

WEDNESDAY 13 JANUARY 2010

Present

Goodlad, L (Chairman)
Hart of Chilton, L
Irvine of Lairg, L
Jay of Paddington, B
Lyell of Markyate, L
Norton of Louth, L
Pannick, L
Quin, B
Rodgers of Quarry Bank, L
Shaw of Northstead, L
Woolf, L

Memorandum submitted by Unlock Democracy

Examination of Witnesses

Witnesses: **Mr Peter Kellner**, President, YouGov; and **Mr Peter Facey**, Director, Unlock Democracy, examined.

Q39 Chairman: Peter Kellner, Peter Facey, can I welcome you most warmly to the Committee and thank you very much indeed for coming to join us through snow and ice. We are being audio-recorded so could I ask you please to formally identify yourselves for the record and thereafter if you wish to make brief opening statements please feel free to do so, otherwise we will go straight into our session.

Mr Kellner: My name is Peter Kellner and I am the President of the polling organisation YouGov. In 30 seconds, may I perhaps disturb the present equilibrium by saying something that people in this room who know me fairly well will not have heard me say before, which is I think Baroness Thatcher got it just about right in her speech to the House of Commons on the second reading of the Common Market Referendum Bill in March 1975. She had been leader for just a few weeks and I thought she made a speech which has stood the test of time

on the dangers of referendums and the hurdles. Can I just say one other thing, which probably causes more upset. To me the plural is “referendums” not “referenda” because, as I understand it, referendum is a gerund and not a noun.

Q40 Chairman: We are all agreed on that.

Mr Facey: My name is Peter Facey and I am Director of Unlock Democracy. I take the opposite view to Peter. Unlock Democracy believes that referendums have an important constitutional role in our democracy. It is one of the few ways in which we can entrench a decision within our constitutional framework. We believe they can play a part in combating public cynicism. We do not believe though that referendums should be an everyday occurrence; they should be something which is done soberly and cautiously.

Q41 Chairman: Thank you very much. Perhaps I could kick off by asking you both what you think the constitutional criteria, if any, are that should govern the use of referendums? And perhaps to Peter Facey: where do you stand on your previous assertion that “referendums should be considered as single issue elections”?

Mr Kellner: First of all, I think it is implicit in the question that you are not looking at what might be regarded as the Swiss or Californian approach to referendums; that is referendums or indeed citizens’ initiatives on a wide range of non-constitutional issues. If I am right in that understanding, that puts quite a lot of the arguments to one side if the focus is more specifically on constitutional issues. To me, there are various problems some of which are general and some of which are specific to the UK. On general issues I think one has to be very careful about the relationship of referendums to parliamentary sovereignty and to the principles of deliberative democracy that underpin parliamentary sovereignty. I think also - and this was one of the warnings of Baroness Thatcher back 35 years ago which has been amply fulfilled - this is a potentially slippery slope down which governments looking for

some tactical reason to use referendums will resort to it rather than something which is done on a matter of principle and against clear cut-criteria and not merely according to the government of the day. The more specific point – and I am sure I am saying things which cover ground you have already covered before - is we do not have a formal written constitution. In a sense, it is quite easy if you have a written constitution because you can have a grown-up argument as to whether you should have referendums when you wish to amend that constitution. If you do not have a written constitution or perhaps more accurately one has a fluid constitution as we do, I think it becomes much more problematic to decide when it is appropriate, even on what one might consider constitutional issues, to have a referendum or not.

Mr Facey: Like Peter I think one of the problems we have is because we do not have a written constitution and therefore deciding what is a constitutional issue becomes a matter of debate. Firstly, one solution to that would be to move to a written constitution, as an organisation which has long advocated that. Accepting that is not an immediate possibility, there are a number of issues where we already as a country I suppose seem to have decided that referendums are appropriate tools to be used. I do not think anybody is suggesting that the break-up of the United Kingdom could happen without a referendum in the particular part of the United Kingdom which wanted to leave. We seem to have come to a position whereby if as a country we want to devolve power significantly from the centre to new Parliaments in Scotland, Wales or any regional assemblies in England that we should have referendums at that point. There is also now a growing body of opinion. The official Opposition has now stated that they want to amend the European Communities Act to ensure that if there are future changes to European treaties that we should have referendums there. Broadly I think it can be done. Our line is that if it is a significant change to the contract between the individual and the state that you should have a referendum in those circumstances. We believe we

should move, where at all possible, to mandatory referendums, not to referendums which are decided by government on a whim but where we clearly state out these are the circumstances in which the government must have a referendum. In terms of our assertion that referendums should be considered as single issue elections, if you think about a referendum, both as a participant in it but also as someone organising it, 99 per cent of what you have to do is exactly the same as an election. From the point of view of the citizen it is the same process as an election. You go and put a mark in the ballot box, you go to a polling station. All the issues about campaign expenditure, about polling stations and the basic requirements in a democracy apply to a referendum. In most countries referendums are actually held on the same day as an election. From the point of view of the voter the only real difference is in one case you are electing an individual or a party and in the other you are voting on an issue.

Q42 Baroness Quin: Could I pick up on the single issue answer and ask whether you feel that certain subjects because of their complexity are not suitable for referendums? I am thinking for example of things like the Lisbon Treaty which is very difficult to boil down to a single yes or no given the number of different issues that are involved, the different powers that are involved, transfer down to national parliaments, transfer up to the Commission both in the same document. What are your thoughts on how straightforward the question should be in a referendum?

Mr Facey: Firstly, on the question of the ratification of the treaty, in effect Parliament - yourselves and Members of the other House - had to take a yes/no answer because ratification is a yes/no process. You can ratify it or you do not ratify it. You do not have an option at that stage of re-opening it. It is kind of straight. I hear this argument that some issues are too complex to put to voters. I am not saying that every issue should be put to voters, but I find it a difficult one to accept. If we think about what we are going to ask voters to do in a general election, they may be asked to take the Lisbon Treaty and attitudes to it, they have to take a

whole range of other issues, the party philosophy, the attitude of the individual candidate in terms of their character, also the tactical situation in their constituency, all those things combined, and make a rational judgment on electing a party or an individual. If they are capable of doing that incredibly complex act of mental arithmetic then they are perfectly capable on a single issue with good public education of taking a complex decision. Around the world there are plenty of examples of people doing that. There is an argument about whether some treaties in terms of European treaties are constitutionally significant enough to warrant a referendum and the expense. I am perfectly warm to the Danish approach which is if there is a super majority in Parliament you do not have to have a referendum but if there is not a super majority in Parliament you do. The reason why the Danish voters did not get a choice on Lisbon was because Parliament by five-sixths agreed that the Lisbon Treaty was not a major constitutional document for Denmark. On things like Maastricht they did have referendums.

Mr Kellner: The only point I would make - and I do not want it to become an argument between Peter and me - is I think Peter's phrase "the contract between the individual and the state" is a slippery notion. I think most ordinary people, the people that YouGov poll day in day out would think that the contract between the individual and the state would relate to things like immigration or identity cards or bailing out the banks. I am sure that is not what Peter meant but it raises an issue which is if we are saying there should be consideration of referendums on constitutional issues, "constitutional" does not mean the same as "important". I think in terms of the wider public making that distinction is fairly difficult. It is not easy to explain to ordinary voters why they should have a vote on whether they have a mayor but not on whether to bail out the banks or on the deficit reduction plan. I would come back to the point that I do not think the argument about the contract between the individual and the state is good enough. Again I come back to the point, I agree with Margaret Thatcher's speech

when she said that if you are going to have it on constitutional issues you have to have a constitution. She could see and I can see no way round that point. That may be a very good idea but I think to chart a set of principles for holding referendums on constitutional issues when you do not have a written constitution is a very difficult and hazardous process.

Q43 Lord Woolf: Identifying, if I may Lord Chairman, why the written constitution is so important, what you are really saying before you have a referendum is that you have to have a proposal to amend the written constitution. That then immediately crystallises the purpose of the referendum. Often there can be no argument about slanting the question; it is there in stark terms. Have I rightly interpreted you?

Mr Kellner: That is right. To be honest, in my ideal society, I would not even have referendums then. Britain's constitution evolved over hundreds of years, perhaps too slowly, without referendums. I suspect had we had referendums in the 17th, 18th and 19th century the evolution would have been slower, just as the Swiss did not grant women the vote until 1971 because the male voters in a referendum in 1959 had rejected votes for women. That was plainly a constitutional issue.

Q44 Lord Lyall of Markyate: I am a little anxious that we should not get the impression that a written constitution is a self-evident truth for Britain. There is a great deal to discuss before one takes that step. Would you agree?

Mr Kellner: Absolutely, let me be clear, I think the fluid constitution we have is actually better than a written constitution. I was simply saying that if you are going to go down the route of saying we should have referendums on constitutional issues, you need a constitution.

Mr Facey: I am an advocate of a written constitution. I believe from the point of view of controlling government that is a great advantage, but we are not here to debate a written constitution; we are here to debate referendums. Even if you accept that it would be better to

have a written constitution to define when a referendum is used, it is perfectly possible for us to pass a Referendum Act which will actually specify in an Act of Parliament which Acts would require a referendum. Or it is possible, as the Conservative Party has proposed, to amend particular pieces of legislation so beforehand you know when a referendum is going to happen. If you decide that the European Communities Act is a document you need to amend, that can be amended. It can specify when a referendum must happen. It is perfectly possible, even within a country that has parliamentary sovereignty as its philosophy, to do that. It is also worth noting that the founder of parliamentary sovereignty, Dicey, was an advocate of referendums and thought they did have a role within our system. It is perfectly possible to marry parliamentary sovereignty, our present constitution, with referendums even though I am an advocate of moving away from a fluid constitution because I think it gives too much power to executives.

Q45 Lord Rodgers of Quarry Bank: Could we turn to a specific example which Peter Kellner has already mentioned - 1975 - and see what conclusions we can draw about that and its strengths and weaknesses. If I may put this proposition in this way: firstly, it was a political convenience or device, neither more nor less than at that time; secondly, the vote was 64.6% or 64.8% and it is argued that you get a much bigger referendum vote whereas in the two general elections just before 1975 one was 78 per cent and then 72 per cent. My memory is in 1979 it was 76 per cent, so in general elections of that time we had a much larger poll than on this single very important nationwide issue. Then the third point is being decisive. The Prime Minister of the day as decisive but in 1983 the government of the day was trying to reverse the decision made the 1975 in the referendum, so it was not decisive and it is not decisive now. It will continue to be indecisive; it does not go away; it did not settle anything. Please tell me that that was not the case and whether it was right or wrong on such a large nationwide issue and what conclusions could we draw about the future?

Mr Kellner: Lord Rodgers, you were much more actively involved than I was. I was a foot soldier in the Get Britain Out campaign at the time, along with people like Lord Kinnock. It plainly had one practical advantage which is that it put to bed the issue of Britain's membership of the EC in terms of domestic politics for a generation. My general view, as I said earlier, is I do not like referendums at all. In terms of non-constitutional issues they are crazy although on constitutional issues it is a closer judgment call. I would be 60/40 against them rather than 90/10. I would not dispute that the 1975 referendum did have the practical advantage that, broadly speaking, the opponents of British membership accepted that verdict for a period and without the referendum it might have been re-opened. On the other hand of course, it has opened up the floodgates to other referendums. Before then I think I am right in saying there had been a referendum in Northern Ireland in 1972 or 1973 and there had been a clutch of referendums in parts of Wales in the 1960s on Sunday pub opening. However, it was the 1975 referendum which breached the dam in terms of the place of referendums in our national political life. That part of it I am sorry about although I recognise in terms of the particular issue it addressed it did have some political advantages.

Mr Facey: If we are looking for referendums to put issues to bed then in the same way that a vote in Parliament cannot do that I do not think referendums can. What they can do is settle an issue for a moment. Like Peter I think, effectively, it decided a particular issue in terms of membership of the Economic Community at the time and it settled it to that degree. It also set the precedent, and unlike Peter I think it was a positive one, that ultimately it is the people who should decide those types of fundamental issues. Joining the European Economic Community was probably one of the most profound historical changes in this country post-War, and I think it is perfectly right that that decision should have been taken in a referendum and not simply in a general election, in the same way the decision to have a Scottish Parliament, which again is a profound change, was endorsed in a referendum and not just in

an election. What it also does is make it very difficult if this country were to leave the European Union not to have a referendum on that issue. Effectively, it created a precedent and it created for a time a settlement of the issue, but only for a time. If we want referendums to settle it forever, the reality is I was seven years old at the time of the referendum and I do not feel bound one way or the other by a decision of my forebears in that sense. Therefore different generations will take different decisions, in the same way that we do not just have one election and then expect us all to live with it for the next 50 or 60 years.

Q46 Lord Lyell of Markyate: Just on the 1975 referendum, it was a skilful and highly political act by Harold Wilson partly in order to hold his party together. Of course all parties were split. Peter Kellner, you were in the “no” camp and the present Lord Salisbury, Robert Cranborne was in the “no” camp. I was in the “yes” camp. Yes, it did in a way settle an issue but it was really done for political reasons, was it not?

Mr Kellner: Absolutely, and while I think there was a political positive to come out of the 1975 referendum, frankly it was a constitutional outrage. You said it was partly to do with holding the Labour Party together; I think it was wholly to do with holding the Labour Party together. In a sense this is the constitutional problem that once you effectively allow governments for wholly tactical reasons to employ this device you put the constitution, fluid or written, into a very difficult place.

Mr Facey: I think this is the central issue because the reality is governments have at the moment the ability to call referendums when they want them. I think, like Peter, yes, it should be there but it can be quite damaging and that therefore codifying as much as possible where we should have referendums will remove some of that sting about it being a purely political tool designed to solve an issue of a party at a time. Therefore we need to move on. I find in some ways that if you are an advocate of our fluid constitution, this is the direction our constitution has flowed, and therefore what we need to now do is work out whether there are

new rules about saying that in these circumstances referendums should be held, and therefore reducing the ability of governments just to call them on a whim so they actually have to pass certain hurdles to do it. I think that would be a good thing from the point of view of the constitution but also from the point of view of the public and the point of view of Parliament and government.

Q47 Baroness Quin: Following that up, I do hear the argument, and you have largely just said it, that referendums can settle things for a considerable amount of time, but we have just had the recent example in Ireland where you have had two successive votes within a short space of time on the Lisbon Treaty, and I wonder what your thoughts are about that kind of procedure and indeed how far on the same subject referendums should be set apart from each other.

Mr Facey: I think it is regrettable but when we are looking at a general election where it is quite possible that we may have two elections in a short period of time, partially because the reality is the parties may not be happy with the result at the election because no one party may have a majority and they may therefore call another election like there was in 1974, the same issue can happen in elections as it can in referendums. I am not an advocate and I do not think that what the Irish Government did was right. If at all possible we should have a rule that if you have a referendum you should not have it for a period of time afterwards. Maybe that would be five years or whatever. That is a difficult thing to actually do. The same criticism that government can if it does not like the answer hold another one applies to elections. It is quite likely that after this election, if we have a hung Parliament, whichever leader may decide that they do not like the result, it is too difficult, and we should have another election to get a clear result.

Mr Kellner: Here is where I really do part company with my friend. I think this is again a fundamental point that referendums, if you are going to have them, then it is plain that you

need some mechanism to prevent governments from repeatedly re-asking the same question until they get the answer they want. You require a certain rigidity. This is one of the reasons why I favour our deliberative parliamentary democracy because democracies are made up of human beings who make mistakes. It is right to have mechanisms for undoing those mistakes. Take the poll tax for example. I am not seeking to make a partisan point here genuinely. If for some reason the poll tax were approved by referendum and you had a rule whereby ten years had to pass before another referendum, what would you have done? What you instead had was a Government that realised it had done something which was not sustainable, could not be carried on and needed to be changed. Apart from all the other advantages of a deliberative system of negotiation, of trade-off, of consideration of different issues, none of which can happen in a referendum because it is frozen into a yes/no either/or decision; it is the rectification of mistakes. If you go down Peter Facey's route - and I agree with the logic that referendums should be binding for a period of time - you introduce a rigidity which in time you are going to regret.

Mr Facey: That is why I think it is very difficult, although it is attractive, to think about having a bar on time, that is why I said I think it is very difficult to do. Unless you actually had a constitutional framework which specified it on purely constitutional issues, it is possible there that you could have something like that. Where countries have citizens' initiative processes, they regularly have a process whereby if you have a citizens' initiative on something you cannot have it for a period of time because you cannot keep coming back on it. Where we have complete flexibility of government and Parliament, introducing that sort of hurdle, although attractive, without a more detailed constitution would be quite difficult to do.

Q48 Lord Norton of Louth: I want to knock on the head this comparison between a referendum and an election because there is a complete difference because you are talking

about an election that produces an indecisive result and a referendum that produces a result that you disagree with. They are completely different.

Mr Facey: I do not think it is an indecisive result.

Q49 Lord Norton of Louth: It is a yes/no.

Mr Facey: If people are saying in an election that Parliament should have no one party with a majority that is a result, that is what the people have actually said. It is Parliament which then decides. It is not the people who go back and say, “We do not like the result and want to do it again.”

Lord Norton of Louth: That is produced because you have more than two parties. With a referendum it is a yes or no vote and you have a decisive outcome.

Q50 Baroness Jay of Paddington: I really wanted go back, Peter Kellner, to what you were saying at the beginning about the issues that really engage people you were daily polling and to ask both of you, taking the point about citizens’ initiations, if there was ever a case to be made – and I think we have all agreed for example that the 1975 referendum was a party political device - for expanding the citizens’ initiative concept to looking at a referendum on an issue which in Parliament would be called a free vote issue which does not have party political resonance. The classic example which is always given is the one of capital punishment but there is a whole of range of what I suppose one would call general social policy issues where legality, democracy, morality if you want to call it, all impinge on each other where there are very definite citizens’ views and not party political views.

Mr Kellner: I understand the argument. I think it is profoundly mistaken. I spent some time during the last US presidential election just over a year ago in California where on the same day they had about a dozen citizens’ initiatives votes. Anybody with any sense in California thinks - I was told and I found this was a widespread view - that a citizens’ initiative is a

device for the sad, the mad, the bad and the very, very rich because those are the people who can mount the organisation. Also there is the cumulative consequence of a whole variety of citizens' initiatives in California on economic and governance issues. You have you ended up cumulatively with a state legislature which is required to do more than it should but barred from raising the money it needs to do the things that people want. It is a classic example of the fact that if you have a range of citizens' initiatives that you cannot get some orderly trade-off, as is part of the everyday life of any proper legislature in the world, for people want to pay less in tax and have more services. A large part of politics is arbitrating between those two positions in all sorts of complex ways. That is the first point very briefly. Secondly, even if you were to try to restrict it to what you call moral free vote issues, I personally think it is a bad idea but, above all, I think there is a practical problem in defining that. Capital punishment perhaps or drugs - what about drugs because of the consequences for criminal procedures or immigration. I think a lot of people would say immigration is a moral issue and I suspect that is not what you had in mind.

Q51 Baroness Jay of Paddington: No, but I would challenge your point about the Californian position, which I agree with you last year was hideously over-complicated, but if you take for example the state one state north, Oregon, and you look at the referendum .on assisted dying which established a different change in the law and has stood now for 12 years or something, that was not devised by the mad, the bad and the rich and has effectively achieved a citizens' initiative, although it was not called that, on an issue which is of the type that I am thinking about.

Mr Kellner: What I would say is if one tries to look through the prism of results one likes ---

Q52 Baroness Jay of Paddington: Of course.

Mr Kellner: I could cite Australia where the Menzies Government after the Second World War held a referendum to try and outlaw the Communist Party. It failed and I am delighted they failed. It was clearly an outrageous idea but I do not think if one goes through the record it is right to cherry-pick. One should have some sort of basic principle. I would go back to two principles. One is it is difficult to define and the second is I do think parliamentary democracy is the right forum even for these kinds of issues.

Mr Facey: I take the completely opposite view. Firstly, the citizens' initiative is one element of a number of tools which people are now talking about introducing into the United Kingdom, so that alongside it you have an agenda initiative, which is the ability to force Parliament to discuss an issue, you also have citizens' initiatives but you also have recall. They are things which ten years ago were not discussed in the United Kingdom and now they are regularly discussed within Parliament and outside it. I believe that citizens' initiatives can play an important role. We do have to look at what issues are covered. Lots of jurisdictions exclude things like finance and a range of issues to do with human rights, et cetera, for the reasons which you have stated in terms of you do not want to have government by referendum, but you can actually have processes whereby you make it more difficult than you have in California but you make it possible to do it, but it is a deliberative process. It is a process which takes time. I believe if you are going to introduce it in the UK you should first have to force Parliament to debate an issue and only then be able to actually go to a situation where you have a referendum on it. We already allow people to petition to have an elected mayor locally. If you raise five per cent of your fellow citizens you can hold a referendum on that. I would say that issues like fox hunting, which this place spent huge amounts of time debating to what seems from the outside to be not necessarily any great effect, that referendums or citizens' initiatives at a regional or local level or even a national level would have been a better way of dealing with that and would have taken a lot less time in this place

on an issue which is ultimately one about how people feel about an issue. It does have a place. I am not saying it should be easy but I think it should be possible. The international range is between one per cent and ten per cent which is the norm in terms of what you would actually have to have on a petition. I personally think that our five per cent rule we have for mayors is a fairly good one. It is in the high range internationally. There are also other ways of making it more difficult. I do not believe you should be able to do it by email. It is important that there are laws about how much money you can spend. In the same way we regulate elections we would have to regulate that but I think it is perfectly possible to do and it is something which will help deal with some of the citizen and politics issues of people feeling powerless.

Mr Kellner: Let me very briefly say, unless you believe in having a referendum on capital punishment then your position, Peter, is that you would have to go out to explain to people why they could have a referendum on shooting foxes but not on killing people.

Q53 Baroness Jay of Paddington: That is the problem.

Mr Facey: One issue is you have to be careful that you do not take unintended consequences, so you have to actually say that if you are going to change international treaties you cannot do something which would do that without deliberately intending to do it. The reality is if we were to reintroduce the death penalty we would have to leave the Council of Europe and the European Union as a result of that. I do not believe it should be put to the people but, if you do, you have to be clear on citizens' initiatives that it is something which people can decide without the consequences binding on other things. That restricts what issues you can do it on. There are many perfectly proper democracies in the world which have managed to find ways of doing this. Even countries like New Zealand, which are the mirror to us in large degrees, have found a very weak way, and there is a very high threshold, in New Zealand it is ten per cent, to actually introduce citizens' initiatives. It is interesting on the polls which the Hansard

Society do here about the levels of public citizenship. Here about 85 per cent of people think they are powerless to change things within our system of government and politics. In New Zealand they had very similar poll trends before they introduced it and also they changed to proportional representation in the 1990s, and today it has dropped and the poll figures have gone more positive by about 20 per cent. It is possible to do. It is possible to do it within our type of governance structure and I think if we take a very sensible and sober approach to it, which puts safeguards in and which puts Parliament in the centre of the process, that that can reconnect people with the political process rather than alienating them from it.

Q54 Lord Shaw of Northstead: I must confess that I am deeply suspicious of referendums. Viewing it from that point of view, the basic question has not clearly been answered yet: is referendum compatible with the UK system of parliamentary democracy? Following on from that, is there not a real danger that the fundamental principles of our parliamentary system will be weakened by referendum? Following again on that, if one believes in the use of referendums, should the system be extended or restricted, and in any case should we not, if in fact we believe that there is a case for them, be concentrating on defining the rules under which referendums can be permitted and indeed the way in which they are conducted?

Mr Kellner: My answer is that the British constitution in its fluidity has been sufficiently robust over hundreds of years to absorb many things and plainly it has absorbed referendums over the last 35 years. I regret their incidence but you are all still here, deciding things, passing laws, and so on. I would not couch the argument against referendums in terms of some cataclysm for parliamentary democracy but I do believe it weakens parliamentary democracy. As for your other points, I hope I have sort of covered them in the remarks I have made so far. If we are going to have them and if they are going to have a permanent place then it should be on constitutional rather than “important” issues. It should be narrowly defined and it should be defined objectively in order to minimise the opportunity for

governments to use them on a whim. It would be easy for me to say this is utterly incompatible with parliamentary democracy and therefore we should have no truck with them. I am giving myself a slightly tougher task of saying of course you can have them and a parliamentary democracy but I think they have a negative rather than a positive impact on that system.

Mr Facey: Like Peter I believe they are compatible with parliamentary democracy. There are plenty of parliamentary democracies which have referendums built into their system of government. Even countries like New Zealand that do not have a written constitution like us have them within a parliamentary democracy. I believe they are complementary rather than an alternative to representative democracy. We also need to recognise that in a lot of the referendums we have had they have been post-legislative, so Parliament has already spoken, Parliament has done all its business in terms of passing a law and then saying “subject to referendum”. In those circumstances it is difficult to say that a post-legislative referendum is not compatible with parliamentary democracy or with our traditional system of government because what it is actually saying is Parliament has decided something and it is confirmation from the people, so in those circumstances I think it is perfectly compatible. Now that we have had the experience we have had since 1975 (but particularly since 1997) in terms of referendums, we need to start defining where we have them for constitutional reasons. If we do that I think we will deal with some of the issues around the accusation that governments use them for purely political reasons. The reality is historically looking at some of the decisions they have taken, you have to say that they were taken for purely political reasons. I do not think that is necessarily a good thing and if we can define specifically where we are, either through a written constitution or simply by deciding which particular Acts of Parliament we think are significantly important so that if they are changed or elements have been changed that there is a referendum, that will move us forward in that process. On the

issue of rules around referendums, we already have the power that outlines some rules. The difficulty is that we have not had enough real experience to say whether those rules really work because we have only had one referendum conducted under those rules.

Q55 Lord Shaw of Northstead: Would you say therefore that if there is going to be a referendum it will arise out of a statute or legislation that has been passed in the House and that the conditions of the referendum are laid down within that legislation?

Mr Facey: That is certainly one possibility. That is the proposal the Conservative Party seem to be putting into their manifesto in terms of changing the European Communities Acts. I have a preference myself for having a single Referendum Act which specifies which bits of legislation if they are going to be changed there would need to be a referendum on. I think that would in effect move you towards a written constitution. It would codify and entrench in some way the core parts of our constitution. I think that would be a helpful step. I think it is a step which would fit within the fluid constitution of adapting to the way things move forward. I think that would be a way forward. If you do not do that you could simply amend each piece of legislation and specify that if you were going to abolish the Welsh Assembly or if you were going to abolish the Scottish Parliament there needs to be a referendum. It is interesting. At the moment you have to have a referendum when introducing an elected mayor but if you abolish a local authority you do not have to have a referendum. I happen to think that is a rather peculiar circumstance so you can abolish a county and not have a referendum but if you want to have an elected mayor for a district authority you have to have a referendum. I think some codification and clarity would be a good thing.

Q56 Lord Woolf: Peter Kellner, as I understand it, your position is that you accept with reluctance and regret the fact that we now have a fluid constitution which includes having referendums in certain circumstances. You see the biggest danger in that is that it is a

slippery slope. Would you place any limitations on bringing forward legislation as to the circumstances where a referendum should be held and, if so, what?

Mr Kellner: Yes, and assuming what I am about to say is practically possible, and I am not sure it is, they should be limited. Here I half agree with Peter Facey: if we are going to go down this route we need to have a set of rules, and the rules must in some way relate to the issues and the question being constitutional issues. There is then the matter of defining what is a constitutional issue. I am not in favour of doing what I understand Peter Facey to have just said, which is you can put in legislation that to undo that you need a referendum because it seems to me that this is an open invitation to any government with a majority to try and entrench a partisan policy by saying any subsequent government cannot simply put it in their manifesto that they going to change it; they would have to go back to the people. I am not in favour of that unless there was a prior umbrella piece of legislation which specifies the kind of legislation into which you can insert this condition. If it is possible then I would regret it but I think it is liveable with, but I am not sure it is practically possible.

Q57 Lord Pannick: Can I press Peter Facey on the suggestion that we can define the circumstances in which legislation raises a constitutional issue and therefore amendment needs a referendum. Your suggestion a few moments ago, if I understood it correctly, was that one could have an umbrella piece of legislation which would identify those Acts of Parliament ---

Mr Facey: Or clauses of Acts.

Q58 Lord Pannick: Or clauses, sections of the legislation which would require a referendum were there to be an amendment. That is a monumental task, is it not, because there are many, many provisions of highly important legislation - the European Communities Act - the amendment of which may well not raise a constitutional issue and it is very, very

difficult in advance of knowing what the particular proposal is for amendment to identify whether it raises or does not raise a constitutional issue. This seems to me with respect wholly impractical.

Mr Facey: Firstly, if you take the fact that most countries have written constitutions and they define their constitution, if Malta was capable of defining its constitution, this country is certainly capable of defining its constitution as well, so it is possible for us to do. I am not saying it is easy but we could move to a written constitution if we wanted to.

Q59 Lord Pannick: Is there not a difference though between having a written constitution the amendment of which requires a referendum and specifying now which bits of existing primary legislation require a referendum?

Mr Facey: It is perfectly possible to define core issues such as, to give one example, is anybody round this table actually proposing that if we abolish the Act of Union, and we amended the Act of Union to remove parts of the United Kingdom (so Welsh independence) that that would not require a referendum and that it is not possible to actually amend the Act of Union to say that if the Act of Union is amended/changed that there should not be a referendum?

Q60 Lord Pannick: It depends how it is amended would be my answer.

Mr Facey: But if Scotland left the Union, to specify in those circumstances that there must be a referendum, that must be possible. The same must be possible to say that if the Welsh Assembly is abolished there must be a referendum. It is possible to say that if new Parliaments are created in the English regions or an English Parliament is created there must be a referendum. There are issues we could have big debates about but there are some core things which there would be agreement on that there are certain core aspects of our democracy which would require referendums. I am not saying that every single amendment

would need a referendum. I am not an advocate of that. If you were to abolish the Human Rights Act, personally I feel there should be a referendum, or if you are going to introduce a new proper Bill of Rights which would fundamentally entrench certain freedoms of individuals, I think that should be put to a referendum. If you were going to abolish the House of Lords completely and go to a unicameral system I think that should be. Those are major constitutional changes which it is possible to put into legislation to say if these things are done there would have to be a referendum on it. I am not saying that you can look into the future and say every circumstance when a referendum would be required. I do not think that is possible. I do not have a crystal ball; you may do but I do not. It is perfectly possible to say for what core changes to our constitution, if they happen, there should be a referendum in those circumstances. Again, I think it would be very difficult for this country to leave the European Union without a referendum, and I think saying so would help, and I think also other changes like that would be a positive. That may not cover everything but it would mean that there is clarity on some core parts of our constitution. It means that those changes could only happen with the consensus of the people.

Q61 Lord Norton of Louth: It is really a follow-up because I do not think we have really resolved it. To provide an example of a core issue is not to define the constitution. If you say you list core issues then you are presumably excluding everything else or else you bring back in the question of what falls in that dividing line. You mentioned the House of Lords. If you have a proposal for an elected second chamber should that be subject to a referendum? If it was who would bother to vote? You really do not resolve the issue unless you can actually define it. Just to define a constitution, which this Committee did in its first report, would not resolve it either. You would have constitutional issues that are not important constitutional issues.

Mr Facey: It is possible to define constitutional issues. Most countries define their own constitution, so we can do it. We could actually have a written constitution and say, “In these circumstances ...”

Q62 Lord Norton of Louth: You have to do it on core constitutional issues. That is your point.

Mr Facey: But most countries that actually have referendums built into their constitution do not have a requirement that any constitutional change should have a referendum. Most of them specify in certain circumstances referendums are used. I can give you my wish list of those things but it is perfectly possible for Parliament to define what core changes to our constitution would require a referendum. The alternative is that you simply leave it to the executive to decide for any issue in future it wants to have a referendum on, if it can get a parliamentary majority it has a referendum. That is where we are. That is the slippery slope that Peter has talked about. I may be wrong but I do not see this country going back to a situation where there are no referendums. At the moment, all the major parties in Parliament which are likely to form a Government have some commitment which they say should go to a referendum, whether that be a Labour Government on changes to the electoral system to AV, or whether it be a Conservative Government on future changes to the European Communities Act, referendums seem to be now with us for the long term. The question is do we put rules in place to define when we have them or do we simply leave it up to Parliament and the executive to decide on an ad hoc basis, in which case we are likely to get more of them in those circumstances than we would do in circumstances of defining them, but that is the choice of the Committee.

Mr Kellner: I agree with a lot of what Peter Facey has just said. It seems to me where we are at is referendums have arrived in our state of affairs. Logic says to me that the best way forward, if we are going to keep them, is to have a written constitution and then you have

referendums only to amend that constitution. However, if we are not going to go down the written constitution route it strikes me that there are a lot of very, very difficult practical issues, but what I would say - and this is where I would agree with Peter if I am not putting words into his mouth - is where one should go is not to use the difficulty as the reason for abandoning referendums. I would abandon them on the principle of how we should operate our democracy. I am in favour of a deliberative system through a parliamentary democracy. That is different to the practical problems and is my core reason for disliking referendums. If they were a good thing but very difficult to do, then I think it would be incumbent upon you to solve the difficulties. I do not think the difficulties should be used as an excuse for doing something on its merits.

Chairman: Time has marched on. Peter Kellner, Peter Facey, thank you very much indeed on behalf of the Committee for joining us and for the evidence that you have given. I wonder if we might trespass even further on your generosity by communicating in writing about one or two matters we would have liked to have covered but time has precluded us from doing so. In the meantime, thank you very much indeed.

Witnesses: **Professor Stuart Weir**, Associate Director, Democratic Audit; and **Baroness Kennedy of The Shaws**, a Member of the House, examined.

Q63 Chairman: Lady Kennedy, Professor Weir, can I welcome you most warmly to the Committee and can I thank you very much indeed for joining us. We are being audio-recorded but not televised so, as it proves necessary, could I please ask you to identify yourselves for the record and if you would like to make a brief opening statement please do so but do not feel obliged to and otherwise we will pitch straight in

Baroness Kennedy of The Shaws: My name is Helena Kennedy. I imagine I have been invited here because I did chair the Power Inquiry which was established at the end of 2005 by the Rowntree Trusts, the Reform Trust and the Charitable Trust, to look at the issue of why there was a downturn in electoral turn-out and why so many fewer people were joining political parties. It was to look at the state of British democracy. A small Commission was established and we travelled up and down the country and took evidence and we created a report which was published after 18 months. Since that time the Power Inquiry in this last six months has been involved in a sort of second stage which relates to basically the concern that we had that there was now much more debate, as a result of the allowances scandal, about reform of our political system, and so we have been involved in a process since that time of inviting the public to engage in an on-line consultation asking them for their ideas on reform. In turn, we have had a deliberative poll just this last weekend. I will explain that to the Committee in due course. Prior to my invitation to chair the Power Inquiry, from 1992 until 1997, I was the chair of Charter 88 and so I have been very involved in constitutional reform issues for a very long time. I was one of the founding members of Charter 88.

Professor Weir: I am here on behalf of the Democratic Audit which is an independent research body set up initially by the University of Essex and is now more attached to the University of Liverpool as it happens. We evolved a methodology for assessing the quality of

democracy and the protection of human rights which we have applied in three successive audits of the arrangements in the United Kingdom for democratic governance and protecting human rights. Our methodology has been adopted internationally by the International Institute for Democracy and Electoral Assistance. It is an inter-governmental body based in Stockholm. Our methodology is being used now in about 24 different countries or regions around the world. I just want to say very briefly we think that referendums are neither sound nor appropriate mechanisms for dealing with the kinds of problems which they are supposed to be dealing with. We think this is particularly the case because the United Kingdom does not have a written constitution and we believe that any kind of rules and procedures for holding referendums should be governed by the referendums and not left to the executive of the day, the Parliament of the day and ad hoc bodies like the Electoral Commission. That is our basic position.

Baroness Kennedy of The Shaws: They should be governed by a constitution. That was not what you said.

Professor Weir: I meant to. They should obviously be governed by constitutional arrangements through a written constitution. We believe that should be the result of very, very close and detailed consultation with the public. We have one exception to this basic position. We believe that the executive is in such a powerful position when it comes to making changes to our governance arrangements and we have already had notice that both the major parties have ideas of this kind in mind, so we do think there needs to be at least some kind of additional check on the executive when they are making arrangements which have constitutional implications. Obviously we are very aware that the House of Lords exists and we would assume that the House of Lords as a body would take a very close interest, but we think there ought to be an additional check and therefore there ought to be referendums on any changes which are going to take place which will affect constitutional arrangements and

that a referendum in that case preceded by proper consultation and deliberative information should be made available.

Q64 Chairman: Thank you very much. Could I ask each of you to expand on precisely what you mean by “constitutional”, how widely you think the word “constitutional” should be applied. What do you mean by “constitutional arrangements”?

Baroness Kennedy of The Shaws: I did not use my moment of introduction to describe my own position on this. The Power Inquiry made a number of recommendations and one of the recommendations was that there should be a greater use of referendums and that in fact you could have citizen-initiated referendums. That was the view of the Panel as a whole and I should indicate that it is not a view that I share with great enthusiasm, but as a democrat I accepted that that was the view of most of the people on the Commission. I think the Power Commission certainly felt that in order to have any kind of citizen-initiated referendums there should be a limitation on the sort of subjects that there could be such a referendum on, and again they confined it to constitutional issues, but did not define what constitutional issues meant, so we are left with that uncertainty. However, I think that it was very clear that one was talking about anything that changed the power balances within our democratic system, and so that involved issues like devolution but also issues in relation to our relationship with Europe; anything that in any way redistributed power in a significant sense. I think that was what they had in mind. When they spoke about citizen-initiated referendums they wanted certainly it to be cushioned with a number of very clear conditions, in that there should be a very significant threshold that would have to be passed before you could initiate, that the turnout of people who actually voted would have to be significant enough for it to have any meaning, that it would only be recommending positions to Parliament because ultimately the sovereignty of Parliament was still considered vital in this. The acceptance was that if it was significant enough that Parliament would take cognisance of any referendums. There was

concern about the nature of the question that would be asked and it was felt that there had to be some body that had oversight of the question. It would presumably be the Electoral Commission now and they would want to have the position of the Electoral Commission on that made much clearer. They also felt very strongly a concern about the sort of manipulation that there could be of any campaign by the media, by lobbyists and so on. I think there was a very strong feeling within the Power Inquiry that you would have to have deliberative processes around any referendum, so that you would actually hold around the country deliberative processes. I just had the experience this last weekend of holding for Power a deliberative poll. YouGov helped us to select the people. It was intended that it should be 200 people but it was 130 in the end because of the weather conditions. They came from all over the country and in the end the group who did arrive was measured and was still representative of the whole of the country, so you had the nation in one room. They stayed over two days to deliberate on reform that they would like to see within their democracy in order to improve, they felt, their democracy. The results have only just been published today and a press release is going out today. It was very interesting because what it showed was that when the public were given good information they move away from populist positions. When they are given the opportunity of taking part in debate and discussion and then can ask their questions of experts whom they trust they actually shift their position. They do not choose populist reform. It was very interesting to see that when they were polled before the two days of conferring they actually took positions about voting; you should be allowed to vote for your Prime Minister; there should be an English Parliament; they wanted referendums on all manner of things. By the end of the two days of deliberations they had shifted their positions significantly on all of those things and had drawn away from populist reform. You will be happy to know, those of you who are interested, that House of Lords reform fell way down their feelings of determined changes that have to be made with alacrity.

It did not come up there as one of their key issues. In fact I think a deliberative poll would be a very useful thing for this House to have on House of Lords reform because I think you would find that the results would be very different from what you would get as a knee-jerk response when you ask the question: "Do you want it to be simply voted on?" Just to turn to the issue of referendums, we had evidence given which changed the position of the deliberative poll this last weekend. When there was a discussion on referendums the example was given of what had happened recently in New Zealand. It is maybe something that you are all familiar with already. The way in which that initiated referendum still has left people with a bad taste in their mouths in New Zealand is partly because the question seemed to be so poorly drafted but also because there is an issue about how many people turn out in a referendum like that. It was just over the 50 per cent, so even with an incredible poll which has 86 per cent of the electorate deciding that they wanted to be allowed to smack, it still took it below 50 per cent of the population, and so what meaning do you take from that. It has caused a great deal of debate amongst reformers, and amongst politicians of course, and generally in New Zealand about the whole question of initiated referendums. I go back to the position I set out at the beginning. I am not a great enthusiast of referendums. I think that if you really do want to engage the public and have the public's views, it has to be based on proper discussion and debate and the public have to have an opportunity of becoming well informed. I now veer towards much more use of deliberative polling where you bring together what is a cross-section of the general public. You can do it on a more regular basis and you can bring them together, and then you provide them with good information and the opportunity to question experts, and then allow them to then reach some sort of conclusion on whatever the issue is that you are placing in front of them. It is a far more satisfactory way than simply asking a perhaps largely uninformed or influenced or manipulated public for a

view. I think well-informed members of the public reach good conclusions but there are other ways of doing it.

Q65 Chairman: Professor Weir?

Professor Weir: It is an odd question in a way. It is a bit like saying to somebody, “Will you describe a camel for me?” when we all know what a camel actually looks like but would find it perhaps difficult to give a very accurate description of the beast. Essentially I agree with Helena that firstly anything that bears upon the arrangements over the disposition of power within our society ought to be potential candidates for a referendum under current circumstances. Clearly Gordon Brown’s idea of a referendum on a choice between first-past-the-post voting and the Alternative Vote ought to be a candidate for a properly conducted deliberative approach to the public. Similarly, the Leader of the Opposition’s ideas about changing the composition of the House of Commons clearly is another matter which ought to be subjected to a referendum and the kind of conditions that Helena has outlined. I suppose, in a way, the New Zealand poll on smacking is a human rights issue and I would have said that any human rights issues ought to be properly debated too, but I think that is slightly trickier, and perhaps we ought to rely upon our existing judicial system and the European Convention on Human Rights to actually adjudicate upon any changes that are going to affect human rights in this country.

Chairman: Noble Lords who have been Members of the House of Commons will have spent many, many years having deliberative meetings in draughty halls in their constituencies up and down the country so we are well familiar with the experience. Lady Quin?

Q66 Baroness Quin: You have partly already touched on my question which is really about the strengths and weaknesses of the referendum as a democratic and constitutional tool, but I just wondered if either of you would like to add anything not just on referendums that have

taken place in this country but also any international examples. I thought the examples of New Zealand that you have both already referred to were extremely interesting in this respect incidentally.

Baroness Kennedy of The Shaws: I think we have covered the ground in that we have the concerns that are the usual ones and we are particularly concerned about the quality of discussion that there is around a referendum. That is why I think the only way you can do this really successfully is for a few issues. I think it should be a rare use and when it is used I think you should pack it around with deliberative processes. The way that you do that is that you roll them out around the country and then you try to have them televised so people can see what is happening and people can see the way in which people hear evidence and change their views. My confidence in this largely comes from my 35 years' experience of doing jury trials, where I am a big believer that when you give the general public, whatever their level of education, good information and good evidence, they will work on it and they usually will come out with sensible conclusions. The experience of this last weekend was conducted by a man called Professor Jim Fishkin from Stanford University. He is originally from Yale and he has become the king of deliberative processes and has done them all over the world. He did them in Canada around their intention of having reform of their voting system. He has been doing them all around the world and he has done them in the United States. He has developed a methodology and one of the reasons why I wanted him to come in and conduct this one over this last weekend was because I wanted us to learn from him but I also wanted the independence of that and experience of that so that it is not just being invented on the hoof. I am sure that Philip Norton knows the person I am speaking of. It was very interesting to see the preparation that went into it and also to see the results. What was so interesting was, just to mention this so that it is before the Committee, what the deliberative poll, which ended up being 130 people, came out with in the end were very sensible proposals. Some of

them are ones which may seem mundane to all of us because we are so familiar with the system but they really wanted to see the strengthening of select committees. They wanted to empower Members of Parliament more. Of course, there was a certain amount of concern over abuse of allowances but they left that behind very quickly and moved on to what they would like to see in the way of changes and a lot of the things were very sensible. For example, quite high up was the business of statutory instruments. Very few of them knew what a statutory instrument was before but in advance we had provided them with a document which set it out. We had had it reviewed by independent sources to make sure it was setting out what the position was and it was learning document. Many of them came very uncertain as to what a statutory instrument was. When they got to understand it and to know it they felt that it should not be used as readily as it is being used. I thought it was very interesting that it came quite high up in one of the changes they would like to see. It was interesting that they wanted to empower the voice of Members of Parliament and they also wanted to empower the voice of the citizen. They wanted for example consideration for elections to take place at weekends to make it easier but they did not want you to be able to vote sitting in your arm chair as you might do watching *Big Brother*. They did not want that kind of thing. They were very concerned about the ways that that could be abused in the way the postal vote perhaps had been. The reforms they went for very sensible ones, some of them quite radical, but on the whole it was about letting more voices in and empowering their Members of Parliament, their representative democracy, and it was not a move away from representative democracy in any way. As I say, some of the things fell away, some quite interesting things. For example, the idea of electing the Prime Minister directly halved. The idea of allowing on-line voting halved and although they came in thinking this would be a good idea, once they heard what the arguments were it changed. Included in this was one of the suggestions that had come from the internet from a lot of people was that party manifesto promises should

become legally binding. You can see where this comes from, which is the idea that they make promises to us before an election and then they never deliver and so they should be forced to deliver. Then we pointed out how are you going to force anybody to deliver a manifesto promise? Again, it completely dropped away as a suggestion. They also did not like the idea of electing judges, they did not like the idea of the public or local people being able to elect the heads of key services like police commissioners and so on. There is a lot of stuff in this for the different political parties who are riding some of these horses at the moment about how the public once they get good information actually think it is all rather shallow stuff.

Professor Weir: To go back to your question, our concern is that referendums are so open to manipulation, especially by the executive but also by vested interests of one kind or another. If you get comparatively low turn-outs then a particular section of the population could be mobilised one way or the other. Indeed, you can get campaigns not to vote in a referendum at all. So there are very real operational problems with them. The thing that really concerned us when we looked at this was that everything would be based on existing electoral registers, and they are well-known to be deficient and they are well-known to depend upon the diligence of the local electoral officers in the first place. There are major omissions of particular groups in the population from the electoral register, especially young people. One of the things we are supposed to be doing is encouraging young people to take an interest in politics. This simply would leave them out. When you get a relatively deficient and inaccurate electoral roll, it gets more and more inaccurate as time passes. We estimate that between eight per cent and 18 per cent of the public are probably not properly represented through the electoral register. I think that is a major problem for the people who wish to see this idea. The idea of referendums is a very beguiling idea but in actual fact there are so many deficiencies, so many unexamined questions and implications come out that we think we need to seriously consider the use of

any kind of citizens' initiative in relation to the role of both Houses of Parliament and that far more should be done to bring people into contact with their representatives in Parliament. We would go further because we would say that we think parliamentary sovereignty is a very poor substitute for popular sovereignty but we do believe that everything should be channelled through Parliament as far as possible, so it is for those reasons that we are very, very sceptical about the value of referendums.

Q67 Lord Norton of Louth: It is really the point about deliberative democracy. I can see the arguments for the exercise you have outlined, but if one is offering it as an alternative to a referendum I am more concerned with the outputs of the process and how they relate to Parliament, and how it would be embodied in terms of actually affecting public policy because it would be confined to a few people and therefore those not engaged in deliberative democracy would feel excluded.

Baroness Kennedy of The Shaws: Can I make it clear that I am not suggesting it as an alternative. I think it should be used for example when you are talking about a policy like ID cards. It would be very useful to have run out a whole set of deliberative processes around the country to see how people actually felt about it once they knew. What we know was that when they first started on that policy there was a great enthusiasm because people thought it was simple, and it was only when you dug deeper into this and you understood what was involved that people started becoming very hostile. What I am saying is that on the few occasions where I think that a referendum is appropriate, the way that you enrich it is by having deliberative processes around the country. I am not suggesting it as an alternative to it. I do not think you can do that. What you do is have deliberative processes in the period immediately before. Fishkin has done this. He did it in Australia on the referendum on the monarchy. He ran out deliberative processes immediately before the poll. He did it elsewhere where you make it a part of the process so that you create a kind of culture of

wanting to know more, there being more debates, a representative section of the public being involved in a deliberative poll, having it televised, having an internet reaction to it. You try to generate much greater information.

Q68 Lord Norton of Louth: In previous evidence we were told the cost of a referendum was about £120 million. If you are having extensive deliberative democracy you then have a practical problem about cost.

Baroness Kennedy of The Shaws: That is an issue.

Q69 Lord Norton of Louth: Is not your argument that if you have deliberative democracy it is not so much an alternative to referendum but actually undermines the case for a referendum because if you have a referendum debate without the sort of exercise you are talking about, then that would suggest you might get an ill-informed result.

Baroness Kennedy of The Shaws: I think that you could easily get an ill-informed result. I think that this process that we went through last weekend gave you an inkling of that because you got the people at the beginning taking quite strong views on all manner of things. They were very cross about the idea that English legislation should be voted on by Scottish MPs to an extent where they can change the outcome on some things where the MP has no constituency to call them to account. Yet at the same time once they gave consideration to the implications of setting up an English Parliament and so on, they then started to feel there was a threat to the Union in this and that you do not create a proper federal system because England is so large. Once they got more information they retreated from some of this stuff. That is why it really made me much more reflective about the business of referendums. Being so closely involved in this process made me think that it is very easy to plump for this and actually the learning for me out of the last weekend was that you get very vulgar responses to things.

Professor Weir: I would like to agree entirely with Lord Norton. That does not happen that often actually! I think what Helena has been saying does undermine the case, but I would add that if we are going to have democracy in the United Kingdom, we should be prepared to pay for it. I think a lot of the problem with the House of Commons and expenses has been that the political class has been unwilling to confront popular prejudice and MPs ought to have been paid properly from the very beginning rather than forced to all the kind of devices that we have seen. I would like to put in a little pitch for the methodology that Democratic Audit has pioneered, as it were, and which is now used internationally. In the Netherlands the Government there actually used our system for assessing the quality of democracy for a major inquiry into the equality of their democracy after the two fairly notorious murders. They set the civil service to work in that country using our criteria and our methodology to assess the quality of their democracy and they came up with quite a few reforms which in fact the Dutch Queen used in her Christmas-time address to the nation, as it happens. In this country we need to shift away from the idea of magic bullets, the idea of hit-and-miss electoral registers and the huge amount of discretion that is available to the executive. We need to move in our culture and ethos to a much more deliberative way of doing politics. I would have hoped that your consideration of the use of referendums would include some thoughts on the quality of the culture of our democracy in this country, our willingness to pay for things, and the approach we make to major reforms, both constitutional and in other areas, where there are very, very real deficiencies, and the way we have passed legislation of course.

Baroness Kennedy of The Shaws: It was very interesting that in this deliberative process last weekend when they heard that in fact our Parliament is actually, by comparison with most others, an incredibly cheap Parliament, in fact it costs very much less than most other Parliaments and indeed France and Britain together still do not come to as much as what Italy costs in terms of its Parliament, it was of interest to people. There was a real shift if you went

around the tables in the views that they took about the allowances scandal once they had more information. In the same way, I just wanted to mention on the issue of referendums the recent referendum that they had in Italy, which was either on the use of IVF or abortion. It was on a very controversial issue in which the Vatican was also having a say. What happened was because in their constitution they insist on there being a certain amount of turn-out before it can have validity, the phone campaign and internet campaign was all about persuading people not to turn out. People who were at all ambivalent and uncomfortable because of the profound nature of the question just did not vote. That was what happened. It failed because of the turn-out. The campaign was to not let people come out to vote. It is interesting how those things work out but it is a much more complex issue than people often think.

Q70 Baroness Jay of Paddington: I think we may have moved on but it was really a supplementary to the question of Lord Norton about the responsibilities for providing the kind of information or in fact building the deliberative process that you have both talked about in different ways. What role do you think the Government of the day in a referendum might have in that sort of process? Could it have any role? Would it be the provider of the information?

Baroness Kennedy of The Shaws: I think that you therefore have to hand it over to civil society. I do think that the deliberative processes have to be run by something separate from government because otherwise the sense that people get is, “Is it trustworthy?”

Q71 Baroness Jay of Paddington: Then the question of resource and paying for such an operation as you describe it would be pretty demanding on civil society organisations unless they were publicly subsidised?

Baroness Kennedy of The Shaws: They would certainly have to be publicly subsidised. There is no doubt about that. It is about who runs it and who creates the information packs

and all of that. We had it over the weekend where questions were asked where they actually wanted to know about the background of experts and so forth. They really did want to know the sources of information. It was interesting because they wanted to be confident that they were not being moved in a particular direction and that was interesting.

Professor Weir: The problem is really that the executive so much dominates Parliament that anything that comes out through Parliament which should be the focus for any kind of information that is provided is absolutely tainted by the fact that the executive controls Parliament. It is a very difficult situation. Then you are driven to all these expedients of trying to find ways of remedying that position. I think it is a very difficult position, which is why we think we should have a much more independent Parliament in terms of the way elections work and so on. I suppose there is one deliberative alternative to referendums which might be quite interesting, although it probably will sound revolutionary, but instead of having Royal Commissions, as it were, of the great and the good, the Chilcots and so on, we could actually set up deliberative juries of citizens to consider all the kinds of questions which need thorough investigation in advance. I think they do that in Scandinavia to some extent but I am not sure about that. It would be an interesting experiment and I think the citizens would certainly do as well as the experts and possibly even better because the choice of them would depend upon some kind of YouGov exercise making sure they were generally representative rather than it being the prerogative of the executive to decide who was the appropriate person to conduct an investigation or an inquiry.

Q72 Chairman: Professor Weir, when you say a “more independent” Parliament could you just expand on what you mean by that?

Professor Weir: Essentially I believe that Parliament should be elected by a system of proportional representation. I have ideas about which system would be the most appropriate given our culture and so on. Until you do that, if you fuse, as it were, the major parties with

the control of Parliament in the way that we do at the moment, you are not going to get a properly independent Parliament. I know there are things that alleviate that, the existence of the House of Lords being one of them, but so much initiative lies with the executive in our system of government. We keep on trying to find ways of evading that fact. It might just be better to change the system which puts people into Parliament in the first place and then you would obviously get a much less “take it or leave it” political system and a much more balanced system within which Parliament and then the people could operate.

Chairman: Lady Kennedy and Professor Weir, time, alas, is our enemy. You have been extremely generous with your time for which the Committee is most grateful. I wonder if we might trespass further on your generosity by communicating with you in writing on one or two of the questions that time has precluded us from covering this morning. Thank you very much indeed for joining us.