

WEDNESDAY 20 JANUARY 2010

Present

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

Memoranda submitted by Professor Vernon Bogdanor and Professor Stephen Tierney

Examination of Witnesses

Witnesses: **Professor Vernon Bogdanor**, Professor of Government, Brasenose College, University of Oxford, and **Professor Stephen Tierney**, Professor of Constitutional Theory, University of Edinburgh, examined.

Q73 Chairman: Professor Tierney, Professor Bogdanor, welcome to the Committee. Thank you very much for joining us. Would you identify yourselves formally for the record, as if it was necessary, and if you want to make a brief opening statement, please do so? Otherwise, we will go straight into the discussion.

Professor Bogdanor: My name is Vernon Bogdanor. I am Professor of Government at Oxford University.

Professor Tierney: I am Stephen Tierney. I am Professor of Constitutional Theory at Edinburgh University.

Q74 Chairman: Can I begin by asking whether you both or either of you think that constitutional issues should be subject to referendums and, if so, how constitutional issues should best be defined?

Professor Bogdanor: There is an important distinction to be made according to whether referendums are discretionary, that is, whether they are held at the will of the Government, or whether according to certain rules laid down in advance, for example in a constitution. Obviously, in our system it is very difficult to have rules because we do not have a constitution and we have the principle of parliamentary sovereignty, according to which Parliament can do what it likes. Nevertheless, there are certain precedents that have grown up as to when referendums ought to be called and it may be that those precedents amount to a convention requiring governments to call them on certain occasions. For example, on each occasion when devolution from Westminster has been proposed, there has been a referendum, either before or after the relevant legislation. I think it would now be very difficult for a Government to avoid having a referendum on devolution. This shows how a precedent perhaps amounting to a convention has grown up – not planned by anyone but in an evolutionary way so as now to constrain government. I think that this is the key to the constitutional role of a referendum: that it should constrain the government of the day.

Professor Tierney: I would begin with the general position that, within a representative system, referendums as a generality are not a particularly good idea. There are three main objections to referendums in principle. One is elite control; that typically referendums promise popular sovereignty but in fact they can be controlled by governments and governments use them when they want to effect a particular result. Secondly that, in terms of the process, they crystallise pre-fixed views. They do not permit the kind of deliberation that we find within representative legislative assemblies, where we expect our representatives to have the competence and capacity to consider matters in the round. Thirdly, they promote majoritarianism, whereas, again, within a representative system we hope that there are systems in place to effect a broader level of pluralism than you would find in a referendum. Beginning with those three objections, therefore, I take the view that referendums, if they are

to be permissible or within a representative system, should be retained for the highest issues of constitutional principle, where it is genuinely important to call upon the people to speak to matters of what an American theorist called “constitutional authorship”. In other words, when issues of the highest constitutional principle are at stake regarding the nature of the state or the constitution, then only at that point would a referendum on principle be a suitable device.

Q75 Chairman: You have used the expression in writing, “very important constitutional issues”. What sort of threshold would you apply to “very important”?

Professor Tierney: It would obviously vary from system to system. I jotted some possibilities down in my written submission in terms of sovereignty of decision-making, and the ones I suggested would be a new constitution; fundamental changes to the electoral system or nature of Parliament; fundamental changes to the constitutional status of the sovereign; the transfer of substantial constitutional powers to institutions beyond the state; and possibly independent statehood for a sub-state territory. Those would seem to be the kinds of issues that might lend themselves to a referendum.

Q76 Lord Woolf: Following on from what you said and taking into account your helpful written evidence, Professors, could I ask you for a little bit of clarity? Of course, we do not have a written constitution, but in relation to a particular constitutional issue is there any reason why Parliament should not pass legislation which says, for example, that before the electoral system is interfered with it is mandatory that a referendum takes place and the referendum should be binding? If that was done, would it not elevate that legislation to a constitutional status which it would be difficult for a government, perhaps without holding a referendum, to interfere with?

Professor Bogdanor: There is no reason in principle why such a statute should not be passed. Obviously, given that Parliament is sovereign it could be ignored but, as you imply in your question, Parliament would be unlikely to ignore it. In my view, it is a question of judgment as to whether the outcome should be mandatory. One might argue that the outcome should come back for Parliament to use its discretion. There might be certain cases, for example a very low turnout or a very narrow majority, when Parliament might want to think twice. As I understand it, however, there is certainly no objection whatever in principle; indeed, I think it would be a good idea to pass a statute of the kind that you suggest.

Professor Tierney: Following on from that, I would probably distinguish between making the holding of the referendum mandatory, which the Act could provide for, and making the consequent result mandatory; because you could then come back with the result and it would again be at Parliament's discretion what to do with it. I think that would depend on the kind of issue at stake. But, yes, there is no principle against it; and such a statute, one would assume, would begin to take on the notion of constitutional statute as used by Sir John Laws, as he was at the time, in the *Thorburn* case.

Q77 Lord Pannick: Is there a problem here, though, that it surely cannot be any amendment to a particular statute which requires a referendum? There may be minor changes to even the most important of constitutional statutes; therefore there would still need to be a judgment made as to whether the proposed amendment is sufficiently important, or I suppose one could say amendment to particular sections of a statute?

Professor Bogdanor: I thought that Lord Woolf was referring to a proposal to change the electoral system for elections to the House of Commons. I think it is generally accepted that, even though there is no statute of the kind that Lord Woolf mentioned, such a change should require a referendum. It has an obvious rationale and a party in government should not be able to change the electoral system simply for its own partisan purposes; and there is obviously a

broader issue that major changes of this kind should not be made without popular approval. However, I imagine that Lord Woolf is not referring to any minor change in electoral administration but rather to a change in the electoral system by which the House of Commons was elected.

Lord Woolf: Maybe, being even more controversial, suggesting that perhaps another issue would be to interfere with the circumstances which have to elapse before the Commons can override the Lords.

Chairman: I do not think that is at all controversial!

Q78 Lord Lyell of Markyate: The general question is “What are the strengths and weaknesses of the referendum as a democratic and constitutional tool?” Professor Bogdanor, you pointed out that our elastic constitution implies an elastic use of the referendum, but you also point out, I think quite rightly, that whilst it can augment the power of government it may constrain it as well. Could you elaborate a little?

Professor Bogdanor: Yes. My argument is that, because we do not have a constitution and because Parliament is sovereign, it would seem to be difficult to lay down any rules for when a referendum should be held. However, in an unplanned, perhaps typically British way, certain precedents have grown up which some people may say amount to a convention – for example as I said earlier, on the devolution of powers from Westminster. I think that with regard to any radical change in the way that we are governed, such as the electoral system for Westminster, also the institution of a directly elected mayor in London – the first directly elected mayor that we have had in our history – it was right to have a referendum. It may be argued that, if we require a referendum for the devolution of major powers from Westminster why should we not also require a referendum for the transfer of powers upwards, as it were, from Westminster to the European Union. So far, we have not had referendums on European Community or European Treaty amendments. That is what I meant by saying that in principle

an elastic constitution implies an elastic referendum but, in practice, the referendum is now no longer such an elastic weapon as one might have thought; it may now constrain governments. I think that is a good thing. I do not wholly share my colleague's scepticism towards referendums. Most democracies do use them. They do not use them regularly; they use them occasionally. I do not believe that they weaken the process of deliberation; I believe that they widen it by bringing the public into the debate. I think that is very important in the modern world. The public want to be consulted on these major changes and I think the referendum could have an educative function. One consequence of the 1975 referendum on the European Community was to make people much more aware of the issues involved in our membership of the European Community, and I think the same is true of the devolution referendums. In the modern world, I think it is illusory to believe that you can confine legislative matters solely to parliamentarians.

Q79 Lord Lyell of Markyate: I very much agree, if I may say so, but they are also a valuable political tool, are they not? You offer a referendum when you seem to be on a hook and when you thought you had got off the hook you removed the offer of the referendum. There has been a recent instance, I think.

Professor Bogdanor: Yes, indeed, it can be used to overcome backbench opposition in Parliament. I think that was true of the offer of the devolution referendums in the late 1970s. It can be used for tactical purposes. Nevertheless, the history does show that it now has the function of constraining government: preventing government from doing what they otherwise might want to do. One example might be entry into the eurozone. Mr Blair's government was in favour in principle of entry into the eurozone. One reason why it could not secure entry was because it had committed itself to a referendum, and I believe that not one single opinion poll has shown a majority in favour of entry into the eurozone, and so the Blair government took the view that it would be unlikely to win a referendum. If the instrument of

a referendum had not existed, however, we might well now be in the eurozone, for better or for worse – people have different views about that – but it has constrained what governments might want to do.

Q80 Lord Lyell of Markyate: But it did offer a referendum on the Lisbon Treaty and it did then, after the election, decide that that referendum should not be offered. Was that not also a matter of political judgment?

Professor Bogdanor: My understanding is that the Government offered a referendum on the Constitutional Treaty but took the view that the Lisbon Treaty had a different function; that it was not a new constitution for the European Union but an amending treaty to the existing system. That was a matter of great controversy and some people argued that the differences were not very great; but, as I understand it, that was the Government's view.

Q81 Lord Lyell of Markyate: Do you hold a view yourself?

Professor Bogdanor: I hold the perhaps unfashionable view that there are quite significant differences between the Constitutional Treaty and the Lisbon Treaty and that the Government does have some justification for its position. I am supported in that view by the fact that nine countries had referendums on the Constitutional Treaty but only one country, the Irish Republic, had a referendum on the Lisbon Treaty, and that is because it was required to do so by the terms of the Irish constitution. However, I appreciate that is a controversial view.

Q82 Chairman: Professor Tierney, anything to add?

Professor Tierney: No.

Q83 Lord Rodgers of Quarry Bank: Can I pick up a point about 1975, about the stage of the process? As I recall, there had been a discussion about renegotiation in 1974-75 and the government of the day published a White Paper. The first stage was a White Paper and was a

referendum appropriate at that time after the White Paper? The second stage was a vote of principle which was made in the House of Commons in October 1971. The third stage was a completion of the legislation to the end of 1972, as I recall. My question is this: At what particular point should there be a referendum, if there is to be a referendum, on a constitutional issue of this importance?

Professor Bogdanor: This is a difficult question to answer. We have had referendums before legislation has been brought into Parliament and we have had referendums after legislation has been brought into Parliament. My instinct would be to have a referendum before the legislation is brought into Parliament. The advantage of that would be that if people said they did not want the relevant legislation, you would save a lot of parliamentary time. You may argue that in the late 1970s, when we had a post-legislative referendum on devolution and it was rejected by the Welsh – and, you may argue, in effect rejected by the Scots – if Parliament had known there was no great demand in Wales and Scotland for devolution they would not have spent as much time as they did on that legislation. I think there is therefore a case for holding a referendum before legislation is introduced into Parliament, to secure the opinion of the country on it.

Q84 Lord Rodgers of Quarry Bank: A vote on principle which was made in Parliament before the legislation was begun. Would it have been appropriate before the House had decided or would it be more appropriate after there had been a vote in favour of joining the Common Market, as it then was?

Professor Bogdanor: The 1975 referendum to which you refer was remarkable, because of course it took place some time after the legislation had been passed providing for our entry into the European Community. The issue was not whether we should enter but whether we should leave. The then Conservative Government under Edward Heath decided not to have a referendum on whether we should enter the European Community and, for various reasons

relating to political vicissitudes, it was held some time afterwards; so I am not sure that it is a good precedent. I think that in general there is a case for having a referendum before Parliament has a vote in principle because then MPs can vote, knowing what the opinion of the country is on a particular issue.

Professor Tierney: I would tend to agree with a referendum before a lot of parliamentary time was spent. I think that 1978 to 1979, on the Scottish legislation, shows how much time was spent on something which ultimately never resulted in devolution. Also the point of principle, as soon as the issue is clear. If it is a constitutional question and it will be put to the public, then there is no reason not to put it once the principled issue is clear.

Q85 Baroness Jay of Paddington: Could we turn to the international experience? Professor Bogdanor, I think you have said in your written evidence that only a handful of countries that have been continuously democratic since 1945 have not had national referendums. Can we learn anything from international experience broadly about what you might call a good and a bad referendum experience? Specifically, are there questions – the way that questions are framed in referendums – we can look at internationally and say, “That’s a good example and that is not”?

Professor Bogdanor: It is certainly the case that the way the question is put can affect the answer. It was discovered in pilot surveys in the 1970s that people’s reactions, when asked whether they wanted to join the European Community, were very different from their reaction when asked whether they wanted to join the Common Market, because “community” has a much warmer sound than “market”. I think the solution is to have the question formulated by an independent body such as the Electoral Commission. If there is a post-legislative referendum one can simply ask as the Government did in 1979, “Do you wish to accept the provisions of the Scotland Act or the Wales Act?”; but if the referendum is introduced before legislation, there is some difficulty, and it is vital, therefore, as you imply, that the question be

drawn up by a neutral body. I think the main lesson to be drawn from studies of referendums abroad is that people are willing to participate and welcome the opportunity to participate if they think their participation will have some result, some outcome. They are not willing to participate in what may seem to be a talking shop – mere consultative exercises. Where something depends on their participation, however, people are willing to participate.

Professor Tierney: It seems to me that when we look at the evidence from abroad we can look at the referendum in three stages: the decision to hold a referendum, and that is, if you like, the trigger mechanism. The decision to make then is do you go down the road of an Act that requires a referendum on particular issues? Some countries have gone down that road, such as Ireland, Denmark and Australia. The second issue is ---

Q86 Baroness Jay of Paddington: That is what you describe as a good balance?

Professor Tierney: Possibly. Certainly the Danish model arguably works fairly well, and I will come back to that maybe in a moment. The Australian model arguably not, because it is so difficult to get matters through the majority of the states. The issue of the question brings up the second stage, if you like, which is framing the issue and framing the question. I would agree that certainly some independent involvement is important, be it an Electoral Commission. A more radical approach, of course, is to involve popular deliberation at that stage. We have seen precedents for that in Australia in 1999 on the head of state issue, and in British Columbia, Canada, on the electoral system, where different forms of civic assembly were put together and people were asked to deliberate on what the issue should actually be that then goes to the referendum. So it is possible to involve the public in framing the question and arguably that is something that would be important. The third issue maybe to consider from international experience is thresholds. There are two types of threshold. One is do you require a supermajority to pass a referendum? A more modified version of a threshold is do you require a particular turnout? That is the Danish experience, where I

believe that 40 per cent of the electorate must vote. Those are therefore some of the things from historical experience. What you would take from it is that if you create a high threshold it can be very difficult to get things through. Secondly the question, without some independent involvement, can be very controversial. In Quebec in 1995 the question was very controversial, because it was set by the Quebec nationalists. People do hold that up as an example of a situation where a more independent process might have been better.

Q87 Baroness Jay of Paddington: There is obviously work that is being done in this country currently about what one might call a citizens' initiative part of a referendum process. Do you think that there is any future in pursuing that?

Professor Tierney: My view is that that would be the approach. I have argued that if referendums are to be acceptable within our system, it would be for the highest constitutional issues, and the very reason that would require a referendum at that time would also require broad citizen involvement. Yes, I think that it is a good model. The Canadian model of almost a lottery of citizens, bringing them together to deliberate on an issue, with the help of experts to help frame an issue, can be important. It would depend on the issue at stake, but it could be useful on something like the electoral system.

Professor Bogdanor: May I add something to that point, because I think that Lady Jay has raised a very crucial issue? I do think the citizens' initiative idea, both at local and national level, is an important way forward and an important instrument of a modern democracy. People now believe, in a way they did not, say, 50 years ago, that they have a right to be consulted on major changes and on change in the public services which affect their lives. I think that they feel in particular that they want greater control over public authorities. Frankly, I feel that the expenses crisis confirmed that view. I therefore believe that this is an important way forward. As I have said in my evidence, we can spend a lot of time on the more glamorous constitutional issues but perhaps the way forward with the referendum and

popular involvement is on the less glamorous local issues connected with the public services, where I think citizens' initiatives and consultations have a fundamental role to play. I think that people are no longer prepared to accept a democracy where they vote once every four or five years and then leave everything to their political leaders.

Q88 Chairman: Professor Tierney, do you want to come back to the Danish experience? You were going to say a word about that.

Professor Tierney: Only on the threshold issue. It is sort of a separate issue that has not really been raised yet, about whether super majorities are a good idea. I will maybe hold that back to see if people are interested in discussing that.

Q89 Lord Norton of Louth: First a comment. Is it not the case in comparative experience that generally the turnout in referendums is actually lower than in elections of candidates? Looking at this country, is not the problem that remains clear from what you have said so far that you still cannot draw a very clear dividing line between what should and should not be subject to a referendum? Professor Bogdanor, you make the point that of course there is much room for argument as to which transfers of power are major and which are not; and so we will have that problem of being quite precise. There may be a problem with generating, say, legislation that is generic, when referendums should be held. What we have, of course, is legislation covering the conduct of referendums once it has been decided to hold a referendum. I want to get your comments on our experience to date, whether you think the 2000 Act has made a significant difference, whether it is sufficient and, if not, what is missing.

Professor Bogdanor: Do you mean the 2000 Local Government Act?

Q90 Lord Norton of Louth: No, the Political Parties, Elections and Referendums Act 2000.

Professor Bogdanor: I see. I think the establishment of the Electoral Commission has made an important difference, by providing a neutral body that can scrutinise both the question in the referendum and the fairness of the procedure. In one or two of the referendums there have been arguments about how fair it was. I am thinking particularly of the 1975 European Community referendum. There was a great imbalance in expenditure between the pro-European side and the anti-European side. I therefore think that the establishment of the Electoral Commission does make it easier to hold effective referendums. You are absolutely right that turnout in referendums is in general lower than it is in general elections. However, in a referendum one is asked to do something different from a general election. One is asked to give one's verdict on a specific question. In a general election one is asked to give a verdict on a whole host of questions. It is rather as if one were a member of a jury and one was told by a judge that one could only convict one person, if one convicted another 20 people who were accused of quite different offences. Although the turnout is lower in a referendum, therefore, I think it does have an important function in giving people the right to make a judgment on a specific item of legislation, as opposed to the whole menu which they are presented with in general elections.

Professor Tierney: On the turnout question, while the turnout on ordinary referendums is low, there is actually evidence that referendums on big constitutional issues produce a high turnout. If you take for example the Belfast Agreement, the turnout on that would compare very favourably to general elections. Similarly, in Denmark, referendums on the euro; in Montenegro in 2006; in Quebec 1995 there was a turnout of over 94 per cent, I believe. So if it is the big issues, I think there is evidence that people will be mobilised – provided the issue is big enough. As far as the 2000 Act goes, I think it is very useful. The positives are the notion of permitted participants; the creation of umbrella organisations where you have two main groups; the role of the Electoral Commission on the intelligibility of the question;

financial aid; the provision for sending literature out, because education is a key factor if the referendum is to be deliberative; limiting donations and limiting spending; broadcast rules. All of those things are very important. Where I would situate the 2000 Act is that it basically covers the third stage, which is the campaign. The two earlier stages that we have already been talking about are the trigger issue – should a referendum be forced or not by Parliament – and, secondly, the process of setting the rules and setting the question. Those are the two gaps, if you like; but as far as the third stage goes, I think that the 2000 Act is very positive.

Q91 Lord Norton of Louth: Just on the big issues, I think what is clear from what you are saying is that it is big in relation to whether it is a big constitutional issue or whether it is an issue that really exercises people, which may not be a constitutional issue in a formal sense. To come to the point about the 2000 Act, if one had the chance to amend it – not necessarily in terms of prescribing issues on which referendums should be held but governing the conduct – what specific changes would you think would be appropriate?

Professor Tierney: There is maybe a minor one, which would be the opportunity for parties to spend a particular sum of money, given that you could find two or more parties aligning on a particular issue and suddenly there is a lot more spending on that particular question. People mentioned that with regard to the euro. You could end up with Labour and the Lib Dems spending a lot. People might balance that against the media. One issue would therefore be media regulation; but whether that is possible or not I just do not know. On the bigger issue, I stay with the slightly more radical point that you have to step back a stage and begin to think about the role of citizens' assemblies or citizen juries in framing what issue actually goes to the people. For me, that would be the big opportunity.

Q92 Lord Shaw of Northstead: I wonder if I could ask about the question of the information that you feel should be supplied for the voters to reach any sort of proper

decision, particularly the financial consequences of any referendum? It seems to me that, if you look at the results of some of these referendums, the final financial results clearly were not envisaged by a lot of the people who voted at that time.

Professor Tierney: Education for the voters is a difficult question. One model is simply to send them the whole agreement – as in the Belfast Agreement or a European treaty – but there would not seem to be much sense in that. One option that was used in Australia in 1999, I believe, was to allow both sides to summarise their key positions and then basically to send two documents to every voter, saying, “Here is a summary of both sides”. That maybe would be one way to do it. It does not stop all the other information that they get, but that may be one way to do it.

Q93 Lord Shaw of Northstead: Could I interrupt there? Surely this discussion should take place in Parliament, with Treasury officials and so on being involved, either in committees or in the Chamber itself, before the referendum?

Professor Tierney: For me, it would depend on the type of issue at stake. One thing about a referendum within a representative system is that it never will be a stand-alone process. Parliament will have a role at the beginning and presumably at the end; but, for me anyway, it would depend on the issue.

Q94 Lord Hart of Chilton: If you took as an example, “Should we or should we not have a written constitution?” that seems at first blush to be a simple question that could be asked, but actually is a hugely complicated question. It is a higher end of constitutional matters. Is that something that should be the subject of a referendum, do you think? If it is, what are the principles that you would apply to formulating the question as to whether or not that should be acceptable?

Professor Tierney: For me, this is where the breakdown of a process into different stages is crucial. You can certainly ask at the beginning a principled question, “Do you want a written constitution?”, but that simply begs the question, “What kind of written constitution?” This is where the second stage of the framing of the issue is so important. For example, if we take the British Columbia experience, rather than simply ask people, “Do you want some form of proportional representation?” a group of citizens was brought together to consider all the different models and came up with a model which most people thought was the best one to then go to the referendum. It may be that, in the event of a written constitution, first of all you would have to determine if there was in principle agreement or support for such a proposal and then I think you would need a stage where citizens were brought together to try to work out what that model might look like, so that when the referendum took place a detailed model could be put to the people. Otherwise it simply begs the question.

Q95 Baroness Jay of Paddington: The same applies, does it not, to the question of Scottish nationalism?

Professor Tierney: Yes, absolutely. Seemingly simple questions can be very unclear.

Professor Bogdanor: You might have to have two referendums if the question of Scottish independence were to arise. A first referendum – which I gather the SNP is proposing – which would, I imagine, give no more than a mandate to enter into negotiations with the United Kingdom Government. You would then need at the end of those negotiations a second referendum as to whether the Scottish people approved of the terms that had been agreed. It would, as you imply, be a very complex matter.

Q96 Lord Hart of Chilton: Professor Tierney, I think that you are against the multi-option type of questions. Could you expand on that a little?

Professor Tierney: The problem is largely a practical one of incomprehensibility. The notion is easy enough if we are, say, taking a vote on a toll for a bridge. You can have a range of options. If some people vote for a £5 toll and some people vote for £10, you can say that there is a general consensus in the middle. The problem is when you have a lot of options that can contradict one another. If you take Australia in 1999, you could have put “Keeping the status quo of head of state”, “A directly elected head of state” or “An appointed head of state”. The consensus would not necessarily fall between the two latter options. A lot of people who would want a directly elected head of state would much rather keep the status quo than have an appointed head of state. It therefore becomes very difficult to work out what would be a consensus option when you have more than two options on a lot of these issues.

Q97 Lord Pannick: Professor Bogdanor, your written evidence demolishes the case for the use of threshold requirements, whether in terms of the turnout or the percentage of the vote. You point out that it is very difficult to be precise in advance; that such requirements are likely to depress turnout; that there may be extraneous factors such as the weather. Far better, you say – and I agree – to allow government and Parliament to make a final decision after the referendum, in the light of all the circumstances. Yet you then say that nevertheless there are strong arguments for threshold requirements in Northern Ireland and in local referendums. I am puzzled as to why the same general arguments do not apply.

Professor Bogdanor: In Northern Ireland there is a very special situation because of the community division. You could have a majority in a referendum which was composed entirely of the Unionist community and I suspect most people would say that would not be sufficient to yield legitimacy. In local referendums turnout could be very low indeed. For that reason I think that one might have a very low minimum requirement of turnout. It is difficult to give a precise figure on it. I accept that. One good illustration of the difficulty was the London referendum – the referendum on the Mayor and Assembly for London –

where the turnout was 36 per cent but there was a very large majority in favour. The Government, in my view rightly, took the view that this was sufficient to implement the reform. In a local referendum, if one had, say, just 10 per cent of people voting, then I think it might reasonably be held to be an invalid outcome. I think that different considerations do arise. In my view, local referendums should be held much more frequently than national ones; so I think that the question of voter fatigue might come into it as well.

Professor Tierney: There is a general question about what do you need to change a constitution and what are the principled arguments to have a super majority built into constitutional change, as they have in America? Given that in the UK we have traditionally changed the constitution through Act of Parliament, it seems difficult to make a principled argument that a simple majority is sufficient there but a super majority should suddenly come in at the level of a referendum. Maybe there are arguments but they are not readily apparent. Where referendums are particularly dangerous is in divided societies. Northern Ireland in 1973 and Bosnia in 1992 are examples where simple majority referendums simply made the situation worse rather than better. When you have consultational arrangements like Northern Ireland, thresholds have to be taken into account very carefully. The third thing on a threshold on voting is that there is perhaps a stronger argument for turnout. In the cases I am arguing for, big constitutional issues, one of the first things to do is to work out if people are genuinely mobilised. You might think a thing is a big constitutional issue but if nobody comes out to vote maybe they do not think it is a big constitutional issue. So there may be an argument for a threshold in terms of voter turnout, where you would assume that those who do not vote are opposed; but that would be different from a threshold on the vote itself.

Q98 Lord Lyell of Markyate: On this question of threshold, it is often said, “They are very low turnouts. People are disenchanted with politics” but I think that it can often be a political decision not to vote, and therefore either it does show in an oblique way how people are

thinking or, alternatively, it can be used as a tactical move in order to prevent a threshold being reached.

Professor Bogdanor: Yes, indeed. This, it seems to me, is a question for Parliament to decide upon at its discretion, when the result is known. There are all sorts of reasons, as you suggest, why people may not vote and Parliament will have to make a decision – sometimes a difficult one – based on the size of the turnout and the size of the majority. The 1979 referendum in Scotland was a good example, where 40 per cent of the registered electorate were required to vote “yes” for the legislation to go through, and the vote was 33 to 31. Parliament then decided, perhaps rightly, that because it was under 40 per cent and because the majority was so narrow, the legislation should not go through. However, if the vote had been, shall we say, 33 to 19, even though you would have had a much smaller turnout I think Parliament might have said, “The majority is large and we ought to let it go through”. It is therefore difficult to lay down any rules in advance.

Chairman: Professor Bogdanor and Professor Tierney, thank you very much indeed for being with us and for the evidence that you have given. We have covered an enormous range. May we trespass on your kindness, on reflection on what you have said, by communicating in writing if there are one or two other points coming forward?

Memorandum submitted by Mr Daran Hill

Examination of Witnesses

Witnesses: **Lord Fraser of Carmyllie**, a Member of the House, former Director, *Think Twice* (1997 Scottish devolution referendum “no” campaign) and **Mr Daran Hill**, former National Co-ordinator, *Yes for Wales* (1997 Welsh devolution referendum “yes” campaign), examined.

Q99 Chairman: Lord Fraser, Mr Hill, welcome to the Committee. Thank you very much for joining us. We are being sound-recorded and so I have to ask you, as if it were necessary, formally to identify yourselves for the record. If you would like to make a brief opening statement, please do. Otherwise, we will go straight into discussion.

Lord Fraser of Carmyllie: My name is Lord Fraser of Carmyllie and I was director of the *Think Twice* campaign in the referendum in Scotland in 1997. The title *Think Twice* comes not from a particular cerebral vanity on our part but because there were two questions on that particular referendum paper. That is why we were asking people to think twice.

Mr Hill: My name is Daran Hill. Back in 1997, I was the National Organiser of the *Yes for Wales* campaign, which was a cross-party and no-party campaign, which campaigned for a “yes” vote in the referendum on the establishment of a Welsh Assembly.

Q100 Chairman: Could I ask each of you to share your thoughts with us on what the strengths and weaknesses of referendums are on constitutional matters and what sort of issues are most appropriately submitted to people for referendums?

Lord Fraser of Carmyllie: I would restrict myself in the use of referendums to those situations where there were substantial constitutional issues raised. I certainly do not think they should be part and parcel of the everyday business of government; nor do I think they should be used in relation to issues that might be thought to be capable of standing alone, such

as the death penalty or abortion or something like that. I would restrict myself to just those significant constitutional matters.

Mr Hill: I find myself in general agreement with Lord Fraser. I think the use of the word “substantial” is particularly appropriate. It is matters that are constitutional but outside normal politics. What I would say in terms of weaknesses, though, in terms of the use of referenda, would be that sometimes they can be used as a political tool. Sometimes they are a general political barometer and people answer for a variety of reasons, rather than the question that has actually been posed to them; but I am sure that is a common factor in the evidence you have received throughout your inquiry.

Q101 Lord Norton of Louth: You are not our first witnesses but you are our first witnesses who have practical experience of being at the heart of campaigning. It would therefore be very useful from our point of view if you would give us a few insights into how you developed your own campaigns and, from your point of view, what you thought were the strengths and limitations of the campaigns that you undertook.

Lord Fraser of Carmyllie: I think that too often a referendum is capable, as has been indicated, of being simply a barometer on the attractiveness of the political party at any given time. The referendum campaign we were engaged in, which was the Welsh Assembly and the Scottish Parliament, fell some months after a very unpopular Conservative Government in Scotland had been defeated. I do not think we had a snowball’s hope in hell of doing anything because that is the way that people saw it. They saw this as just a second opportunity, in less than six months, to indicate why they thought the Tory Party was unpopular. In some countries such as Switzerland where referendums are held pretty regularly, I can see the sense of government using that device on a regular basis, but I would be pretty loath to see them extended much in the United Kingdom. I think, as in our campaign, when not even the whole of the Tory Party was on side and ranged against us was

the Labour Party, the SNP and the Liberals, we never stood a chance. Frankly, a lot of people were still reeling from the effects of a general election campaign.

Mr Hill: Again, I would echo what Lord Fraser has said to a certain extent. I remember that one of the campaign tools, ethical or not, that we used in the “yes” campaign was that, on polling day, we had an aeroplane flying across South Wales trailing a banner which said, “Vote Yes, Vote Blair”, which really had nothing to do with the question being posed at all! It chimed in with the political mood. In terms of positive and negative experiences – and the point you made in terms of our being the first practitioners that have come in, as it were – that was reflected to a certain extent when we were trying to run the referendum campaign as well, because the only previous experience had been some 18 years earlier. As I understand it, the referendum campaign back in 1979 in Wales certainly was not a particularly energising campaign; it was not one that engaged the public on either side of the debate in a particularly meaningful way. In terms of a particular weakness, without wanting to point the finger at the media – it is always tempting to do so but I will refrain – the number of newspapers that are produced for a Welsh audience is radically different to Scotland, and the readership of said papers that are produced in Wales is vastly smaller proportionally. The broadcast media as well: a lot of televisions point over the border, so where do they get their meaningful and intelligible news, interpretation, et cetera? It was therefore quite difficult in a lot of places to get a message out and across. I am particularly heartened by the existing legislation that has now come, in terms of recognising the “yes” and “no” campaigns and giving them proper status because for about half the campaign, or half the period of the existence of the *Yes for Wales* campaign – we were established back in January 1997, so before the parliamentary election – there was no “no” campaign until late June/early July. We were not really arguing with anyone. Then it came about almost overnight, where two members of the Labour Party – not particularly powerful members of the Labour Party, they were ordinary members of the

Labour Party in the Rhondda – decided to start a “no” campaign themselves, with the support of Viscount Tonypany. It grew quite embryonically, but it did seem a relatively strange experience for four or five months – arguing against nobody. I think that is something that certainly could be learned from in terms of a fair vote.

Q102 Lord Norton of Louth: You say there was not much past experience. In both your cases you were more or less starting from scratch, getting a campaign underway.

Lord Fraser of Carmyllie: The legislation of 2000 is very important, and I think we are coming on to that later. We were caught flatfooted. We had no money; we had no premises. Most importantly, the general principle I would draw from it is that we had a complete absence of local networks. People understood how to fight constituencies on a general election basis or a by-election basis, but they did not really understand how to campaign in a referendum on a local basis. So, apart from the headquarters which we eventually established, there was really very little else. We did not have sub-offices around the place.

Q103 Baroness Jay of Paddington: Lord Fraser, you mentioned the always difficult but necessarily crucial question of money. How did you or both of you go about raising funds? I was interested in the written paper from Daran Hill saying that most of the funding for the “yes” campaign came from a single source.

Mr Hill: Roughly half the funding for the “yes” campaign – I am sorry, I do not have the precise figure with me – came from a series of grants; one block grant at the start and then some later grants from the Joseph Rowntree Reform Trust. The rest was raised by public donation, by engagement with other stakeholders. I was personally more concerned on the “no” side, who ultimately had less money than us. Their final accounts demonstrated some £100,000 to our £140,000 or £145,000.

Q104 Baroness Jay of Paddington: They are still small sums.

Mr Hill: They are still relatively small sums, especially compared to what the PPERA now proposes to allocate to campaigns on referenda. On the “no” side, however, it was quite clear from their accounts that 90 per cent of their funding had come from one single source. I do not think that is a particularly healthy situation to be in either. I think it is a definite step forward that both sides would be properly funded.

Lord Fraser of Carmyllie: I would have loved to have had money from one large, single source! We had to rely on the old-fashioned technique of simply begging letters. We did discover some people who were sympathetic to the cause who did contribute significant sums of money on an individual basis, but nothing like enough money to run a really serious campaign. Some money was spontaneously donated and some was just handed in at the office, but we never really had a well-organised campaign to raise money before the referendum campaign got underway.

Q105 Baroness Jay of Paddington: Do you think the 2000 legislation has completely transformed that? Will this never be an issue in a future referendum?

Lord Fraser of Carmyllie: I think it is a significant improvement and it is a very valuable part of that legislation that, 28 days prior to the referendum, neither central nor local government can put about information that might bear on that topic; because I am bound to say I do think that government is not trying if it does not know how to put across information which is effectively propaganda in an information fashion.

Q106 Baroness Jay of Paddington: On the other hand, we have had some discussion in earlier sessions with witnesses who we have asked about how they think information is effectively given to the public and whether the Government does have a role in that; so there is obviously as narrow tightrope to walk there.

Lord Fraser of Carmyllie: Yes, I agree with that.

Q107 Lord Shaw of Northstead: What lessons do you reckon we should draw, either positive or negative, from the operation of the referendum as a whole? Unlike the political situation, which can change every few years and a different climate comes in with different results, once the referendum has taken place and is put into operation you cannot keep switching from one situation back to the old one and then on again. It therefore seems to me that there is a case for a delay, in perhaps having even two referendums with a few years' interval, to reflect on the whole thing.

Lord Fraser of Carmyllie: Yes, I think there is some force in that. I was very interested that, as the First Minister in Scotland, Alex Salmond, has been proposing – although he seems to be delaying it a bit – a referendum on independence, he has said quite clearly that it is an event that should happen once in a lifetime. I think that is quite valuable. If, say, you get to 43 per cent, do you have another one next year and hope to get 44, and go on and on, until you secure a majority? I think that they ought to be used sparingly and if the issue is the same, the sort of Alex Salmond principle of “once in a lifetime” or once in a decade, or something like that, seems to me to be a sensible idea.

Q108 Lord Shaw of Northstead: So far as finance is concerned – this is the practical argument – it is very difficult to get over the financial situation when feelings are running high, but did the people of Scotland really understand the true cost of what was about to happen?

Lord Fraser of Carmyllie: No, and we did not have free mailing then either. What had happened was that the Government, quite sensibly and wisely, had booked with the Post Office when every household would get a delivery. By the time we had enough money to be confident that we could mail every household in Scotland, the only date that the Royal Mail

could give us was after the referendum – which we thought was rather a waste of money, frankly, and so we did not take it up.

Mr Hill: This is a particularly interesting question to me at the moment because we are about to face another referendum in Wales. The Government of Wales Act 2006 enshrines a process by which a further referendum can be triggered to move from Part 3 to Part 4 powers. It is this whole issue of asking a question of people only once in a generation and the constitutional significance of the question that is asked. Back in 1997 I think there was a deeply substantial constitutional issue that was posed to both the people of Wales and of Scotland, which could be relatively easily expressed. I think that was certainly a lesson that was learned from that referendum. The questions were generally well structured and helped, certainly from the Welsh end, to stimulate a real debate. I am rather nervous about the way that the question the Welsh people will next face will be phrased. Essentially, what you would be asking people is, “Do you want to move from Part 3 to Part 4 of the Government of Wales Act 2006?” How else might you phrase that? “Do you want to move from an Assembly to a Parliament?” Is that really what is happening? “Do you want the Welsh Assembly to have the same powers as the Scottish Parliament?” That is not on the table either. How you make that particular thing intelligible is something that is certainly exercising my mind. It was a lesson that was learned properly from the last referendum but goodness knows how it will be applied to the next one, to make that one intelligible.

Lord Fraser of Carmyllie: The one matter on which I would disagree with Mr Hill is that although editorially the Scottish press was almost unanimously against us – as was the radio and the television – nevertheless I have absolutely no complaints about the conduct of the media. It may be that they had had only three or four months from a general election and so they did fastidiously come along, at an appointed time, to a press conference and would listen to what we had to say for the day; but whether that is a reflection of their recent experience at

a general election or whether it is something that happens more generally in referendums, I do not know. I suspect it had to do with their having had it inculcated in them from the recent general election. We all know that at general elections they go round from one party to another at an appointed time and ask questions or hear what the story of the day is.

Q109 Lord Norton of Louth: In a way this comes back to Lord Fraser's point about no free mailing – or indeed in that case apparently no paid mailing either in the event. Of course, it is fundamental to the campaign, how you reach out to the public. In effect, you were both starting from scratch and did not have the established infrastructure for actually letting people know what you were about. That was the fundamental challenge. How did you tackle that and let the public know what your precise views were?

Lord Fraser of Carmyllie: In the media we had more access to correspondence pages than would have been permissible during a general election, when editors tend to say, “no, we are not going to cover this”. Otherwise, we just resorted to the old techniques, as I said, and we got good television. They were helpful; they would have one or two people giving evidence about it. But I still think that, in a sense, the more useful experience was my own during the EC referendum in the mid-1970s. I well remember old ladies and people saying to me, “I don't really understand this issue” and I would say, “Well, Margaret Thatcher is in favour of it and Tony Benn is against it” – and that was what people wanted to know and they said, “Right, I know where I stand”. It was as simple as that.

Mr Hill: In terms of informing the public – Lord Fraser has referred to local networks – we spent a lot of time early on trying to establish local networks. I think there was a clear correlation when the results came in of the places where we managed to get local networks established early – Carmarthenshire, Neath Port Talbot, Gwynedd – where the actual “yes” vote was particularly high. Neath Port Talbot was a good example. The first group that we set up was on the western fringe of the South Wales valleys and the “yes” vote was

substantially higher there. You were competing against the clock, essentially, and you were having to see 22 of these things. One of the other techniques that we used was to engage people in a professional capacity to make the case; so from time to time you would have “Nurses Say Yes”, with an explanation as to why, “Teachers Say Yes”, “Students Say Yes”, et cetera. It was trying to relate the issue in different terms, in professional terms. I think that was also relatively successful in broadening the debate out through the media. My criticism of the media is not of the media *per se*; it is just the reach of the Welsh media, which is limiting in itself.

Q110 Lord Norton of Louth: What strikes me, particularly from Lord Fraser’s comments, is that the techniques you were using – whether it is correspondence columns or an interview for the media – are not expensive. Presumably that was a significant factor.

Lord Fraser of Carmyllie: That was a bit of a necessity!

Q111 Lord Norton of Louth: Yes, and if funding had been different – Mr Hill, you have raised the point about how you fund it, not so much where it comes from but I suppose the amount itself – would that have made it.

Lord Fraser of Carmyllie: One of the things that we tried to do was fairly similar. We did not have “Teachers Say No” or “Doctors Say No” or anything like that, but what we did try to recruit was a number of people who had been proud enough to put on a Scotland jersey who wanted to say “no”. We thought that would make a big impact; that if people felt patriotic enough to do that, they could not be accused of being lackeys of the English or anything like that. I have to say that sometimes we got it wrong and we were not quite sure what their views were; and, on a number of occasions when we did get very good support from well-known sporting personalities, they were unprepared to put their heads above the parapet at the time.

Q112 Lord Woolf: I think that your personal experience is so very interesting. Based on that experience, do you think there is room for greater statutory control for referendums generically?

Lord Fraser of Carmyllie: The interesting thing is that in 2009 we had a Political Parties and Elections Bill, but it does not mention referendums as it did in the year 2000; so I do not know as yet whether the existing statutory framework for a referendum – we will be finding that out fairly soon – is better. However, it seems to me that in principle it is better. First of all, governments cannot, under the guise of putting out information, resort to propaganda and all that kind of thing. There is funding available. I think it is about £600,000. We never had anything like that money. There is an argument for a proper statutory control for it, because, as I say, our experience was that government had a full hand and we had none at all.

Mr Hill: I welcome the same sort of initiatives as Lord Fraser does. The Government will always be engaged though, because essentially British experience on referenda is that referenda are held on issues within the government programme. It strikes me that that will always be a factor. How much power the Government is given within that situation is the critical point. That is the power ultimately to set the question, which is a matter that, as I say, exercises my mind. It is the question that will be set for the Welsh referendum probably over the coming year. We also have government control over timing. I think that was quite an interesting point back in 1997, where Scotland went first and we were about a fortnight afterwards, or something of that nature. We were in no doubt that whatever the outcome was in Scotland, it would have a huge knock-on effect in terms of the vote that we were able to generate in Wales. They could not be detached, partly because of the way the UK media was focusing more on Scotland than on Wales – because it was a bigger constitutional question that was being posed, as well as everything else. This issue of timing is quite interesting in terms of the current Welsh experience, where there is a debate going on between the UK

Government and figures within the UK Government and the Welsh Assembly government, and the two parties within the Welsh Assembly government, over when the precise timing of the next Assembly referendum will be. You really cannot detach the politics from that because, as well as the phrasing of a question, the funding of a campaign, the timing of the referendum can be a very political issue too.

Q113 Lord Hart of Chilton: Following on from those answers and from your own perspectives, how do you see the role of the Government in the referendums? Do you see it as a genuine enquiry after public opinion or do you see it more as a cynical use of a political tool?

Mr Hill: I think “cynical use” is possibly a bit strong, from my own perspective. Certainly experience shows that governments often use referenda to answer questions that they find it difficult to answer themselves, or politically expedient sometimes to pass the issue over for others to deal with. For example, my own experience with the forthcoming referendum in Wales: the use of the referendum in that instance grows out of the Government of Wales Act 2006, which has been perceived as a compromise within the governing party – Labour at the time in Wales – around the whole issue of how things move forward. I would not go as far as to say “cynical” but I think that political buy-in can often be manifested in lots of different ways, some of which are more subtle than others.

Lord Fraser of Carmyllie: I think that the electorate would find it quite extraordinary if the government of the day did not actively participate in a referendum, because that is why they have elected them previously. I do think that sometimes it is used as a political device if there are intractable difficulties within the government of the day. I am sure that is the case. I have no objection to the Government participating, but that is why I said in answer to an earlier question that I do think there ought to be a proper statutory framework, so that they do not enjoy an unfair advantage in approaching any particular referendum. Certainly at the time we

were engaged in the 1997 election we did think that the Government was enjoying an unfair advantage. May I just say as a postscript to what Mr Hill has said that we were very clear in Scotland in 1997 that the outcome of the referendum in Scotland would have a significant bearing on what happened in Wales as well.

Q114 Lord Rodgers of Quarry Bank: Could I ask whether referendums could be infectious? We had a reference earlier to local referendums. Do you anticipate experience of referendums on smaller issues in local government? We did not discuss this earlier but, if the idea becomes infectious – I have perhaps chosen the wrong subject – but if, for example, there is a move to close a hospital or even to close a department of a hospital, do you think there is any feeling that there may be increasing demand for this device?

Lord Fraser of Carmyllie: I think there might be such a demand, particularly in the example that you have chosen, where a much-loved hospital is in danger of being closed, and I will tell you what the result will be, wherever it is in the country! It will be overwhelming. However, I think that there are considerable dangers about that, and often on things like planning matters. That is why local councillors are elected. If they have got it wrong, they will suffer next time round. Issues of definition would be extremely difficult. Is it to be pylons? Is it to be hospitals? Is it to be roads? What? It seems to me that you could find yourself in a very real danger of taking the centre out of local government, where such decisions should be taken. I would strongly resist the idea of doing it on a localised referendum basis.

Mr Hill: There has been the use of referenda to establish local mayors, has there not? That has been a local example. To my knowledge, there has only been one such plebiscite in Wales and that was in Ceredigion in west Wales, where the vote was overwhelmingly against. Sometimes infections can travel more speedily in certain parts of the country than others, I guess. Even in our major cities in Wales, so far there has been no real appetite to exercise the powers in the previous Local Government Act to use referenda to establish mayors.

Q115 Baroness Jay of Paddington: This is going on to talk about what you think might happen now, because obviously when you were both involved in the two major referendums things were very different about the processes of elections. To start with, we did not have the 2000 Act but also I am sure you would be aware of the importance that people are now seeing, for example, in online campaigning and education *vis-à-vis* general elections. I wondered if you thought there would be very different outcomes and indeed methods if you were running a referendum campaign today?

Mr Hill: Looking back to the 1997 experience, I remember our putting out a press release when we launched our website, which had one web page on it. That was the infancy of the internet as a political tool. The only people who had email addresses were generally academics. Even though it is only 13 years ago, it was a different world in terms of political campaigning. One of the things I do in my spare time is to edit a non-party, cross-party website that deals with political issues and tries to raise the tone of the debate within the Welsh blogosphere. We have welcomed articles from people on both sides of the debate, the “yes” campaign and the “no” campaign, already, so that people can start to engage in a more meaningful way and realise what exactly are the issues at stake in advance of the next referendum. I have to say that I am generally pleased by the tone of that debate and the breadth of contributions that are coming out.

Q116 Baroness Jay of Paddington: And the responses?

Mr Hill: It is growing. We have run two articles online now from the “no” campaign. The website is www.waleshome.org, if anyone wants to have a look. The level of debate around the two “no” campaign articles in particular has been quite striking and there has been a degree of civilised discussion between both sides. I compare that to most of the blogosphere, which is quite often a nasty and vile place, where people are often misrepresented or their

ideas abused quite freely. I think that might well be a feature during a referendum campaign as well. Unfortunately, the downside of online campaigning is as prevalent as the upside.

Lord Fraser of Carmyllie: I placed emphasis in the 1997 campaign on local networks. I am not so confident that I would place quite the same weight on it now because I do think that there will be a greater use of the internet and online campaigning. That would have been a considerable advantage to us actually, because it does not cost anything like the money of setting up offices in ten cities or towns, which is extremely expensive and takes up a lot of time to work up. If you just had two or three people working out an online campaign, it would be infinitely preferable – and it might be a lot easier. I think that will affect all sorts of campaigning. I do not think that it is exclusively a remark directed to a referendum campaign.

Q117 Baroness Jay of Paddington: No, it will have a massive impact in a general election. I am just thinking that, from your experience and the point you have just made, it would have been much simpler and less expensive to be able to conduct what was in a sense a minority campaign if you were using online techniques.

Lord Fraser of Carmyllie: That is right.

Mr Hill: I suppose the most valuable thing to possess in terms of online campaigning is not necessarily a Twitter feed that reaches hundreds of thousands of people, is not necessarily a very active Facebook page or even a very active website. From what I am told by people on the frontline, the most precious thing of all is often email addresses, so that you are able to connect directly with potential voters. I think that will be where the biggest step forward in terms of connection will come.

Q118 Lord Pannick: You have both mentioned the 2000 Act and the impact which its provisions would have had on the campaigns for which you were responsible. Are there any other specific legislative reforms which either of you think we should now be considering?

Lord Fraser of Carmyllie: I do not think so but I would reserve my position, in that we have not had a referendum campaign of any order since the year 2000, and I hope it works. If it does not work, we might need to amend it further. The short answer, however, is that I do not know, because I have not been able to observe any campaign subsequent to that date.

Mr Hill: There has been only one, the North East referendum, and I did not observe that one particularly closely either. However, I think it is quite indicative that the “no” campaign won. That probably demonstrates the fairness of the legislation perhaps – that a “no” campaign can triumph, using the mechanics that have been put in place.

Q119 Chairman: Following from Lord Pannick’s question about possible legislative changes, is there anything either of you or both of you would like to add to what you have already said about how you would like to see referendums conducted in the future, in addition to legislative changes?

Lord Fraser of Carmyllie: I do not see how you would write into legislation “sparingly”, but that is what I would like to see. As I said to Lord Pannick, I would like to see how the 2000 Act works before I would propose any further changes. I think what is contained within it has all the germs of a very good scheme; that is to say, financial support, free mailing, access to broadcasting. I am not complaining about the access we had to broadcasting but it does not seem to me to be undesirable to have it on a statutory basis that you should have access. If they had decided that they were not going to give it to us, it would have been very difficult to know what to do about it.

Mr Hill: There is a point that I made in my brief written evidence to you which relates to framing an explanatory paragraph and the questions to be posed in the next Assembly

referendum. I think that improving a referendum can be done by offering more context rather than just placing a simple question, however easily intelligible that may or may not be, before the public. I think that, particularly from the 1997 experience, if there had been a paragraph which said, “If you vote ‘yes’ it will mean this. It will not mean independence but it will mean the establishment of an Assembly” – and of course I say this knowing full well that that form of words would need to be negotiated, involving the Electoral Commission and possibly both sides of the campaign as well – sometimes having explanatory paragraphs can add real value. I say that particularly in the context of the future Welsh referendum, which will likely happen in the next 18 months or so, where it is about moving from one part of an Act to another. I think that just posing a question on its own without any form of context that seeks to explain what powers are already held by the Assembly, what the net effect would be, would undermine the asking of the question.

Lord Fraser of Carmyllie: My understanding is that the Electoral Commission will have a role to play in the fixing of the question. I think that is desirable because it is very easy to ask a question where you load it. I think that about 19 per cent are in favour of an independent Scotland at the moment; but if you asked the question “Do you want something done for Scotland?” you will get 99 per cent saying “yes”!

Chairman: Lord Fraser, Mr Hill, on behalf of the Committee, thank you very much indeed for joining us and for the evidence you have given. You have been most generous with your time.