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## Political Structure and Constitutional Reform in the United Kingdom\*

*Sir Alastair Goodlad*

I am delighted to be here today and honoured to be asked to present a lecture in the Senate Series.

It is a great privilege to be invited to address you in these hallowed surroundings on political structure and constitutional reform. Mr Twemlow, in Dickens' *Our Mutual Friend*, said that the House of Commons was the best club in Europe. My former colleague, Jeremy Thorpe, remarked in passing that it was the only club in London that paid him to be a member. In any event we are undoubtedly assembled in one of the best clubs in the Southern hemisphere.

A parliamentary career, according to Lord Macaulay was one:

... in which the most its combatants can expect is that by relinquishing liberal studies and social comfort, by passing nights without sleep and summers without one glimpse of the beauties of nature, they may attain that laborious, that invidious, that closely watched slavery which is mocked with the name of power.

He was describing the golden age of Parliament.

In *The English Constitution* in 1867 Bagehot wrote, 'In such constitutions as England's there are two parts—first those parts which excite and preserve the reverence of the population ... the dignified parts ... and next the efficient parts ... those by which it, in fact, works and rules.'

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Which category the Whip's Office comes into is not for me to say, but a combination of the two is desirable in any package of reform.

My presentation today focuses on political and constitutional change in the United Kingdom since May 1997. The Government's aim then was to modernise Britain, and change the structure of British politics with a significant and wide-ranging program of constitutional reform. Devolution was the major part of the program. But it also included the creation of a city-wide authority for London; exploration of regional government in England; reform of local government; modernisation of the House of Commons; reform of the House of Lords; commitment to a Freedom of Information Act; the modernisation of the machinery of government; and the incorporation into UK law of the European Convention on Human Rights.

I cannot hope to cover all these issues in great depth in this lecture. So I will concentrate on exploring the thinking behind such widespread change; and on what has been achieved so far.

### **Why reform?**

A challenge for any government is how to engage people, and explain policies in terms to which they can relate. The phrase 'constitutional reform' sounds boring for most, except the experts. Yet its importance is huge and democratic change is a popular concept in Britain today. Talk of 'bringing power to the people', 'opening up Westminster and Whitehall' and 'giving voters more say' strikes a chord.

### **But why the need for democratic change?**

Democracy is about liberty and self-government, in which Britain has a lengthy record. Britain has enjoyed parliamentary government for a long time, drawing on civil liberties dating back to the Magna Carta. Until the early part of this century, the British Constitution proved highly adaptable. Although the outward appearance of the Crown, the Lords and Commons remained unchanged, the system of government was fundamentally altered. In the Seventeenth and Eighteenth Centuries, power passed from the Crown to Parliament as Britain became a constitutional monarchy. In the Nineteenth and early Twentieth Centuries, Parliament itself became more democratic. The House of Lords became subordinate to the House of Commons; and the Commons—an oligarchic assembly until the early Victorian era, extended the vote first to freeholder men, then to all men, and finally to women. But every landmark change—from the 1689 Bill of Rights guaranteeing the role of Parliament, to the Great Reform Act of 1832 beginning the process of voting reform, and the 1911 Parliament Act curbing the powers of the House of Lords—followed a political crisis. By 1928, when women gained the vote on the same terms as men, the Constitution had adapted sufficiently for democratic evolution to thrive in Britain.

But over more recent decades, many have argued that the political system has not adapted quickly enough to modern life. Power passed from the Crown to a Cabinet, which was accountable to the House of Commons. But, with the first-past-the-post voting system in the United Kingdom, this left the House of Commons largely under the control of the government of the day, so far as it could command the support of the majority of MPs, and gave it an opportunity to change and implement law as it

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saw fit, subject to parliamentary assent. Of course the rule of law is firmly established in the UK, but the judiciary must give effect to the ‘will of Parliament’. And so, it was argued, what Quintin Hailsham called the ‘elective dictatorship’ had the effect of strengthening an already centralised government, leading to fewer checks and balances on the government, or for that matter, extending popular participation beyond the occasional voluntary act of voting.

So, when the present government came to power, they believed they saw an over-centralised and bureaucratic government in need of modernisation; a House of Commons in need of modernisation; and a House of Lords dominated by hereditary peers with no democratic legitimacy. They also believed there was a lack of clarity about individual rights and that people had difficulty gaining access to information. So their aim was to develop a more participative democracy with more responsive, localised centres of power, where individuals enjoyed greater rights and where government was carried out closer to the people.

Faced with such a widespread reform agenda, the government took a pragmatic approach and embarked on change step-by-step in the British evolutionary tradition. In the first session of Parliament, they have concentrated on devolution and human rights, while taking some preparatory steps on reform of the House of Lords and on Freedom of Information.

### **So how far have they got?**

Devolution—the devolving of centralised power from Westminster to Scotland, Wales and Northern Ireland—was the centrepiece of the Government’s constitutional reform agenda and, some would say, is the most radical constitutional change to be implemented in the UK since the Great Reform Act of 1832.

For me, it is particularly interesting to be in Australia for the Centenary celebrations this year. One hundred years ago your forefathers embarked on radical constitutional reform that saw the six British colonies with their own bicameral parliaments transformed into a nation with six separate states and subsequently two territories. During the course of the century, Australia has become not only an independent nation, but a strong, vibrant, mature, stable and effective democracy.

The British Government’s reform goal was not to create a federation of states like Australia, but to devolve powers to Scotland, Wales and Northern Ireland—already mature polities of their own—in a varying fashion, to match the history and contemporary circumstances of each.

Constitutional reform, in the UK as elsewhere, needs public consent, and during 1997 and 1998, referendums were held in Scotland, Wales and Northern Ireland on how they should be governed.

In Scotland and Wales, people were simply asked whether systems of devolved government should be established in their respective countries. Both referendums decided in favour of devolution. Unlike Australia, in the UK voting is not compulsory. But in Scotland, over 70 percent of those voting—and there was a 60 percent turnout—voted in favour of a Scottish Parliament. In Wales, the result was

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closer: 50.3 percent—of a 50 percent turnout—voted in favour of a National Assembly.

In Northern Ireland, voters were asked to approve the Belfast Agreement, now known as the ‘Good Friday Agreement’, which contains provisions for devolved government, a Northern Ireland Assembly and a Northern Ireland Executive Committee of Ministers. In the 1998 referendum, over 71 percent—of an 81 percent turnout—voted in favour.

### **Scotland, Wales and Northern Ireland**

Even before devolution, Scotland had considerable administrative autonomy. The Act of Union in 1707 guaranteed the independence of its legal, education and church systems. But political responsibility remained in Westminster, with the Secretary of State for Scotland, who was a UK cabinet minister, although there was a period when the office did not exist between the 1745 Jacobite rebellion and 1886.

After the 1997 referendum, the Westminster Parliament passed the Scotland Act 1998 which provided for the establishment of a Scottish Parliament and a Scottish executive.

The Act left the British Government with overall responsibility for non-devolved issues, such as the Constitution, foreign affairs (including relations with the European Union), for defence and national security, economic and monetary policy, and immigration and nationality questions. The Edinburgh Parliament—rather like Australia’s state governments—now has full responsibility for a broad and important range of public services, including health, education, local government, agriculture and the environment.

A new voting system was introduced for elections to the Scottish Parliament. The single member constituency simple majority/first-past-the-post system applies together with a regional vote for a political party or candidate standing as an individual. The Parliament has 129 members: 73 represent constituencies and 56 have been elected from eight regions. A Labour-Liberal Democrat Coalition hold power at present.

Historically, Wales has never had the same autonomy as Scotland within the UK governmental framework. Again, political responsibility resided with the Secretary of State for Wales—a British cabinet minister. The Government of Wales Act 1998 provided for the establishment of a National Assembly for Wales, to be sited in Cardiff.

The Assembly inherited nearly all the Secretary of State’s functions: including responsibility for the Welsh language, arts and heritage, industry, education, economic development, agriculture and fisheries. And, as in Scotland, the British government keeps responsibility for non-devolved issues. Reflecting the fact that the Assembly inherited the former Secretary of State’s powers, it can only make secondary, not primary, legislation.

Acts of Parliament for Wales must still be passed by the Westminster Parliament.

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I will not go deeply into the political situation in Northern Ireland, which I know is followed closely in Australia. But, after the Belfast Agreement was approved in May 1998 in a referendum, elections to a new Northern Ireland Assembly took place in June 1998. The voting mechanism used was the Single Transferable Vote, reflecting practice in local government elections in Northern Ireland, as well as in elections for previous Northern Ireland Assemblies. The Assembly and Executive can exercise full legislative and executive authority over issues that fall within the responsibility of the Northern Ireland government Departments in Belfast. This gives the Assembly devolved power over a number of areas such as agriculture, environment, education and training, employment, enterprise and investment, health, culture and the arts.

But the Northern Ireland Secretary retains responsibility for other issues, particularly in Northern Ireland for policing, security policy, criminal justice and international relations, though there is provision for law and order matters to be devolved in due course.

Devolved powers were formally transferred from the UK Government to the devolved administrations in Scotland and Wales on 1 July 1999 and to the Northern Ireland Assembly and Executive on 2 December 1999.

All these arrangements are bedding down. We are in a period of adjustment. The peace process for Northern Ireland is difficult. But the government remains completely committed to securing the peace it seeks—whatever the difficulties—as is the community.

### **Reform of the UK Parliament**

For the whole of the UK, Parliament itself is being reformed.

In the House of Commons—the elected chamber, which forms the government and provides the majority of its ministers—procedures are being reformed, with some sittings and voting at more convenient hours, though a commitment to the importance of scrutiny and debate has made the search for solutions as difficult as always. G.M.Young wrote in *Portrait of an Age* in 1936: ‘The procedural history of Parliament is a struggle between an old principle (freedom of debate) and a new one, to make a program and get it through.’

As a recent member of the Select Committee on Modernising the House I can confirm that there are no easy answers. Each generation has to strike its own balance between the rights of backbenchers and the convenience of the government. Changes to the voting system for the Commons are being studied. An attempt has been made to look for a workable alternative to the ‘first-past-the-post’ voting system which some criticise as favouring the larger parties at the expense of the smaller, and producing a result which does not necessarily reflect a constituency’s general will, if such a thing exists. First-past-the-post does however, generally produce a government with a working majority and a mandate, both important elements for effective governance. Work on modernisation continues. But any proposed change of course would have to pass through the House of Commons and the House of Lords.

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In relation to modernising the House of Commons, I should also mention that we now have a parallel chamber, Westminster Hall, whose main business is backbench adjournment debates and debates on Select Committee reports. It is in fact directly modelled on the Australian ‘Main Committee’.

In the House of Lords, the first stage in its long-term reform went through in 2000, with hereditary peers losing their automatic right to sit and vote in the chamber. Ninety-two of them, elected by their peers, retain a seat in the transitional House. Further reform is still under debate and consideration. The Royal Commission appointed to consider the future of the House of Lords envisages the role, powers and functions of the Second Chamber building ‘to a considerable extent’ on those of the existing House of Lords. The 550 members whom they thought should remain, should act as one of the main ‘checks and balances’ in the political system, should be able to ‘cause the House of Commons to think again’ about its decisions, and should provide a voice for the nations and regions of the United Kingdom. Further Lords reform is unfinished business for the next Parliament.

### **Mayor of London**

Turning from regional devolution, the government have also created an important institution in London, with a poll in May 2000 for the first ever elected Mayor of London and an Assembly of 25 members. The new Mayor, Ken Livingstone, and members of the Assembly, who are drawn from all political parties, none with an overall majority, took office in July 2000. They have substantial responsibilities, including budgetary powers. They will control the London Development Agency and the renamed Transport for London, which operates the city’s buses and the Underground. They will make appointments to the Metropolitan Police and the Fire and Emergency Planning Authority. The Greater London Authority will have a budget that amounts to about A\$10 billion (£3,600 million). Given that London is one of the world’s greatest business capitals, with an economy bigger than Holland and Belgium—or Australia, New Zealand and Indonesia—put together, this ‘local government authority’ for more than seven million people will be an important institution.

### **Modernisation of the machinery of government**

I should also tell you about change in the machinery of government.

Modernising government is central to the government’s program of renewal and reform. But what does it mean? Essentially it is a long-term program to improve the whole of the public sector, by putting people first and ensuring public services are available to all. It’s a commitment:

- to ensure that policy is more coordinated and strategic;
- to emphasise the role of public service users, rather than providers, thereby matching services more closely to people’s lives; and
- to deliver public services that are of high quality and efficiency.

There are many motors for change: the need for continuous renewal; greater demand from people for the results they expect; a recognition that we need to embrace ever greater social diversity; new opportunities that the new technologies bring; increased

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globalisation; and a realisation that by showing the public sector that it is valued—and giving it the resources to do the job well—there can be better public services for all.

The government's determination to modernise applies to all parts of the public sector—the National Health Service, schools, prisons, the armed forces, local authorities, agencies and central government departments.

In the government's spending review last July, public services were given a financial boost to deliver these reforms, as well as tough new targets to meet in the highest priority areas, published openly in the new Public Service Agreements. Service Delivery Agreements are also now in place setting out how departments will meet their obligations. But good government need not be big government. Rather, it is central government working in partnership with town halls, unions and the private and voluntary sectors to deliver the best possible services.

I mentioned just a moment ago that one of the key motors for change is the opportunities opened up by advances in information technology. A key plank in the government's modernisation agenda is the adoption of a holistic 'e-government' approach. This is intended to create an environment for the transformation of government activities by the application of e-business methods throughout the public sector. Essentially, this strategy challenges all public sector organisations to innovate, and it challenges the centre of government to provide the common infrastructure which is needed to achieve these goals. The Prime Minister announced on 30 March 2000 that the target date for which all government services to the citizen and business should be available on-line had been brought forward to 2005 from 2008.

A lot has been achieved, but work is continuing. There is still much to do.

### **European Union**

Let me say something about Britain and the European Union.

The government came to power on a 'pro-Europe; pro-reform' platform, committed to making a success of our European Union membership, and to playing a leading role in Europe—not least in the reform of the European Union's institutions and policies.

Despite what you read in some newspapers, Britain's membership of the European Union enjoys cross-party support in the UK parliament. Our membership of the European Union is good for Britain, good for business, good for the environment and good for the people and the country. Over 50 percent of our external trade in goods and services is with our European Union neighbours in the single market. Over three million British jobs, and one seventh of all UK income and production, are linked to trade with other European Union member states. One hundred thousand Britons work in other European Union countries; another 350 000 live there. The European Union forms the largest single market in the world and accounts for 38 percent of world trade; by its membership of the EU, the UK is well placed to play a leading role in the European Union's policy-making on trade and external relations.

Having said that, Britain also values her bilateral relationships and trade with the rest of the world. Australia is very prominent in that spectrum of value. Britain and

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Australia share a unique political and cultural heritage. So it is not surprising that the network of ties linking our parliaments, institutions, businesses and families is extraordinarily strong. But we must ensure together that that partnership continues to evolve, reflecting our modern multi-cultural and multi-racial societies. The UK and Australia look to the future with similar visions; both countries are close to the heart of their own regions while retaining a broad global outlook.

So, while remaining at the heart of Europe and being fully involved there, the debate continues in Britain on how much power to devolve to European institutions. The current focus of this ongoing debate is European Monetary Union.

The government's policy on membership of the single currency remains as set out by the Chancellor of the Exchequer in October 1997. The determining factor underpinning any government decision is whether the economic case for the UK joining is clear and unambiguous. The Chancellor has clearly set out the Five economic tests, which must be met before any decision to join can be taken. These tests will be assessed early in the next Parliament.

Because of the magnitude of the decision, the government believes that, whenever a decision to enter is taken by government, it should be put to a referendum of the British people.

### **The European Convention on Human Rights**

Finally a word about the European Convention on Human Rights. Unlike Australia, Britain has no written Constitution in the sense that it is written in one document. The laws of the land serve as our Constitution together with the procedures of both Houses of Parliament and constitutional convention. An early decision of the present government was to incorporate the European Convention on Human Rights into UK law. The European Convention on Human Rights has been an obligation upon the United Kingdom in international law for half a century. The Convention was produced in 1950 in the Council of Europe and was conceived so as to ensure that the atrocities which had so disfigured Europe during the Second World War could not be repeated, by making the observance of civilised standards a matter of international obligation. The Convention and its standards are now being adopted by more countries, including some which were satellites, or even part, of the former Soviet Union. But until last year the United Kingdom courts had very limited power to take account of the Convention.

So, the government set about producing a Human Rights Act which came fully into force on 2 October 2000, which incorporates the European Convention on Human Rights into our own domestic law. The Act does not confer new rights; many were already prefigured by English common law. Hardly surprising, given the involvement of British common lawyers in the drafting of the Convention. But the Act now allows cases raising Convention issues to be dealt with in the United Kingdom courts. It also allows the courts to declare British statutes incompatible with the Convention, although the responsibility and power to change such statutes remains with Parliament and not the courts. How widespread the impact of incorporating the Convention will be on our national life remains to be seen.



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In 'Reflections on the Revolution in France' Burke wrote in 1790: 'A state without the means of some change is without the means of its conservation.' The UK has demonstrated its capacity to adapt, but where does all this change leave us?

It is a well known phenomenon of British life that the people who really know how to run the country are too busy driving taxis or cutting hair to do anything about it.

Writing in the *National Review* in July 1856 Bagehot said:

The most influential of constitutional statesmen is the one who most felicitously expresses the creed of the moment, who administers it, who embodies it in laws and institutions, who gives it the highest life it is capable of, who induces the average man to think 'I could not have done it any better if I had had time myself.'

Has that test been passed—the barber/taxi test?

Tony Benn wrote in *The Guardian* in 1988: 'I did not enter the Labour Party forty-seven years ago to have our manifestos written by Dr Mori, Dr Gallup and Mr Harris.' Yet politicians of all parties now pay close attention to public opinion—polls, focus groups, referendums. Bagehot also wrote in the *National Review* in 1856, 'public opinion is a permeating influence and it exacts obedience to itself; it requires us to think other men's thoughts, to speak other men's words, to follow other men's habits.'

Having spent much of the last thirty years on other people's doorsteps I know just what he means.

It is too early to assess the full effects of the constitutional changes which I have described, far less their eventual impact on popular opinion.

Bagehot wrote in 1876 that: 'the characteristics of great nations like the Romans or the English, which have a long history of continuous creation, is that they may at last fail from not comprehending the great institutions which they have created.'

I trust we shall not fall into that danger.

I believe with Thomas Carlyle that 'people will not look forward to posterity who never look backward to their ancestors', and that 'society is indeed a contract ... it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.'

The present generation of constitutional reformers carry a heavy burden of responsibility, but there is a commitment to popular consent. Arthur Balfour wrote in 1928 that 'our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker.' I can give you two assurances: one—the bickering will continue; two—the process of change will continue.

Or should I say with Prime Minister Melbourne—'I wish I could be as cocksure of anything as Tom Macauley is of everything.'



**Question** — Could you comment on the contradiction between the concentration in Europe and devolution? These two are happening at much the same time, but apparently are going in opposite directions.

**Sir Alastair** — I don't think there is necessarily a contradiction. We pressed very heavily for the introduction into the Maastricht Treaty of the principle of subsidiarity—that principle being that power should be exercised at the lowest, most regionally appropriate level. And we have sought to achieve that both within the European Union and, as I described earlier, domestically. I think that there is a long-standing and valid distinction between *de facto* sovereignty and *de jure* sovereignty. We seek to share sovereignty, as we did when we joined NATO, where we pooled sovereignty over making war with our allies. We seek to pool sovereignty with our European partners, where in areas such as trade and environment and other matters, it is most effectively exercised on a regional level. And also by devolving power to regions within the United Kingdom, where it is more appropriately exercised at a regional level. So I don't see it in any sense as a contradiction, I see it as a seamless process of evolution.

**Question** — Have the reforms impinged on the small parliamentary assemblies such as the Isle of Man and the Channel Islands? And with the greater responsibility of the London Metropolitan, how does that impinge on the City of London?

**Sir Alastair** — The smaller assemblies have not had any jurisdiction removed from them, nor in fact has the City of London, which is the local authority for the Square Mile. So at the moment, they continue as they were before.

**Question** — The reforms that you mention are very much of an institutional nature. Do you see in the UK, as there is in Australia, a sense of disengagement from the political process by the general population? And are there reforms happening in terms of processes within political parties, bureaucracies and policy making organisations that seek to possibly provide greater 'bottom up' input, rather than what is commonly seen as a 'top down' approach?

**Sir Alastair** — We don't have compulsory voting, as everybody knows. We get turnouts of about 75–80 percent at general elections, and much lower at local government elections—although local government in the United Kingdom does exercise very widespread powers over people's lives. I find that regrettable, because people have fought and died for the right to vote and for our liberties. I don't think it has changed an enormous amount during the 30 years or so that I've been involved in it. I always had, as a Member of Parliament, a very healthy post bag—hundreds of letters a week—raising every issue across the political spectrum. I did not receive much, interestingly, on constitutional matters, but everything under the sun was raised.

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There are a burgeoning number of think tanks producing papers and suggestions on everything. The Conservative Party had (and still has) an institution called the Conservative Political Centre, which produced papers on policy which are then discussed throughout the Party through the grass roots, sending back suggestions. So I think there is a commitment to participation, and I don't think that political debate has withered on the vine. I think that there is a necessity for every generation to try and include as many people as possible in political debate so that governments don't go off on tracks that prove subsequently to be unpopular, and out of tune with what is possible—which occasionally they do. They have to take unpopular decisions of course, but I think that there is a responsibility to keep new generations included in the process. I like to believe that is happening in the United Kingdom—I think it is certainly happening here.

**Question** — Are Members of Parliament in the United Kingdom from Scotland and Wales able to vote on issues such as agriculture and environment, which have been devolved to the parliaments in their own homelands? Are they allowed to vote on those issues as they affect England? If so, does that cause a problem with public opinion? And are there any moves for England to have a government of its own?

**Sir Alastair** — The position is that devolved matters cannot be voted on at Westminster if they are devolved to the Scottish Parliament. So Scottish members of the Westminster Parliament cannot vote on those. They can, on the other hand, vote on questions involving England. That is called the West Lothian question, because Tam Dalziel, who was the Member for West Lothian, made it a great issue last time devolution was discussed—that it was odd that Scottish members should be allowed to vote on matters involving England, but English members should not be allowed to vote on matters affecting Scotland. The government and the Parliament took the view that the best way to deal with the West Lothian question was to ignore it. So it's been ignored.

The question of regional assemblies for England remains in the air—there aren't any, and whether or not there will be I know not. The question that you have put has not yet been answered.

**Question** — You mentioned the concentration of power that is held by the government of the day in the UK Parliament. How do the reforms of the House of Lords affect their ability to influence and provide some checks on the government?

**Sir Alastair** — The reforms of the House of Lords that have hitherto taken place affect only the composition of the House of Lords, namely the removal of the majority of the hereditary peers. It has not affected the powers of the House of Lords. Whether subsequent legislation will affect those powers is for a future Parliament, but at the moment they remain unchanged.

In the previous House of Lords, the so-called 'Salisbury Convention' applied, whereby the hereditary peers, or the House of Lords itself, did not use what was a *de facto* conservative, in-built majority to block legislation which had been included in the manifesto of an incoming government. Now whether that convention—which is no more than a convention—still applies, is an open question. Many would say it does

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not apply. The powers of the House of Lords are extremely strong—unlike the Senate here, they cannot block money bills, but they can block anything else. If the Salisbury Convention no longer applies, there is potentially quite a difficulty for an unelected chamber. And that will have to be addressed by the next Parliament.

**Question** — Is there a trend developing in early debate towards an acceptance in the British style of governance to have laws written down, such as you mentioned in the human rights suggestion of joining the European Union?

**Sir Alastair** — I don't think there is any change in parliamentary thinking towards the common law, or indeed statute law (which of course is written down, and which draws on the common law). Nor do I think that there is much likelihood of moving towards writing our constitution down in one place. But written laws? Yes, of course we will continue with that.

**Question** — Do you think that the constitutional changes, particularly in Scotland and Wales, will counter secessionist nationalism there, or would we be looking to see the end of the British state at some time soon?

**Sir Alastair** — I don't think there is much of a secessionist movement in Wales. In Scotland the Scottish National Party is a secessionist movement. Speaking as a Scot, I have absolutely no time for secession at all—but putting that aside, I think the answer to your question is 'no'. Public opinion polls show that support for secession now in Scotland is lower than it was before devolution. So far, the intention of devolution—to give people in Scotland the feeling that they had a greater say in their own affairs—has been achieved. If I had to give a snap answer as to whether the United Kingdom would break up by way of secession I would say 'not at all'.

**Question** — It seems that constitutional reform has only just begun and it has to move off into one direction or another. I guess it is hard to say just which direction, at the moment. In particular I refer to what you referred to as the conflict between a government which is able to get things done, and people being able to have their say in checks and balances. In talking about reform for voting for the House of Commons, is there any thought of moving away from a majoritarian principle? You have, after all, moved away from a strict majoritarian principle in Scotland, where a version of proportional representation has been introduced.

**Sir Alastair** — There is such a thought. In fact the present government asked Lord Jenkins to undertake public consultation and to produce a report on potential alternatives to the 'first-past-the-post' voting system. His report sets out the various choices and puts forward an additional member system based on a regional party vote to make the composition of the House of Commons more reflective of party preference, rather than 'first-past-the-post'. I think it is fair to say that that report is now on the back burner, and whether or not it will be resurrected in the new Parliament I cannot say.

In the many hundreds of letters which I received while I was in Parliament for a quarter of a century, I think I had only one correspondent who raised the question of changing the voting system. In my perception it is not a great gut issue. People on the

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whole feel that the person who gets the most votes should probably be the winner and they are rather suspicious of smoke filled rooms of party activists putting up lists of people. That may change, and it may reappear on the radar screen, but at the moment it is very much on the back burner.

**Question** — You mentioned the grand democratic tradition of England with the Petition of Right, the Bill of Right, Magna Carta, etcetera. I was wondering what your thoughts were on the Act of Settlement, because I heard somewhere that Tony Blair was trying to change that. As far as I am aware, the Dutchman William of Orange actually ascended to the English throne when he wasn't English at all, although he was married to an English princess. It seems unusual that there is no religious qualification for public office or for voting, yet there is for the monarchy. Does that come into any thinking in England at all, or is that not really considered?

**Sir Alastair** — It has been on the political agenda, and in fact a bill was introduced in the House of Lords—not the sort of bill that was going to get anywhere—to remove the requirement that the monarch is a Protestant. But it has not been on any government agenda, and whether it will be in the future I do not know.

**Question** — During your address you referred to the possibility of the House of Lords having a similar function in terms of representing regions in England much as the Senate does in Australia. Do you believe that the House of Lords would then be required to be an elected house, and do you think it should be so required?

**Sir Alastair** — My view is that it should not be an elected house, because that would challenge the supremacy of the House of Commons and would upset a widely accepted and reasonably well-working arrangement. What the Royal Commission envisaged was a percentage of the House of Lords being elected on a regional basis, so that not all the members were living in London, for example, but came from Northern Ireland, Scotland, Wales and other parts of the United Kingdom. The current debate relates to the proportion of the House of Lords that should be elected on that basis, if at all. But I think that the likelihood is that some of them will be. My guess is that it will be a minority of the House of the Lords who are so elected, and it will be a pretty small minority. But that will be for the political parties and for the next Parliament to decide.

**Question** — Is it possible at this stage to say anything about the political reaction to the greater role of the courts in human rights issues? I raise the question because, in this country, there's been a great deal of sensitivity to external scrutiny of government on human rights issues. When United Nations bodies have found Australia to be in breach of human rights obligations, the reaction of government has been to denigrate the body rather than to address the substance of the issue. At the domestic level there seems to be a strong view that a bill of rights would involve an unacceptable transfer of power from Parliament to an elected judiciary. Can you say anything about the political reaction in the United Kingdom?

**Sir Alastair** — The act has only been in effect for a few months so we haven't had to face up to any crunches. It's too early to say. The legislation did set out that, if a British statute was found to be in conflict with the European Convention on Human

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Rights, the courts had a right—and indeed a duty—to say so, but it was then up to Parliament to change the law if it saw fit. And the courts do not have the power to set aside British legislation on the grounds that they think it is in conflict with the European Convention on Human Rights. So that is an issue that will have to be faced in the future, if at all.

**Question** — You bear witness to the importance of public opinion and consultation in policy making, but you also admit to the philosophical difficulty of determining the general will or indeed implementing it. Across Westminster systems worldwide we see a diverse variety of techniques to consult on public policy—so diverse as to suggest that sometimes they might be strategies rather than actually objective methods. Do you think that there is an adequate discipline in the mechanisms of consulting with the public, or is there a risk that, by the diversity of techniques—dependent on what policy is being discussed—it might be seen as just a continuation of elitist politics?

**Sir Alastair** — There has been quite a long tradition of consultation. Every time (or nearly every time, but not always) legislation has been proposed in the last few decades there has been a Green Paper, setting out the ideas and alternatives and the government's preference. And then there has been a period of consultation amongst interested parties, carried out usually in writing, prior to the production of a White Paper—which puts the government's intentions in a rather more concrete form—prior to legislation.

In 1979 we set up select committees for each department, which have the powers to take evidence from people and scrutinise the legislative and administrative activities of departments. So I think that we do a very great deal to consult and are seeking to modernise the techniques.

But it is a 360 degree spectrum of activity, and occasionally governments get things wrong. When I was in government I think the only time we had a bill rejected at Second Reading was on Sunday trading, when there had been a lot of consultation over many years. The White Paper had been approved by the House of Commons, and then the liberalisation of Sunday trading was knocked back.

But by and large I think our system is very sensitive to what people think—but as anybody who's involved in the political process knows, there are as many opinions as there are men. And at the end of the day, someone has to make a decision. And you're not going to be able to please all the people all the time. But I think that the government mechanism is pretty good, and the Whip's office is an extremely sensitive instrument for anticipating how Parliament is going to react to things across the board. We live in an increasingly complicated age and we have to refine techniques to ensure that people's views, feelings and instincts are taken into account. But at the end of the day someone has to take the decision—that's what democracy is all about.