

Hansard Society Lecture, 9 March 2010

Jack Straw MP

Thank you Peter,

And thank you to the Hansard Society for inviting me to deliver this lecture on parliamentary reform. It coincides with a moment of significant change in the House of Commons following acceptance of key recommendations from the Wright Committee report on parliamentary reform, which the Prime Minister set up in the wake of the expenses scandal. These have the potential to shift power away from party managers and towards backbenchers, and in so doing will strengthen the legislature against the executive.

The Hansard Society has long campaigned for these changes and their enactment is, in part, a tribute to your endeavours and those of your fellow reformers. Parliamentary reform can be seen as dry and difficult to understand, and as such tends not to gain much media attention. But it's vitally important, and you deserve credit for keeping the issue alive.

Parliament matters. It is the legislative body which provides and sustains the Government of the day; and at the same time it is charged with

holding that Government to account between elections. It sits at the apex of the democratic system and still is, in the crunch, the cockpit of the nation.

The view that Parliament is irrelevant or powerless is, as I intend to show tonight, complete nonsense. But the institution is far from perfect. Changes in recent decades have, contrary to the prevailing orthodoxy, strengthened the legislature against the executive. But the balance remains tilted in the Government's favour.

That is not axiomatically a bad thing. A strong executive that is able to steer its business effectively through Parliament is one of the essential and positive characteristics of the British political process. It means that things get done. Contrast that with the US system, where an American President with a clear mandate is being blocked from giving 40 million citizens healthcare by the Congress. Given the strength of opposition which Nye Bevan encountered in 1947, the NHS would almost certainly never have been approved had we had the US system..

But I am not so blind as to believe our system is perfect, or that the parliamentary reforms of the past 13 years have all been for the better. The reforms enacted in this period have, on balance, been beneficial. But

we have not, I think you will all agree, reached parliamentary nirvana. The task now is to use the current momentum for parliamentary and constitutional reform to build on these reforms so as to strengthen the role of Parliament and close the gulf which has opened between it and the British public.

Myths

However, before I look back at the parliamentary reforms since 1997, and ahead to the changes we might see in the future, let me begin by exposing a few myths.

It is common hear that Parliament has never been more supine, more emasculated than during the period of this Labour Government.

The Conservative MP, Douglas Carswell, for example, recently wrote that “As Parliament has lost the ability to hold those with executive power to account, executive power has grown unchecked”.

And the *Daily Telegraph's* Deputy Editor, Benedict Brogan, reported on last year's election of John Bercow by saying that “the next Speaker must

contribute to the building of public confidence, as well as reversing Parliament's supine uselessness in the face of an overweening executive.”

These are serious charges, because they imply that Parliament is failing to discharge one of its two core functions – to scrutinise the executive and hold it to account. Furthermore, this is said to be a recent failure.

Both charges are wide of the mark.

First of all, take off the rose-tinted spectacles. Parliament's supposed weakness and unpopularity is an enduring theme.

At his trial in 1895, when Oscar Wilde was asked whether the house of ill repute he had frequented in Little College Street was in one of London's more sordid, disreputable areas, he replied that it stood near the Houses of Parliament. The Court Report dryly observed that his retort was met with laughter.

Jump forward to 1931, and a debate in the Commons on the merits of the Alternative Vote, and you find the leading Liberal, Sir Herbert Samuel MP, commenting that in his 40 years' connection with Parliament, he had

never known a time when it had not been said that “the House of Commons is not what it once was”. [Commons Hansard 2nd June 1931].

And half a century later, in 1976, Lord Hailsham suggested that we lived in an “elective dictatorship”.

There has never been a golden age of Parliament. The institution has always been criticised for being supine.

Yet as someone who was working as a special adviser when Lord Hailsham gave that famous speech, I would argue that the charge held more weight back in those days.

In the mid-seventies the Government really did boss the Commons and was shielded from all kinds of scrutiny. There were no proper select committees; parliamentary proceedings were covered in the newspapers but not broadcast on TV; neither Parliament nor Government were subject to Freedom of Information legislation; the power of the whips was such that Governments suffered rebellions less frequently; and the House of Lords was a docile body predominantly comprised of unelected mainly Conservative hereditary peers. If a minister got fed up with repeated written questions they could – and did – block further questions

as well as answers by misuse of the claim that an answer would involve a “disproportionate cost” – and the Table Office of the Commons enforced the block.

Parliamentary Reform since 1997

Since 1997, a number of reforms have transformed that situation, building on the critical development of 1979/80, which was the creation of a system of select committees.

Perhaps the most significant of the post-97 changes has been the removal of the vast majority of hereditary peers from the House of Lords in 1999, which has transformed the way that chamber operates. No party can any longer call upon a majority. The size of the Lords is smaller, but it is more independent and active. It is also, as Meg Russell of the Constitution Unit has shown, far more likely than ever before to defeat the Government in votes.

But alongside reform of the Lords there have also been significant improvements to the House of Commons which have similarly put a stronger check on the executive. These include:

- The introduction of Westminster Hall as a secondary chamber for MPs to scrutinise government and hold debates;
- strengthening of the role of select committees including the creation of a Scrutiny Unit to provide expert support;
- the Prime Minister's bi-annual appearance before the Liaison Committee;
- the establishment of the principle that parliamentary votes must precede military action;
- the introduction of topical parliamentary questions and reduced notice for tabling of oral Parliamentary Questions;
- a great increase in the day-to-day supervision of the government through written parliamentary questions, reinforced by the powers to MPs and citizens alike in the Freedom of Information Act;
- the Human Rights Act, with its own Joint Committee of both Houses;
- pre and post legislative scrutiny and draft bills; and
- new public bill committees that enable expert witnesses to give evidence on bills immediately before and as part of their line by line scrutiny. I refer to it again in a moment.

So, scrutiny of government today is far more substantial than it was in the past.

The need for further reform - Programming

But although there has been a shift in the balance between executive and legislature in favour of the latter, the Government is still dominant. As I have said, the fact of a strong executive is not necessarily a bad thing. But it needs to be matched by a strong Parliament. And there are elements of executive power and control that do need attention.

One area to which critics can point with some justification has been the negative effects of the stricter timetabling of bills – known as programming.

It should be said that the system which existed prior to programming was hardly fantastic. It led to macho and unproductive filibustering which with contentious Bills would eventually result in much less scrutiny of equivalent legislation than happens today. A “guillotine” was provoked after 80 hours in Standing Committee; so with that target, consideration of a Bill’s clauses rarely got out of single figures.

But I accept that under the old system there was generally more time at Report Stages and for committees on the floor of the House. And I also accept that the Opposition as a whole, and individual backbenchers from both sides, had more power to disrupt Government business in the days before programming. That was an important weapon in its armoury.

So I hope that reform of programming is something that can be progressed, and I know that the Hansard Society has published useful proposals in this regard.

Before I leave the issue of procedural reform I would like to expand on one of the changes that I was able to deliver as Commons Leader – the replacement of Standing Committees by Public Bill Committees, which allow for a legislative committee to cross examine ministers and take evidence from independent experts.

It is still early days but, as a report by the Constitution Unit found, the initial signs are promising. I suggest that the Hansard Society and others with an interest in this area keep an eye on this aspect of the legislative process, because as Professor Cowley has said, if we get the Public Bill Committees right they have ‘the potential to do more to improve the

quality of the parliamentary scrutiny of bills than any other Commons reform in the last twenty years’.

Connecting Parliament with the public

Beyond procedural change, it is striking how much the culture of the Palace of Westminster has changed over the past decade: in the numbers of visitors it welcomes, the facilities provided for them and in the information both Houses provide on their work. And the Commons and Lords Chambers are no longer considered sacred territory. The UK Youth Parliament has now sat in both.

Much of the credit for this transformation should go to the House authorities and in particular to the House Librarian, John Pullinger, who has pursued this outreach agenda with a passion.

The expenses scandal

It is all the more unfortunate, therefore, that the expenses scandal has struck at this moment. It has acted like a political tsunami, washing through Parliament and sweeping many people before it.

For me, the damage of the expenses scandal is not so much that it shattered any more positive perceptions about Parliament and politicians – rather, it is that it confirmed what many people thought they already knew: that MPs are a bunch of scoundrels who are in it for themselves.

It isn't actually true in the vast majority of cases, but it's very hard for an MP to make that case at the moment.

Thankfully, there are independent voices speaking up on our behalf, as the Chair of the Hansard Society did a couple of weeks ago in his *Parliamentary Affairs* lecture entitled: “In Defence of Politicians – In Spite of Themselves”.

But it is going to be a long haul to win back the trust we have lost, let alone that we never had. What, then, can Parliament, politicians and political parties do to turn this around?

There are no magic bullets. The problem of political disengagement predates the expenses scandal and has deep, complex roots bound up with social and economic changes over many years. It is a phenomenon experienced in many comparable societies. But there are, I believe, some parliamentary and constitutional reforms that might help, and I want to

focus on three interlinked areas: Commons reform, Lords reform and wider reform of the political system that would have an impact on Parliament.

On the Commons, the most immediate issue is to respond to the expenses scandal. Action is already underway in this regard through the creation of a new Independent Parliamentary Standards Authority, which will end the discredited system of self regulation and become the independent arbiter of MPs expenses, pay and pensions.

More broadly, the Wright Committee reforms will help to deliver a deeper cultural change in the workings of the Commons by empowering backbenchers. Its key proposals, now passed, include:

- select committee chairmen to be elected by the House at the start of every Parliament;
- members of select committees to be chosen by their parties in a secret ballot;
- the creation of a Backbench Business Committee in time for the next Parliament to timetable non-government business; and

- the establishment, during the next Parliament, of a House Business Committee comprising the backbench business committee and representatives of Government and Opposition.

On the House of Lords, the time has come to complete the process of reform that we began in 1999. Little more than a decade ago one House of Parliament was numerically dominated by members who sat there solely by birthright – to whom merit or election as the route to the legislature were entirely alien. We stopped that, but now we need to take the next and final steps.

The Constitutional Reform and Governance Bill already contains provisions to end the system of by-elections which still allows new hereditary peers to enter the House by virtue of their hereditary title; to ensure there is a robust disciplinary regime in the Lords; and will enable members of the House to be expelled, suspended or disqualified. And it will, for the first time, allow peers to resign from the House and disclaim their peerage.

Beyond that, we will soon publish proposals for a fully reformed Second Chamber. I have worked long and hard on reform of the Lords. I know just how many battered and ruined plans to reform it are strewn along the

way. This is reform whose time has come. But it is a once in a generation change so we need to get it right. And that means making it a top priority in a new Parliament. The good news is that there is a clear cross party consensus for the destination – a smaller wholly or mainly elected second chamber – and the method – phasing the change in over three Parliaments.

AV and Boundary Reform

On the question of wider constitutional reform I want to end by looking at some rival policy proposals that the main parties have put forward, which would have a significant bearing on Parliament if they were enacted.

One concerns the electoral system, where the Labour Government is currently legislating to allow the British people a referendum on whether to switch from First-Past-The-Post to the Alternative Vote for elections to the House of Commons.

I am a big supporter of FPTP but I believe there are two reasons why the time has come to move to AV.

The first is the fact of multi-party politics. The two-party system of the 1950s is gone for good and the electoral system needs to react to that. The second is crisis of trust in politics following the expenses scandal. We need an electoral system that secures legitimacy for the public. I have in principle long supported the Alternative Vote, by which voters rank candidates in order of preference, and now believe we need to actively move to it.

Crucially the Alternative Vote would enable us to retain the single Member constituency link, which is one of the central merits of the current system – both because it delivers effective representation and allows MPs to be held directly to account. But AV would maximise the chances that every MP is elected with the support of over half of the voters in their constituency. In an age of multi-party politics, it could both enhance the legitimacy of MPs, and therefore Parliament, and enable the public to express a greater range of preferences.

But as with any constitutional change of this magnitude, it could only be made with the endorsement of the electorate. This is in keeping with Labour's approach to all significant constitutional reforms since 1997, which have been made either on the basis of cross-party support or through popular endorsement in a referendum.

Sadly, recent parliamentary debates on the Constitutional Reform and Governance Bill reveal that the Conservative Party would abandon that approach if they were elected to Government.

Both parties acknowledge that there is a need to tackle the crisis of low public trust in the political process. But while Labour has proposed to ask the British people whether they wish to change the electoral system, as one means of increasing the legitimacy of the democratic process, the Conservative party proposes – in the name of “economy” – to cut the number of MPs by 10% without testing the will of the people in a referendum and without any proper effort to seek any kind of cross-party consensus.

The apparently virtuous call to cut the cost of politics is actually camouflage for a dangerous, destructive and anti-democratic piece of gerrymandering. Their proposal is not about cutting the cost of politics; it is about advantaging the Conservative party. Boundaries drawn on the basis of registered electors, rather than the population as a whole, already distort the electoral map because registration rates are lowest among specific groups congregated in specific locations. According to the Electoral Commission's recent estimate, most of the three million-plus

people who are eligible to vote but who are not registered are to be found in our inner urban areas.

Cutting 65-80 seats by crudely equalising registered voters would disproportionately reduce representation in urban areas and would also disadvantage Scotland, Wales and Northern Ireland. And it would hit every island community. Orkney and Shetland would be amalgamated with a large part of the highlands. The Isle of Wight would be amalgamated with a large part of Hampshire.

The non-partisan cross-party Electoral Reform Society has said the "Conservative proposals mean that most constituencies will pay less regard to what most voters think of as community and natural boundaries, and change more frequently, destabilising the link between MPs and constituents." It noted that the "United States has rigorous requirements for arithmetical equality of population in congressional districts, but the worst gerrymandering in the developed world. Equal sized constituencies cannot produce fair votes by themselves".

Another point makes the Conservative proposal completely bogus. There is a suggestion that the size of the Commons has somehow increased exponentially. That is not true.

The size of the Commons has increased by 3 per cent - 21 Members - since 1950. The size of our constituencies has increased by 25 per cent over that period. The work load from constituencies of Members of Parliament, even in this time that I have been in the House, has dramatically increased. The consequence of the Conservative proposals would be to detach Members of Parliament from their constituencies more, and to add considerably to their work load. That can only mean that the level of service to constituents would decline at a time when we should be increasing it.

In stark contrast to Labour's agenda for moving towards a new politics on the basis of popular consent, the Conservatives aim to butcher scores of constituencies for sordid political ends. I don't think that's the right way to go about significant constitutional change, and I don't think it's any way to build public confidence in Parliament and the political process.

Conclusion – Representative Democracy

Nor, in conclusion, do I believe that we would build public confidence and engagement in the political process by moving away from the system

of representative democracy and towards a system of “direct democracy” where MPs are simply delegates and plebiscites become a regular feature.

If you want to see where that can lead, look to the United States and specifically to California, where the practise of holding ballots on the state budget has brought one of the richest and most powerful States in the Union to the brink of bankruptcy.

The *New York Times* recently reported that the Californian initiative ‘in which legislators or independent groups ask voters to mandate how the state’s money is spent or not spent — has become at times an exercise in fiscal self-defeat, with voters moving to earmark money for one special program one year, only to contemplate undoing their own will a few elections later.’ The entire system has been plunged into crisis and the state is almost ungovernable. Or look at Switzerland, where they’ve just had a plebiscite on legal representation for animals, following a successful one to ban the building of minarets.

I believe that existing political structures need to allow more direct public involvement in the decision making process. That’s why I use residents’ open-air meetings in Blackburn. It’s why in the Ministry of Justice we are pioneering policies to give communities a greater say in criminal justice

policy, and why we've used deliberative events to ask people their views on proposals for a statement of values and a Bill of Rights and Responsibilities.

But it would be a serious mistake to try to hand decision making power over to the "body politic" at large. For one thing, as the Californian experience shows, direct democracy risks undermining stable government. But it paradoxically also risks distorting the democratic process by amplifying the voices of those already adept at making themselves heard, at the expense of the more socially marginalised groups.

The Hansard Society's own series of *Audits of Political Engagement* underline my concern that political participation is socially skewed – finding that older and wealthier people participate more than the young, the poor and those from particular ethnic minorities.

I am certainly not convinced that the creation of new and increased opportunities for participation will necessarily tackle that disjuncture. Indeed in all likelihood it will tend to make it more pronounced, as new avenues of engagement attract the already engaged more than the

disengaged. So we need to beware that in our desire to tackle one democratic deficit we don't create another.

Direct democracy mechanisms may make it easier for minorities to contribute to political debates, but at the same time they make it harder for them to influence political decisions – as more and more issues would be decided by majority votes. As a consequence, direct democracy – in its purest form – runs the risk of increasing voter apathy and disengagement among those citizens who are already marginalised. In so doing, it will increase political inequality, and with it inequality in other areas.

So let me conclude by nailing my colours firmly to the mast of representative democracy. I remain convinced that this offers the best means of balancing and accommodating competing interests and best ensures that the interests and rights of minorities are not lost to sight.

When, therefore, we evaluate the case for major constitutional reform in the future, our judgement should be based on the extent to which such changes support and enhance, rather than undermine, the representative system – which has Parliament at its apex.

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