usual place of parliament in the scheme of British decision making, which is retrospective and compliant. What then do we want parliament to do, what do we want it to be like? There is one school of thought which wants parliament to be, in Crossman's phrase, 'the battering ram of social change'. The executive would be, as Laski put it, merely 'a committee of the legislature'.

Far from these ideas being sinister and foreign in their origin, they had a homely ancestor in Bagehot's view that the Cabinet was in substance only 'a committee of the party majority', which had delegated to it, for greater convenience, the day-to-day exercise of the power that had been entrusted to it by the electorate. The Cripps-Attlee-Laski reading was merely the logical culmination of the denial of the separation of powers. In a unitary state of this kind, the general will must flow unimpeded through both the legislature and the executive, unchecked, unbalanced, unchallenged.

The philosophy behind this approach appears to be a kind of vulgar-Rousseauism. What matters is to ascertain the General Will, and then to implement it with no 'ifs' and 'buts'.

This vulgar-Rousseauism brings us directly to a plain contradiction, though one which constitutional reformers, certainly those of Mr Benn's colour, are somewhat reluctant to confront. The more democratic (in the vulgar-Rousseauist sense) that you make parliament, the more unhesitantly and unqualifiedly its votes and arrangement of business give effect to the will of the people, whether declared by implication at a general election or directly through a referendum, the less, inevitably, parliament can be

'parliamentary', in the first general early-nineteenth-century sense given in the *Oxford English Dictionary*: 'slow', 'deliberate', 'courteous' and 'attentive to the wording of commas and sub-clauses' (to the point of pedantry). The whole endless parliamentary process of refraction, revision and consultation can, in this perspective, be seen only as an elitist impediment. If by 'democracy' you mean the instantaneous, immediate, hot-and-strong breath of public opinion — which is what people often do mean — then parliamentary democracy is a contradiction in terms.

But if the intention is to deliver to the electorate steady, consistent and thoughtful government, which pays careful attention not only to the will of the majority, but also to the aspirations, fears and interests of minorities and to the advice and expertise of thoughtful critics, then the more parliamentary — the more indirect, refracted and laborious — the system becomes, the more likely it is to fulfil its function.

If we opt for this definition — a democracy which is genuinely parliamentary, indirect and representative rather than direct and participatory — then we will approach the reform of parliament with a much clearer and more confident sense of what needs to be done. We will want parliament, among other things, to deploy a kind of second-thoughts capability, to correct and improve on the first impulses of public opinion and the first political responses to those impulses. We will want to give members of parliament powers to amend or resist the more overweening or ill-considered interventions of government, however garlanded with mandates from the previous general election.

What devices, old and new, need to be considered as aids to a truly parliamentary democracy? At a rough count, I can discern half a dozen areas in which we might think about revising or reinforcing the vigour of our democracy. And in each of these areas there are a couple of specific proposals which are worth considering.

In this address, I simply want to list those possibilities, without trying to evaluate them individually. And then I shall end by making two general comments which will lead me, greatly daring, to make a further general comment on a related topic close to many of your hearts.

The first relevant area is the system of election to parliament. Here we might wish to consider some system of proportional representation — I will not go into the pros and cons. As it happens, I am lukewarm about proportional representation and rather more enthusiastic about the other leading contender in this area — fixed term parliaments (with some provision for an early dissolution where a government genuinely has lost its majority).

The second area is the procedures of the House of Commons. Here we might wish to establish conventions restricting the use of the guillotine, strengthening the independence of the select committees from the whips, and giving parliament the pro-active power to consider government proposals before they are set in concrete.

Then we need to consider the second chamber. There are a host of suggestions for making the upper house wholly or partly elected, as in the scheme suggested by Lord Home. The House might return to its regional, non-hereditary origins. It might also be more suitable for proportional representation than the Commons, since we might feel

that the sensitive and exact representation of opinion is more important here than the provision of a stable government majority which is so important for the lower house.

Then — the fourth area — we might want to entrench certain statutes or a certain class of statutes, by promoting that they may be amended only by, say, a two-thirds or a three-quarters majority in both houses. The entrenching statute would itself have to be covered by these provisos. Other forms of effective entrenchment might come through European institutions and declarations such as the European Convention on Human Rights.

The fifth area concerns the role of other legislatures, assemblies and codes of law, both superior and subordinate. I mean the whole corpus of European law, on the one hand; and the stabilisation and perhaps the entrenchment of local government institutions and the establishment of Scottish, Welsh and Northern Irish representative bodies within the United Kingdom.

Finally, there is the potential role for the judiciary as constitutional arbiter and protector against overmighty government.

Now the first thing I want to say about this list is that quite a few items on it are already becoming realities. The judges are increasingly losing their inhibitions in reviewing the actions of ministers; cases of judicial review have quadrupled over the past decade. And even the more adventurous applications are quite often entertained; the Home Secretary was found guilty of contempt the other day — something which had never happened before in recorded memory. The significance about Lord Rees-Mogg's unsuccessful application to the courts to declare the Maastricht Treaty unconstitutional was not so much its merit or demerit as the fact that in the old days nobody would have dreamt of taking such a case to the courts.

Then there is the European Community and the irresistible 'incoming tide' of European law, as Lord Denning called it. Superior law, to which the law made in our own parliaments must bow — as was known from the start and has now been clearly demonstrated in the *Factortame* case of the Spanish fisherman. And allied to the European law, there is the European Convention on Human Rights — not part of English or Scottish law yet but already taken carefully into account by our judges who do their best to reconcile their judgments with the convention wherever possible. So much so that Professor Leslie Zines has remarked that 'outsiders such as Australians see Britain in practical terms as having something in the nature of a Bill of Rights that is interpreted and applied by foreigners'. Sooner or later, I believe that we shall incorporate that convention into our law and so repatriate the judging.

The ever-growing influence of the European Community has even stirred the slumberous House of Commons into recognising that it must reorganise its procedures to take a more pro-active part in European law-making rather than condemn itself to an eternity of whingeing at *faits accomplis*.

Will we also see that long delayed reform of the House of Lords? Or some form of assembly for Scotland? Will the European Community finally twist our arm into adopting proportional representation for European elections (it already happens in

Northern Ireland) and thence for Westminster? None of these things is impossible. One or two of them may well come about over the next twenty years.

Defenders of the continuity fiction may retort: 'So what. The British Constitution is always changing — that is just what we mean by a rolling constitutional change. All you are saying is that the thing is still evolving'.

But this misses my point. For a century or more, the constitutional texture has been thinning. Each fresh development was a simplification and a concentration of power. Now each fresh development seems to be recomplicating the system and restoring to it something of that pluralism and distinct separation of powers which so attracted eighteenth century observers such as Voltaire and Montesquieu. It is my impression, too, that a similar desire for effective pluralisation is gaining ground throughout most of Europe, West as well as East.

Without intending a deliberate and systematic program of constitutional reform, we have increasingly felt that lack of the old checks and balances, and we have, almost unconsciously, to reinvent them. It may be that we shall recover some of the old virtues of our constitution almost by accident, rather as we were once said to have conquered and peopled half the world 'in a fit of absence of mind'.

My second general comment is directed more personally at the audience here today. You too may feel like saying, 'So what. Most of these proposals which you are now so timidly debating have been part of the Australian Constitution ever since we can remember. We have an elected second house, and we use proportional representation, both at federal and state level. Our Constitution is bulging with entrenched powers. Being a federation, we are familiar with the constitutional division and separation of powers. To us, this is all elementary stuff. Our constitutional concerns — and we do have some — are of a more advanced and subtle nature'.

Exactly so. I think your constitutional arrangements have not 'run thin'. You are stoutly entrenched and hedged about with protections against arbitrary government. We have only our political traditions and culture to rely on.

And this leads me to my final, rather cheeky point. Constitutional debate usually descends into technical detail, but, in the case of the debate about Australia becoming a republic, the technical difficulties do seem to me, looking at the question from a huge distance and shrouded in fairly dense ignorance, well, they do not seem insuperable. In framing a republic, you might wish to bolt on further safeguards: an entrenched Bill of Rights, a special constitutional court, and so on. You would have the difficulty of evolving conventions or statutes which would ensure that the Governor-General observed the proper restraints of a constitutional monarch. The minimalist position needs some fleshing out.

But the real question is and remains: which do you prefer? Do you find a greater source of pride in your traditions and your extraordinary origins, tragic and heroic at the same time as they were. Or in independence and breaking free of the stiff and dusty old links? Or is becoming a republic not so much a breaking away as a natural stage in the evolutionary process, just as self-government could be viewed as the natural progression from Governor Phillip's declaration that 'there can be no slavery in a free land, and

consequently, no slaves'? Or does uninhibited nationalism carry its own dangers, of overpoliticising the system and hence of corrupting it. Well, all that is obviously none of my business. All an outsider can say is that if you want to make the change you are pretty well placed to do so. We, on the contrary have quite a bit of work to do.

Questioner — I noted your comment about lukewarm support for proportional representation. Those of us in the Australian Capital Territory who experimented with the d'Hondt system can understand your reservation. While you are here, will you be taking the opportunity to have a look at this system of proportional representation as it operates in Tasmania, and as it will shortly operate in the Australian Capital Territory?

Mr Mount — You have struck an area of unrelieved ignorance here. I do not know anything about the systems you are referring to. My lukewarmness does not mean that I go so far as to think that any system of proportional representation may work as well as first-past-the-post in certain political conditions and certain countries and will not work in others. There is a general toing-and-froing of discontented countries. Italy is moving back towards first-past-the-post but there is a growing movement for proportional representation in one form or another in this country. I obviously ought to have a look at the systems you mentioned to see whether they provide encouragement or an awful warning.

Questioner — My question is directed at the British scene. I noticed that there was no mention in your speech about the situation of the republican movement in Britain. Would you care to make a comment?

Mr Mount — The republican movement in Britain had a brief, vigorous and excited flowering last year and then like some sort of desert flower which blooms once every one hundred years went completely quiet again. In my view, it was never nearly as serious as it had been, for example, in the middle of the nineteenth century when republicanism was extremely vigorous for a number of years until Queen Victoria somehow recaptured popularity. It has revivals and witherings.

In the wake of the scandals, tapes and the rest of it, I notice that there is an effort to forget. Indeed, some of the hyenas have now turned back into watchdogs of the monarchy and the vultures are singing like larks in favour of the virtues of the system. As far as we are concerned, for good or ill the question has gone very quiet again and I think it would take some fresh excitement to revive it. It is very different from here, obviously.

Questioner — My question follows in the converse of the previous question. It has long seemed to me that constitutional progress is finding ways of controlling those who rule us. What prospects do you see for improvement along those lines either in Britain or, if you care to venture your arm, here in this country?

Mr Mount — Not terrific. We have had a certain amount of experience with bright ideas which we thought would keep our rulers under our control — or under our control to a greater extent — which have then turned out to be fairly easily evaded. If we want to be optimistic, one or two things are moving in the right direction. For example, openness

in government, while lagging some way behind what you have here, has definitely begun to increase.

It is not simply that more documents are published at an earlier stage; the reform of the Official Secrets Act, removing the penal sanctions for the disclosure of large categories of public documents, has opened debate. The general atmosphere is a little more open. But that is not saying much when you compare it with the almost excessive secrecy of British government, which prevented serious discussion on, and an exchange of, the issues of the day.

Again, the select committees have not fulfilled all of the hopes placed in them. Indeed, the people who thought that they would really carve a swathe through ministerial discretion were obviously relying, rather naively, on the American system, which is within a quite different structure and lends itself to acquiring more power and independence for select committees.

But there are one or two signs. The best, the most optimistic, sign is a general feeling that the whole political process is up for question. When I was younger, that certainly was not the feeling. There was a rather sluggish acceptance of the secrecy, the lack of open discussion and of proper policy planning. We may conceivably be improving a bit, but I would not want to speak too highly on that.

Questioner — Although you have made out a strong case for comprehensive constitutional reform, you have not said anything much about strategies for bringing that reform about. It does seem to me that many nations are now wrestling with issues of major constitutional reform. A few months ago, three major nations had referendums on the same weekend — there were constitutional reform proposals in Russia, Italy and Brazil. I am not necessarily advocating the referendum as a way of doing this, but it does seem to me that we are not thinking hard enough, systematically enough and comparatively enough about the ways in which we might learn from each other in the tasks of implementing major constitutional reforms.

Mr Mount — I quite agree with you. One of the strengths of the status quo is the very large ignorance — among us, at any rate — of how other countries do things; that is, the tips about systems that we could pick up and import into our own. This is so even among people who are interested in these subjects. I have to stress that only a minority of people have this strange enthusiasm for politics and are interested in this subject to any great degree. Even here I think there is a lack of information and research.

But I am not sure that strategies are exactly what we need. We will get improvements only in piecemeal and often unintended ways. For example, judicial review, the questioning by judges of the way governments and ministers exercise their powers, is taking off. Although a couple of acts did make it easier, it is only recently that judges have said to themselves — and people who might apply it to the courts have said — 'Yes, we could challenge this'. Judges have said, 'When I look at it, they have not exercised their powers reasonably'.

So there is a growing consciousness of the potential there. The same could apply even within the House of Commons. As I say, it has begun to agitate the procedure committee very slightly. There is a feeling that 'Perhaps we should get things the other way around

and look at all this European stuff before, and not after, it is set in concrete, and reorganise our timetable'. Often it is something as simple as reorganising a timetable.

Again, with the European Convention on Human Rights, nobody asked the judges to suddenly start taking it into account when making judgments. After all, we signed it donkey's years ago — in about 1950 or 1955 — but we did not pay any attention to it. It has been there all of the time. If we make advances, they will be piecemeal — bit by bit. This is where I differ very strongly with the grand schemes for constitutional reform put forward by some of our policy institutes which do not seem to me to have a hope in hell and always have in them one silly proposal which opponents can seize on and say, 'This is a lot of daffy idiocy'. One has to proceed bit by bit.

Questioner — You mentioned a number of checks on the power of executive government and the legislature. One of the most obvious checks in the system would enable the people directly to either institute legislation or remove existing legislation. Systems which do this exist in most American states and a number of European countries. But in this country they have been treated rather warily and regarded as associated with the fringes of politics, although others have seen them as a way of dealing with the fringe issues — getting them out of the way — and getting on with the main ones. Have systems such as this been considered for implementation in Britain at all? Do you see any scope for this kind of thing in systems such as yours or our own?

Mr Mount — The answer to your question of whether they have been considered is pretty universally no. The answer to your other question of whether there is, or could be, a role for them, I think, is yes. You could almost start this voluntarily. If, say, a local authority took a fancy to doing things this way, it could perfectly well, at every local election, offer a sort of second sheet to the ballot paper in which 'proposition 33' to do this or that could be added. You could have a vote on it, and the council would then feel itself bound to carry it out. It would be interesting to have an experiment of that sort, but I do not think anyone has got around to thinking about that much.

Questioner — I would like to come back to the question of proportional representation (PR). It seems to me that the choice is not so much between a first-past-the-post system or a PR system as such, but whether or not you have a multi-member system. Taking the Australian experience, even though a proportional representation system is in operation for the lower house, because it is a single member constituency it works in a practical way in that only one of the major parties' candidates ever gets elected, with insignificant exceptions; whereas in the Senate, which does effectively constitute a multi-member constituency, a number of minority candidates are always successful.

Following on from that, if one were to have a PR system in the lower house with multi-member constituencies, that would give rise, presumably, to a considerable increase in the number of minority candidates. Obviously, that would lead to a quite different form of government. So it seems to me that the choice is either to carry on in much the same way as far as the lower house is concerned — that is, you have Tweedledum and Tweedledee; two major parties which alternate between terms of office — or to go to what may be represented by, say, the Dutch system or the Italian system with governments of a combination of interests, coalitions, or what have you. Of course, the

downside is that there is much less stability of government. Could you offer any comments on those two alternative systems?

Mr Mount — Yes. Oddly enough, we did have in England between about 1867 and 1885 a sort of multi-member system which had been pleaded for, at the time of the passing of the great reform bill and the first one in 1832, by the poet Winthrop Mackworth Praed. It retained its attractions and was finally instituted in 1867. That produced more minority members, but then politicians — I cannot remember who — abolished it for low political reasons for party advantage. It seemed to work perfectly well.

In Britain, of course, its effect would probably not be quite the same. I do not know about Australia, but the effect would be unquestionably to return many more Nationalist members in Wales and Scotland and a few more Liberals in England, but I doubt whether it would lead to the sort of wholesale change in the variety of representation. In a way, I think that makes it quite attractive because it would answer the grievances of those smaller parties which say that they do not get a fair chance because their support is spread too thinly. But I do not think it would lead to the drawbacks of the Italian system and the fragmentation into dozens of parties. It is worth thinking about, but if I had to choose I would stick with first-past-the-post for the lower house and perhaps have a multi-member upper house.