

Direct Democracy

**Empowering people
to make their lives better**

Douglas Carswell



First published in October 2002 by Cchange

Cchange
Clutha House
10 Storey's Gate
London SW1P 3AY
Tel: 020 7340 2660
www.cchange.org.uk

© Cchange 2002
All rights reserved

ISBN 1 84275 057 7
Typeset by Politico's Design, design@politicos.co.uk
Printed in Britain by Creative Print and Design

Contents

Biographical Note	4
Acknowledgements	5
Summary	7
1 A Flawed Democracy?	16
1.1 Post-representative democracy	16
1.2 Unaccountable government	22
1.3 Cosmetic change or real reform?	30
2 Direct Democracy	33
2.1 What is Direct Democracy?	33
2.2 Localism	35
2.3 Unaccountable government	44
3 The New Battle of Ideas	54
Notes	57

Biographical Note

Douglas Carswell, 31, works in investment management, and before that worked in television, living first in Rome, and subsequently in Brussels and London. Douglas stood as the Conservative candidate for Sedgefield in the 2001 General Election against Tony Blair MP, cutting his opponent's majority by over 7,300 votes. Sedgefield was one of only a handful of seats in the country where the total number of Conservative votes increased, despite the fall in voter turnout.

Acknowledgements

I am grateful to the various comments, suggestions and contributions that I have received while writing this pamphlet from, amongst others, Mark Reckless, Giles Taylor, Jocelyn Ormond, Margaret Carswell, Daniel Hannan MEP, David Gauke and Dominic Cummings.

*We have not overthrown the Divine Right of Kings to fall down before
the Divine Right of Experts.*

Harold Macmillan, 1950

Summary

Chapter 1: A Flawed Democracy?

Britain is no longer a representative democracy. Those elected to represent us in Parliament no longer determine how we are governed, because executive powers that were once the preserve of elected politicians, are now in the hands of unelected and unaccountable elites.

Executive power is in the hands of an unrepresentative system of government. An analysis of policy-making on the issues of greatest concern to voters, such as health, law and order, immigration and asylum and education, shows that policy is determined by a combination of unaccountable central government institutions, an ever more assertive judiciary, and unelected supranational authorities.

Electoral apathy has grown as our democracy has become less representative. Growing numbers of voters (41 per cent at the 2001 General Election) do not bother to vote because they perceptively recognise that their votes do not count, because those they might elect no longer count.

8 // Direct Democracy

Many of the existing proposals aimed at reviving our democracy will do little to make our democracy more representative. Those proposals aimed at making our democracy more 'accessible' by making it technically easier to cast a ballot, offer nothing to ensure that the act of voting will affect how the electorate are governed. Other reforms, such as regional devolution, perhaps the boldest attempt at reform, merely hand the feeble powers of one set of elected representatives in Westminster, to an even more peripheral series of elected chambers. Real devolution means a net transfer of power from the unelected and the unaccountable, directly to the people.

Chapter 2: Direct Democracy

This pamphlet makes 8 proposals for a net transfer of power directly to the people.

- *Localism*: The first 3 proposals aim to transfer power over key public services from central government institutions to either locally elected individuals, or directly to the individual consumers of public services.
- *Accountable government*: The second 5 proposals aim to ensure that, where power necessarily needs to be exercised at a national level, there is a direct form of accountability to the people.

Localism

To achieve direct democratic accountability, responsibility for the delivery of key public services should be transferred from unaccountable central government bodies, to either individuals who local voters are able to hold directly to account, or directly to the people themselves.

Proposal 1: Elected Health Executive Officers (see page 35)

- Responsibility for running the NHS should be handed to directly elected Health Executive Officers for each county, city and large town. Elected for a fixed term mandate of perhaps three or four years, each Health Executive Officer would be held directly accountable to local people for how health services were delivered.
- The NHS should be funded through a National Health Fund, the total size of which would be determined by Parliament annually. The National Health Fund would then be allocated directly to each local Health Executive Office on a *per capita basis* with various geographic considerations. Under such a system, elected representatives in Parliament (who would determine how much is spent on the NHS), and locally elected representatives (who determine how such resources are to be used locally) would replace the existing party political slanging match, which generates much heat about, but sheds little light over how, the NHS is run.
- Existing targets and guidelines, determined centrally and imposed uniformly across the NHS, should be scrapped. Elected Health Executive Officers would be free to innovate in order to deliver local health care. Dogmatic, and at times theatrical, debate as to whether the NHS should 'remain public' or 'be privatised' would be largely redundant, as discussion focused on practical considerations of how to deliver the health needs of local people most effectively.

Proposal 2: Elected Sheriffs (see page 40)

- Responsibility for policing, and for prosecuting criminals, should be handed to a directly elected Sheriff representing each county, city or large town. Elected for a fixed term mandate of

10 // Direct Democracy

perhaps three or four years, each Sheriff would be held directly accountable by local people for how effectively the law was upheld, the effectiveness with which suspected criminals were prosecuted, and the extent to which police and prosecutors worked together to reduce crime.

- A fight back against historically high levels of recorded crime would be resourced out of a National Crime Fighting Fund, the size of which would be determined each year by Parliament. Each elected Sheriff would be allocated their resources on a *per capita*, and geographic basis, from this National Fund.
- The Crown Prosecution Service would be disbanded, each of its local offices reconstituted as the local Sheriff's Office, with the Sheriff assuming responsibility for bringing public prosecutions. Local Sheriffs would be directly democratically accountable for deciding whether or not to bring prosecutions, as well as for their effectiveness in securing convictions.
- Chief constables would report directly to locally elected Sheriffs, who would assume responsibility for their local police forces, and who would thus be held accountable by local people for the effectiveness of the local police in upholding the rule of law. Where police incompetence resulted in a failure to convict, as has been alleged, for example, in the failure to secure convictions against those who murdered Stephen Lawrence or Damilola Taylor, the elected Sheriff could be held directly accountable for that failure by local people.

Proposal 3: Universal Education Vouchers (see page 42)

- Every parent would receive an education voucher for each child that they have of school age, which would be redeemable by any school willing to accept that child as a pupil. Unlike other public services, such as policing, education needs to be delivered to a

specific category of individuals at any given time (i.e. children of school age). Thus, rather than empower elected intermediaries, such as Sheriffs, it should be the parents of school-aged children who are empowered directly to determine how their children are to be educated.

- Education should be funded through a National Education Fund, the size of which would be determined each year by Parliament. The voucher scheme would be the mechanism through which these resources are allocated. The redeemable value of each education voucher would vary so as to reflect both cost differences in educating children of different ages, as well as certain regional cost variations.
- All targets and guidelines, such as the national curriculum, determined centrally and imposed nationally, would be abolished. It would be for teachers to determine how to teach, and for parents, in possession of vouchers, to determine where teaching resources were allocated. Not only would this ensure greater choice for teachers and parents, but also it would lead to wider diversity, and a broader mix of traditional, progressive and faith-based education.

Accountable government

Certain powers, such as the power to make national legislation or international agreements must, by definition, be exercised at a national level. Yet those who exercise such powers should be made directly accountable to the people.

Proposal 4: Popular initiatives to let the people set the political agenda (see page 45)

- Any popular petition calling for legislative change, signed by over 5 per cent of the electorate, would be put before Parliament.

12 // Direct Democracy

A popular initiative would trigger the legislative process, but it would not by itself lead to changes in the law, since it would remain for elected representatives in Parliament to endorse or reject a proposal in the knowledge that a significant section of the electorate sought reform.

- Overseeing the process of drafting popular petitions, and verifying the signatures collected, would be the 'People's Chancellor', appointed directly by the Queen to ensure their complete independence.
- The Queen's Speech at the annual State Opening of Parliament would cease to be merely a recital of the ruling administration's legislative agenda for the Parliamentary year, and would also become an occasion to announce the popular legislative agenda. Issues of concern to a significant number of voters, such as the use of genetically modified crops, or the legal status of same sex marriages, which are rarely debated by those elected to represent us, would become an important part of Parliament's annual legislative agenda.

Proposal 5: Elected representatives to appoint heads of public bodies (see page 47)

- Elected Parliamentarians would ratify the appointments of the heads of the more important statutory bodies and executive agencies by calling the candidate(s) to account before US Senate-style hearings. While the Prime Minister would propose one, or possibly several candidates for a particular role, a Parliamentary Appointments Committee would need to either ratify the proposed candidate, or select a candidate from the shortlist, or veto candidates for the appointment. Where such a veto was exercised, the Prime Minister would either propose alternative

candidate(s) for the job, or take the matter before all elected Parliamentarians.

- More constructive than proposing to abolish quangos and other such executive agencies (some of which undoubtedly perform essential tasks), our challenge must be to make such institutions accountable for how they undertake the tasks that they are intended to perform. With our current system of asylum and immigration deemed to be in disarray, the direct appointment by our elected Parliamentarians of the heads of those executive agencies responsible would ensure that there was greater accountability for perceived failings.

Proposal 6: Elected representatives to appoint senior judges

(see page 49)

- To make the judiciary more accountable, while retaining its independence, a Parliamentary Judicial Appointments Committee should appoint all senior judges for fairly lengthy fixed terms, from a shortlist jointly compiled by the Prime Minister and the Lord Chancellor.
- Rather than attempt to turn back the clock to an era before the incorporation of the European Convention on Human Rights into UK law, the task should be to ensure that having assumed a decision-making role that was once the preserve of those we elected, judges become accountable for how they exercise such powers.

Proposal 7: Professional liability for civil servants (see page 50)

- The civil service must be fully professionalised, and, just as doctors, engineers and architects are liable to litigation for negli-

14 // Direct Democracy

gence, individual civil servants should be made liable for implementing measures that are unlawful in that they exceed what Parliament has sanctioned.

- While civil servants would abandon their creative tendencies when drafting regulations, civil servants may also need to seek insurance cover against litigation, as do certain other professionals.
- Once made personally liable, civil servants would demand clearer legislation from Parliament, shifting the onus onto our elected lawmakers to make better-framed laws. Parliament would, therefore, also need to take note of the effects of the mountain of devolved secondary legislation, which has amassed under its authority.

Proposal 8: Democratising diplomacy (see page 52)

- Crown Prerogative should be reformed so that all international agreements entered into by the UK would require ratification by Parliament. A democratic 'loop hole' currently enables unelected officials (primarily in the Foreign Office) to negotiate treaties and conventions without recourse to Parliament when such international agreements have no impact on UK law. Closing this 'loop hole' would mean that our elected representatives, rather than the Foreign Office, would determine what was and was not, in the national interest.
- Moreover, any treaty that had a lasting impact on UK law would first require ratification through popular referendum, and then subsequently require renewal by each subsequent Parliament (much like Parliament has been called upon to renew the terms of the Prevention of Terrorism Act). International treaties with a lasting impact on UK law delegate certain powers of national self-determination into the realm of the supranational. Gaining first the consent of the people in a referendum, and subsequently

Summary // 15

renewing that consent from each new Parliament, would ensure such powers of self-determination were never ceded to the supranational authorities, but merely on loan.

Chapter 3: The new battle of ideas

Representative democracy has been undermined over the past thirty years by ideas and unconscious assumptions as to the nature of democracy, which have proliferated within Britain's body politic. Representative democracy cannot be restored merely by implementing the specific proposals outlined in this pamphlet, but by consciously challenging many of the prevailing ideas about the nature of democracy.

1. A Flawed Democracy?

1.1 Post-representative democracy

The age of purely representative democracy is slowly coming to an end.

Peter Mandelson

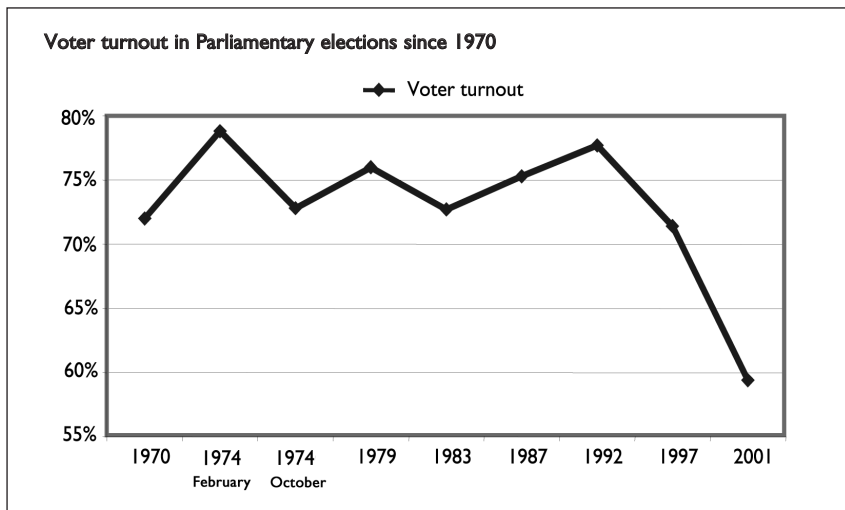
Britain has ceased to be a representative democracy where those exercising executive power are accountable to elected representatives. Just as in Bagehot's day, the Crown and the House of Lords had grown to become merely 'dignified' rather than 'efficient' parts of the constitution, in our own time, those we elect have ceased to play a central role in the government of Britain. Instead there has been a steady accumulation of power by the unelected, and those unaccountable to the electorate.

The apathy of a marginalized electorate

A growing percentage of the electorate chooses not to vote at all since they recognise that those they might elect do not count when it comes to determining how they are governed. While voter

A Flawed Democracy? // 17

turnout averaged 75 per cent in the seven General Elections between 1970 and 1992, fewer than six out of every ten voters bothered to cast a ballot at the 2001 General Election. Indeed, in 2001 proportionally fewer people voted than at any time since the introduction of universal suffrage in 1928. Despite Labour gaining a massive House of Commons majority at the 2001 General Election, more people preferred not to vote than voted for both Labour, and for Labour and Liberal Democrats combined.¹



Certain commentators have suggested that this fall in turnout is indicative of the electorate's contented apathy.² The notion that an increasing proportion of the electorate cannot be bothered to vote because they are blissfully content is contradicted by opinion polls that show that as voter turnout has fallen, discontentment amongst the electorate has in fact grown.³ Moreover, the notion that there is a correlation between high levels of electorate satisfaction and low turnout is disproved by the fact that in areas of socio-economic hardship, where one might reasonably assume dissatisfaction to be

18 // Direct Democracy

highest, turnout has tended to be lowest. If anything the inverse is true: higher dissatisfaction equals lower turnout. An alternative explanation for falling voter turnout must be that the apparent apathy of the electorate stems from a perceptive realisation that those they elect to represent them are increasingly unable to determine how they are governed.

Post-representative government

Elected representatives have become incapable of holding those who govern us to account, not so much because Members of Parliament have proved ineffective (which they have), but because executive powers increasingly reside with those over whom elected representatives have no authority to hold to account. Over many areas of public policy, Ministers are in office, not in power, since power has shifted to an emerging pyramid of un-representative government.

Expert government

Large swathes of public policy are determined by various quangos in the form of executive agencies, Non-Departmental Public Bodies (NDPBs),⁴ regulators, commissioners and inspectors each endowed with the power to make and administer policy decisions that were once made by elected representatives.

- There are between 4,700 and 6,000 quangos,⁵ NDPBs and executive agencies each with a role either making or implementing public policy.
- Many such institutions, created to implement decisions made by Ministers and Parliament, have experienced 'mission creep', their remits extending to the point where they have ended up determining policy. For instance, since the 1988 report on *Improving Management in Government – the Next Steps*,⁶ which began a

process of delegating responsibilities for policy implementation to semi-autonomous Next Steps Agencies, such Agencies have maintained their semi-autonomy, but blurred the distinction between the making and the implementation of policy. For example, both the Benefits Agency's initiatives to clamp down on fraud, and the Child Support Agency's endeavors to determine levels of child support, have seen unelected officials making policy decisions.

- While scope for civil servants to decide policy has grown the number of civil servants operating at arms length from Ministers has increased. By the mid-1990s, the majority of civil servants worked for Next Step agencies.
- The spending power of NDPBs has almost doubled over the past decade, and the proportion of government-funded expenditure has increased six fold since the late 1970s.⁷
- A new breed of super-quangos – the industry regulators such as OFTEL, the FSA, OFWAT, and OFCOM – has grown in number, size, role and purpose. Extending their powers, often on the pretext of consumer rights or preventing abuses of private monopolies, they are today able to preside over private enterprise as prosecutor, judge and jury, without reference to our elected representatives.⁸

Judicial government

The judiciary has acquired the power to determine policy in many areas, not simply in place of, but in opposition to, the expressed will of democratically elected representatives.

- Judicial review, once a process whereby the courts ruled whether the actions of Ministers' were *ultra vires* in going beyond what had been sanctioned by elected representatives, has become a process by which unelected judges proscribe actions that elected represen-

20 // Direct Democracy

tatives have specifically sanctioned. In 1996, for example, a court disregarding the fact that Parliament had, through the 1981 Nationality Act, specifically stated that decisions taken by the Home Secretary with regard to applications for British citizenship 'shall not be subject to appeal to, or review in, any Court', instead ruling that 'this Court [had] decided otherwise'.⁹

- Even before the 1951 European Convention on Human Rights (ECHR) was incorporated into UK law in 1999, courts had invoked the ECHR as an established basis to adjudicate over Acts of Parliament. For example, in 1994, a judge ruled that a Minister had acted unlawfully, not because the Minister's application of secondary legislation was *ultra vires* in light of any primary legislation, but, using the ECHR as an established basis on which to adjudicate, because the judge felt 'the regulations now in force were so uncompromisingly draconian in effect that they must be *ultra vires*'.¹⁰
- Now that the ECHR has been incorporated into UK law, the extent to which judicial activists can frustrate the will of elected representatives has become apparent. Today, all draft Bills may be scrutinised by the judiciary to ensure their compatibility with the Human Rights Convention. Any Act that the judges declare incompatible with the Convention must be amended by 'fast track remedial action by Order'.¹¹ Far from being a Charter for Human Rights, the Convention provides so much leeway for judicial interpretation, it could perhaps more accurately be viewed as a Charter for Judicial Rights.

Supranational government

The highest British court is no longer in Britain, but is, in fact, the European Court of Justice (ECJ) in Luxembourg. As well as being a judicial body, the ECJ is a supranational institution. It is indeed to

such supranational institutions, whether EU judicial, executive or legislative bodies, or other non-EU supranational bodies, that the entire process of government in Britain is now subservient.

- Under sections 2 and 3 of the 1972 European Communities Act and Articles 226–229 of the treaty establishing the European Community, the British Parliament is compelled to transpose into UK law decisions made in Brussels by the councils of the European Union. While it is a moot point whether or not the British judiciary has the power to, in effect, strike down laws made by our elected representatives, the institutions of the European Union undoubtedly possess, and increasingly exercise, powers that dictate what legislation those we elect can pass. Even if the British Parliament were to refuse to do so, the ECJ, and the British courts that are subservient to it, would rule, and do rule, irrespective of what our elected representatives decide.
- Most UK law is today made and authored by the unelected supranational institutions of the EU.¹² Rules produced by the EU's complex bureaucratic machinery are binding on our elected representatives, who must either amend UK law accordingly (in the case of regulations), or do nothing, the rules simply overriding existing UK legislation (in the case of directives). Powers, which only a generation ago resided with democratically elected British politicians, are now in the hands of supranational institutions that are wholly unaccountable to either the British electorate or to representatives of the British electorate.
- It is not only to the institutions of the EU that powers that once resided with democratically elected representatives have been passed, but to other supranational institutions too. For example, under the 1951 United Nations Convention on Refugees, elected

22 // Direct Democracy

representatives are unable to undertake a policy that would deny settlement into the UK of anyone who has a well-founded fear of persecution.

In our post-representative democracy, the perception that the victors of the 2001 General Election govern Britain, is an illusion. Many of the key decisions that appear to be taken by the political party in office are simply not decisions that any of our elected representatives have the power to take.

1.2 Unaccountable government

Remote elites taking decisions; local people taking the rap; no one accountable and no one sacked. It is the way we are ruled now.

Daily Telegraph editorial, 23 November, 2001

Both critics and supporters of the current Labour administration have often noted its predilection for presentation and news management over substance.¹³ Yet this trait of the Blair administration is not simply a character quirk of the contemporary Labour party. It is a condition made inherent by the weakness of elected representatives to determine how we are governed. As elected politicians have lost their pre-eminence in determining policy, they have increasingly sought pre-eminence in terms of appearing to govern. The supposed 'control freakery' of the Blair administration is a form of presentational possessiveness on the part of politicians who lack the effective ability to decide on policy.

The extent to which effective executive power rests with the unelected and the unaccountable can be shown by examining

the extent to which policy over the things that matter most to the electorate is no longer determined by those for whom we vote.

The electorate's priorities at the 2001 General Election (Gallup poll May 2001)¹⁴

	Public policy issue	Percentage of electorate that rated issue 'the most urgent'
1	Health/hospitals and the medical services	38%
2	Foot and mouth	10%
3	Crime/ law and order	8%
4	Immigration, asylum seekers and refugees	7%
5	Education	6%

1. Health/hospitals and the medical services

Although health/hospitals and the medical services were the electorate's priority in the 2001 General Election, those they vote for are not able to determine how the NHS is run. The Secretary of State for Health, answerable to those we elect in Parliament, is only nominally in charge. Far from being 'run by politicians', the NHS is run by a Byzantine pyramid of centralised institutions, whose decisions Health Ministers announce and justify.

- Management of the NHS is in the hands of the unaccountable. The NHS Executive at the apex, together with some 70 national health quangos,¹⁵ make most of the key health service decisions, handing micro-managerial instructions down the pyramid to be applied by some 500 local health authorities (since re-branded Primary Care Trusts). Overwhelmingly, the 70 odd NHS quangos are not even part of, or directly accountable to, the

24 // Direct Democracy

Department of Health over which Ministers, accountable to the House of Commons, preside.

- Key NHS funding decisions are made by the Advisory Committee on Resource Allocation on the basis of formulaic calculation, and with scant reference to those elected to 'make the NHS better'.
- Unaccountable quangos determine centrally how resources should be used locally. For example, the National Institute for Clinical Excellence, a quango on which representatives of large pharmaceutical companies sit, can decide in secret¹⁶ the so-called 'good practice guidelines' through which new treatments and drugs are rationed nationally.

2. Foot and mouth

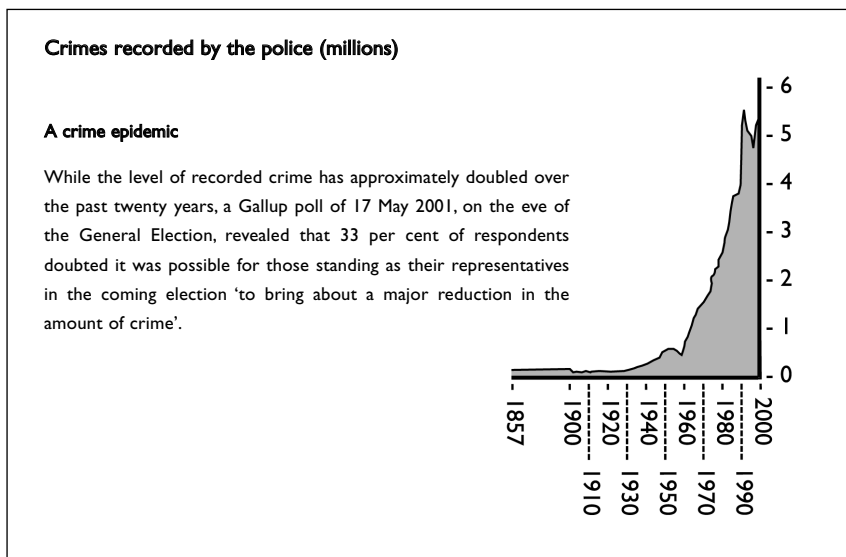
Although the outbreak of a foot and mouth epidemic in early 2001 was atypical in that it placed an agricultural issue high on the list of the public's priorities, it was typical that our elected representatives played only a peripheral role in determining how the crisis was dealt with. Throughout the crisis, the Minister for Agriculture, answerable to our elected representatives, was not in charge, and even the Prime Minister, who claimed to have taken 'personal charge',¹⁷ could only endorse measures decided elsewhere:

- EU directive 85/511 handed overall responsibility for dealing with any incidence of foot and mouth disease from Ministers accountable to our elected representatives to unaccountable EU institutions.
- On the specific question of using vaccination, it was never for Ministers to decide (as the agricultural Minister begrudgingly acknowledged to the House of Commons),¹⁸ since EU directive 90/423 ceded specific responsibility to the EU's Standing Veterinary Committee.

- It was never for Ministers, answerable to Parliament, to decide how to dispose of the hundreds of thousands of animal carcasses caused by the mass slaughter of livestock, since EU directive 80/68 handed responsibility for such matters to EU institutions.

3. Crime/law and order

Crime/law and order was the public's third highest priority at the time of the 2001 election. Yet the Police and the Crown Prosecution Service are not simply unaccountable to the electorate for how they deal with crime and suspected criminals, they have grown less accountable as crime rates have risen.



The Police

Levels of recorded crime have risen rapidly over the past two decades, and there is evidence that suggests public dissatisfaction with the service that the police are delivering. A report by the Adam

26 // Direct Democracy

Smith Institute¹⁹ published immediately before the 2001 General Election revealed that while the public would like the police to tackle 'hard' crime (e.g. targeting criminal gangs and street crime, apprehending criminals, patrolling and maintaining order), it would appear that the police prefer to prioritise 'soft option' policing (e.g. building better community relations). Quite apart from being operationally independent, the police are not accountable for what laws they enforce or how they set their priorities.

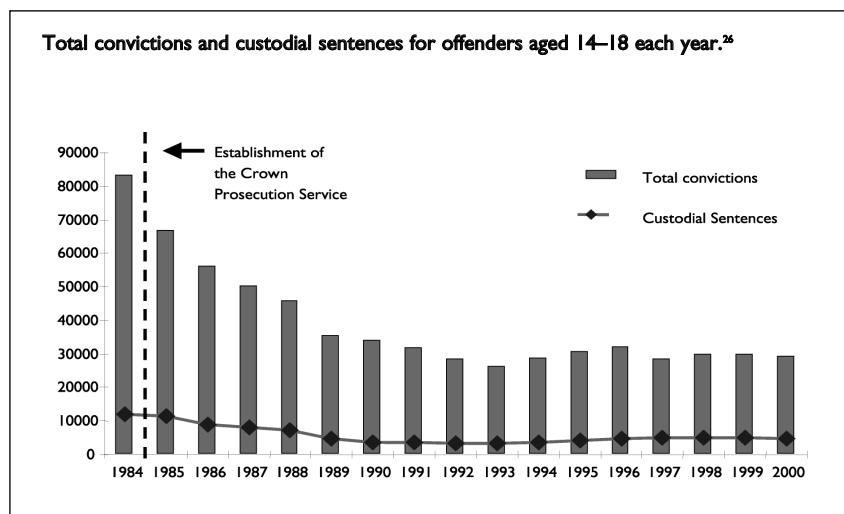
- The police decide what laws to uphold. For example, in 1980 a court ruled that a private individual had no grounds to compel the police to enforce the law.²⁰ According to the police's own guidelines issued in the mid-1980s, the police are no longer obliged to take action in connection with particular breaches of the law, being able to judge for themselves whether to uphold the law, or to find alternative means of resolving crime.²¹ In 1998, a court ruled that it was for a chief constable to choose whether to protect lawful trade, the police being under no obligation to do so.²² In 1985, the police decided to adopt a policy of giving young criminals 'informal warnings' in preference to taking any action.²³
- The police set their own priorities. Following the 1996 Police Act, chief constables determine their forces' priorities, and the priorities for the Basic Command Units within their constabulary, with reference to (appointed) local Police Authorities (who in turn appointed the chief constables). From local Basic Command Units, to constabularies, to the national quangos at the top of the policing pyramid (such as the Police Standards Unit), there is little accountability to those we elect.²⁴

The Crown Prosecution Service

Responsible for the pursuit of suspected criminals through the Courts since 1985, the Crown Prosecution Service (CPS) does so

with reference to its own code, rather than to those whom we elect.

- The CPS decides when to prosecute. Rather than determine whether to prosecute a breach of the law on the basis of there being sufficient evidence (the evidential test) to secure a conviction, the CPS has leeway to determine whether it deems it to be in 'the public interest' (the public interest test) to prosecute suspected criminals. For example, the CPS, encouraged by its code to 'consider the interests of a youth' when deciding whether to prosecute, secured 65 per cent fewer convictions amongst 14–18 years olds in 2000 than were secured in 1984, the year before the it was created.²⁵ This failure to convict young criminals has occurred over a period of time when crimes committed by underage criminals have increased significantly.



- The CPS is incompetent even when it chooses to prosecute. Despite its enormous discretionary powers, the CPS, perhaps because it operates beyond democratic accountability, has

28 // Direct Democracy

performed its role as a prosecutor poorly. An estimated 7 per cent of cases handled by the CPS each year are abandoned 'in error'.²⁷

4. Immigration, asylum seekers and refugees

Despite generating heated controversy during the 2001 general election campaign, those who stood in that election were in no position to determine who can enter Britain. Beyond the reach of democratic accountability, our system of asylum and immigration simultaneously creates incentives to abuse the asylum process at the expense of those in genuine need of asylum,²⁸ while being skewed against economic migrants who might have much to offer the UK.

- Since signing up to the 1951 United Nations Convention on Refugees, all UK governments have been obliged to offer asylum to anybody claiming to be persecuted. Under the Convention, once an applicant has entered the UK, all that a UK government can do is take measures to assess the validity of the application.
- In order to ensure that those asylum applicants whose claims for asylum were 'manifestly unfounded' could be removed to 'safe countries' from which they embarked on their journey to the UK, while complying with the UN Convention, Parliament passed the 1996 Asylum and Immigration Act. Yet the judiciary has restricted the interpretation as to what constitutes a 'manifestly unfounded' fear of persecution to the point that the will of our elected representatives to remove applicants who cheat the system has been frustrated. Furthermore, the judiciary, citing the UN Convention on Refugees, undermined the main premise of the 1996 Act, ruling that neither France nor Germany could be deemed 'safe countries'.²⁹ The judiciary's interpretation of what is 'manifestly unfounded' and what is or is not a 'safe country' has rendered our elected representatives powerless.³⁰
- With no effective legal mechanism to determine who enters the UK

via the EU, or to remove those who enter and whose asylum applications are rejected, approximately 75 per cent of the 21,200 applicants whose requests for asylum were turned down in 1999, remain in Britain.³¹ Meanwhile in 1999 alone almost 100,000 people were officially accepted for settlement in the UK, the equivalent to an annual population increase of approximately 0.17 per cent.

5. Education

Although education ranked as a priority for the public at the time of the 2001 General Election, those they elected do not determine our education policy, which is largely made by centralised State institutions. Research published in the run-up to the election suggests that, without any meaningful accountability to the public, the type of education that these centralised State institutions are delivering is not the kind of education system that the electorate wants.³² While the public has a clear preference for an orthodox, indeed, old-fashioned, type of educational system, which imparts the basics and the tools, with smaller class sizes streamed for ability, and where learning is the priority, the State quangos are delivering something rather different. Yet our elected representatives are unable to determine otherwise.

- Control over local schools has been centralised around unaccountable central government institutions. Few measures have been more centralising in their effect than, for example, the 1989 Education Reform Act and the 1990 Education Act. Thanks to these two crass instruments of centralisation, central institutions now largely dictate both what is taught in individual classrooms and how it is taught. Collectively various centralisation measures have created an education system today that is firmly in the hands of a pyramid of institutions and experts who together devise at least 17 national plans, schemes, initiatives and projects

30 // Direct Democracy

that are applied across the board, determining how schools are to be run.³³ During the 1997–2001 Parliament, schools received over 1,000 publications and sets of regulations from the Department for Education and Employment, including 140 circulars of guidance to teachers in one six month period alone.³⁴

- Elected politicians do not take key funding decisions, but an executive quango, the Funding Agency for Schools, centrally determines what funds get allocated locally.
- Deciding whether or not a school is failing is not a decision made by Ministers accountable to elected representatives, but by the Schools' Inspectorate.

1.3 Cosmetic change or real reform?

Few proposals to revive interest in our democracy are as draconian as the suggestion that voting be made compulsory. Yet as with the idea that electoral apathy be legally proscribed, many other proposals appear to be based on an assumption that low voter turnout is itself the problem, rather than being a symptom of a more profound malaise.

- To encourage higher voter turnout, the newly established Electoral Commission promoted an array of schemes intended to increase electoral participation in the run-up to the 2001 General Election.³⁵ While evidence suggests that postal voting and new technology can help increase the total count of votes, such schemes do nothing to make votes count, since those elected still lack effective power.
- To make Parliament more 'accessible' and 'relevant' to people senior parliamentarians, such as the Leader of the House of Commons, Robin Cook, have advocated a range of superficial changes to the way Parliament functions. Yet until Robin Cook

and his elected colleagues are able to determine issues of priority to the public, and not merely debate the use of arcane Parliamentary jargon or consider how many crèches there should be in the Palace of Westminster, it is difficult to see how the 4 out of 10 voters that preferred not to vote in the 2001 election will grow more interested in the political process.

- To devolve democratic decision-making locally, regional assemblies have been established in Scotland and Wales, and are proposed for England. It is a paradox that as elected representatives have grown less important, their numbers have increased. Having more elected chambers, whether regionally, nationally or in Europe, does not make our process of government more democratic when, sitting in whichever chamber, they do not decide. Rather than advocate yet more elected chambers created for different regions of Britain, reform must seek to empower the elected to decide policy over the things that matter to people in Britain.
- To galvanise local politics, directly elected mayors have been introduced at a municipal and local level in a number of areas. Yet with so much of the process of local government still in the hands of a multiplicity of local quangos, and without any defined local responsibilities to oversee the delivery of local healthcare, policing, education or other issues of concern to the electorate, elected mayors, whether in London or in Hartlepool, will remain largely peripheral to the things that matter most to people. It is indeed precisely because the voters of Hartlepool appreciate the irrelevance of their directly elected mayor that they made such an irreverent choice, electing a man dressed up as a monkey.
- To enhance democratic participation, the Institute of Public Policy Research has given awards to public bodies which involve

32 // Direct Democracy

the public in decisions that affect their lives,³⁶ through citizens' juries and deliberative polling. In a similar spirit, quangos and publicly funded bodies are encouraged to seek legitimacy for policies and initiatives through a so-called People's Panel, consisting of 5,000 'representative' individuals from across the country. Yet quangos and publicly funded bodies fail to find a democratic legitimacy from the 659 really representative individuals elected from all over the country that sit in the House of Commons.

Many of the initiatives and proposals above are not without their merits in trying to bridge the gap between governed and governing. Yet such a gap will never be closed without first recognising that the apathy of the electorate is an entirely rational response to the fact that the choices they are asked to make on polling day have little impact in terms of how they are governed. Overcoming apathy at the ballot box means giving the electorate the ability to make choices at the ballot box that are meaningful in that they will effect the way that people are governed.

2. Direct Democracy

This chapter makes 8 recommendations, to be adopted and implemented by political parties.

2.1 What is Direct Democracy?

Direct democracy aims to make those who govern Britain directly accountable to the people of Britain. To hand power, responsibility and trust to the people, accountability for various executive functions would need to be ‘unbundled’ at either a local or at a national level.

- *Localism*: Section 2.2 outlines instances where direct power and responsibility could be handed out locally – either to individual consumers of public services or to individuals elected locally by the people. For instance, accountability for how schools are run could be handed directly to parents and to individual schools, through a system of education vouchers that would empower individual parents to allocate resources,

34 // Direct Democracy

and ultimately determine how schools are run. Health or law and order, policy could be determined locally, through individually elected local representatives, directly accountable to local people.

- *Accountable central government:* Section 2.3 covers instances where decision making necessarily needs to be at a national level. In such cases, the recommendations seek to ensure that those we elect to represent us at a national level in Parliament are both more directly accountable to the people, and themselves have greater scope to hold central executive institutions and individuals directly to account.

What direct democracy is not

While direct democracy is about the devolution of power, it is fundamentally different from ‘regional devolution’, as practiced in Scotland and Wales, and proposed for England. The regional devolution of limited powers held by one set of elected representatives in Westminster, to peripheral groups of elected representatives elsewhere has seen little net transfer of power from the unelected and the unaccountable to the people. In contrast, direct democracy is about making a net transfer of power from unelected central institutions, and placing it in the hands of the people.

Direct democracy is about determining who decides, rather than about advocating specific policies for health, education, agriculture, asylum or crime.

Yet in advocating greater democratic control by the governed over the governing, direct democracy aims to ensure that new approaches and policies to all the great political questions of the day can be attempted in ways that would almost certainly never be

implemented under our inert and staid form of post-representative government.

2.2 Localism

Direct democracy would transfer responsibility over the running of key public services from unaccountable central government institutions, to the public locally. The health service, law and order and education ranked as three of the top five issues of greatest concern to the electorate at the time of the 2001 General Election. As detailed in section 1.2, many of the key policy decisions over our health service, approach to law and order, and delivery of education are not made by those accountable to the public, but centrally by the unelected and the unaccountable. Direct democracy would make those responsible for the delivery of our key public services directly accountable to the public.

Proposal 1: Elected Health Executive Officers running health

The following 4 recommendations aim to decentralise control over the NHS from the unaccountable national institutions that today run our health service, and give them to those accountable to the public locally.

1. Elected Health Executive Officers

Responsibility for running the local health service should be handed to a directly elected Health Executive Officer within each county, city and large town. The local Health Executive Officer would be directly answerable to each local resident, who would be eligible to vote for his or her Health Executive Officer. Election would be for a fixed term period, perhaps 3 or 4 years, being long

36 // Direct Democracy

enough to enable the Health Executive Officer to implement measures effectively, but not so long that local residents would have to wait excessive periods of time before passing judgement. Elections for the position of local Health Executive Officer would ideally coincide with other local elections. The election of each Health Executive Officer around the country would not necessarily need to be held at the same time, and there may even be some advantage in staggering elections, with perhaps a third, or a quarter of Health Executive Officers being elected each year. The qualifications for standing for election as the local Health Executive Officer would be the same as those for standing for Parliament.

Perhaps the most extraordinary result of the last General Election was the outcome in Wyre Forest constituency, where an independent candidate, campaigning to retain Kidderminster Hospital's accident and emergency department, won with almost 60 per cent of the vote. Yet sitting as a lone backbencher in a peripheral House of Commons, Dr Richard Taylor MP is less able to deliver better health care for his constituents than when he was merely a practising doctor. Decisions concerning Kidderminster Hospital, as with every other hospital, are taken centrally, irrespective of local voters. Far from opening up our health service to 'politicisation', a system of direct democratic accountability over our health service would instead help to open up our system of democracy. Independent-minded local individuals, not merely the narrow band of candidates churned out by the parties' selection machines, would be able to make their mark. As Worcestershire's elected Health Executive Officer, Dr Richard Taylor would have not only a mandate to improve health care locally (which he has today without being able to deliver), he would also have a three-year and a multi-million pound budget to do so. How many millions, would be determined by the size of the National Health Fund.

2. A National Health Fund

Parliament would apportion public money each year into a National Health Fund. The National Health Fund would then be divided between each Health Executive Officer, on a *per capita* basis (with some allowance for geographical and possibly also demographic considerations that might affect the cost of delivering health care and the local levels of demand for health care). The locally-elected Health Executive Officer would be personally and visibly responsible for delivering health care and establishing local health care priorities within their county, city or large town, using their allocated portion of the National Health Fund. Strict rules would ensure that no money from the National Health Fund could be used to promote or publicise an incumbent Health Executive Officer's record; the results as experienced by the electorate, would have to speak for themselves.

There would most likely be a tension between those in the House of Commons setting the level of national spending on health, and those elected on a narrower mandate to deliver health locally. Yet this would be a healthy tension, ensuring that the debate over what resources to allocate to health, and how best to use such resources, was no longer a narrow, sloganised slanging match every four or five years between political parties, but a constructive discussion that would often transcend narrow party lines.

3. Freedom to innovate

Devolving control over the health service to locally elected representatives is both compatible with, and complementary to, various suggestions that have been made to reform the way that our health service is funded, most notably by establishing some form of private health insurance.³⁷ It is precisely because direct democracy would devolve decision-making and ensure greater accountability that

38 // Direct Democracy

such innovations would be more attainable. With health policy currently determined by central government institutions, any proposals for change, whether concerning private health insurance or changes in the availability of cancer treatments, are *de facto* all-or-nothing proposals. As a centralised monolith, either the NHS is funded entirely by taxpayers, or it is not. Either the National Institute for Clinical Excellence permits the use of certain drugs or it does not. Yet with devolved policy-making amongst some forty different elected representatives, each able to formulate their own policy, there would be enormous scope for innovation and adaptation, in terms of funding, administration and treatment. Indeed, changes are likely to occur far faster, with innovations that worked in one region quickly applied elsewhere, or alternatively an elected Health Executive Officer who persisted with failed policies in one area, forced to either adapt or be ejected from office.

Since each local Health Executive Officer would be accountable to their own local electorate for how they delivered health care, they would have considerable latitude over how they did so. A hospital in, for instance, York could treat patients from the County of Yorkshire, or indeed Cornwall or Durham, and would receive funds for doing so from the budget controlled by the Health Executive Officer from Yorkshire, Cornwall or Durham. Far from stifling innovation, the allocation of funds across administrative divisions would encourage specialisation. Health Executive Officers could not only pay other Health Executives for treating patients, but could also pay the private sector to deliver cost effective treatments, as they deemed appropriate.

4. Better value for money

Local Health Executive Officers could club together to negotiate with suppliers in order to obtain better value for money from the

people's taxes for the drugs bill. It would be the responsibility of each Health Executive Officer to set pay and conditions with local doctors and nurses. Far from adding to or duplicating NHS administration, each elected Health Executive would be formed from reconstituted local health administrations (Health Authorities and Public Care Trusts). At the same time, savings would be made by dismantling the national paraphernalia of health service institutions, with the money that would have been spent on them, instead channelled directly into the National Health Fund.

Alternatively perhaps, Health Executive Officers might choose to club together at a national level to pay for, and retain the services of any one of the existing national health quangos. Yet in doing so, such a national health quango would continue to exist only because it was able to find sufficient numbers of elected Health Executive Officer willing to divert resources to the quango to deliver a specified service at greater economies of scale than might be achieved otherwise. If the national health quango failed to deliver value for money, it is unlikely their services would be retained by local Health Executive Officers free to opt out, and find better value for money elsewhere.

Conclusion: local accountability to local health needs.

Handing control of the NHS to locally accountable representatives might see some local health services introduce private health insurance schemes, which if successful, other local health services would then want to emulate in order to satisfy the raised expectations of their own local electorates. Yet it is not the intention of this pamphlet to make such recommendations, but merely to ensure that there is sufficient democratic accountability to ensure that any such proposals received due consideration by removing the central government's monopoly to decide.

Proposal 2: Elected Sheriffs maintaining law and order

While crime rates have doubled over the past twenty years, there is very little that those we elect are able to do about it, since those institutions responsible for dealing with crime are largely beyond democratic scrutiny. Direct democracy aims to reestablish a direct link between the choices voters make at the ballot box, and the way that crime is actually dealt with, without compromising the integrity of the justice system, through 4 key recommendations:

1. Elected Sheriffs

Responsibility for upholding the law, apprehending criminals, dealing with crime and prosecuting criminals through the Courts should be handed to a directly elected Sheriff representing every county, city and large town. The local Sheriff would be directly answerable to each local resident, who would be eligible to vote for his or her local Sheriff. Election would be for a fixed term period (as with Health Executive Officers, perhaps for 3 or 4 years). Elections for the local Sheriff would ideally coincide with other local elections (such as that for local Health Executive Officers). The election of each Sheriff would not need to necessarily be held at the same time, and there may even be some advantage in a series of staggered elections, for example, with a third or a quarter of all the local Sheriff facing election respectively every three or four years. The qualification for standing for election as the local Sheriff would be the same as those for standing for Parliament.

2. A National Crime Fighting Fund

Parliament would apportion money nationally each year into a National Crime Fighting Fund, using taxpayers' money. Money from the National Crime Fighting Fund would be divided on a *per*

capita basis (making some allowances for the geographic location and demographic make-up) to the local Sheriff's Office in each county, city and large town. Using these nationally allocated funds, with strict rules to prevent such funds being used to promote or publicise an incumbent Sheriff, each locally elected Sheriff would have the power to set budgets for the local police and Sheriff's Office. For instance, the Sheriff would determine what portion of funds went on new police cars and equipment, and how much money should be spent on local Victim Compensation schemes.

3. The Sheriff as prosecutor

The Crown Prosecution Service, already organised into some 43 administrative regions in England and Wales, would be reconstituted in each local area as the Sheriff's Office. The Sheriff, supported by the Sheriff's Office secretariat, would take over the current role of the Chief Crown Prosecutors, but also have direct responsibility for establishing police priorities in the pursuit of criminals, at the same time overseeing the prosecution of suspects through the courts. Like Chief Crown Prosecutors, the Sheriff could not determine the law, nor interfere with the courts, but would replace the Crown Prosecutors in deciding when and how to bring public prosecutions against suspected criminals.

4. The Sheriff and the police

The Sheriff would replace the role of chief constables as head of each local police force. The Sheriff would assume responsibility for each of the local Basic Command Units within their geographic area. Like chief constables, the Sheriff would not be able to determine the law, but like the chief constables today, would have considerable leeway to determine how best to uphold it. Moreover, the Sheriff would be held accountable by local residents for how they did so.

42 // Direct Democracy

While there has been much discussion about the success of New York Mayor Rudy Giuliani in reducing crime in New York, the fundamental lesson is not what policies he did or did not implement, but that first as District Attorney, and then as Mayor, he was democratically accountable, with a mandate to apply new policies. With direct accountability, there was a democratic dynamic to act in response to voter concerns. Contrast such democratic accountability in the fight against crime to the situation in Middlesbrough, in the north of England. Former local police chief Ray Mallon, was voted in as Middlesbrough's first ever directly elected local Mayor in May 2002. His reputation locally, and nationally, had largely been built on his tough approach to crime, whilst serving as head of the police in Middlesbrough. Yet as Mayor of Middlesbrough, unlike Mayor Giuliani of New York, Ray Mallon has almost no influence over local policing in Middlesbrough. As Sheriff Mallon of Middlesbrough, he would.

Conclusion: local accountability to local communities affected by crime

Making the police and prosecuting authorities more locally accountable might mean that the police and prosecutors adopt a 'zero tolerance' attitude to street crime, a more robust approach to burglary, yet a less aggressive stance towards motorists. Yet it is not the purpose here to recommend a different approach to law and order, but simply to argue that those who do determine the approach towards law and order should be held accountable for what they do.

Proposal 3: Universal Education Vouchers

Direct democracy aims to place decision-making as close to the electorate as possible. Executive responsibility for running the health service and dealing with crime would be handed to

directly elected local representatives. For education, the elected intermediary would be cut out entirely, and instead each parent in the country would be able to exercise a direct choice, and allocate funds, as they choose, by implementing 3 key recommendations:

1. Universal Education Vouchers

Every parent, irrespective of income or their child's ability, would receive an education voucher of the same value, weighted only to reflect the age of the child, and perhaps taking into account certain geographic considerations (it might, for example, be more expensive to deliver the same level of education in rural Cornwall, compared to suburban Manchester). Parents would be free to allocate the voucher annually, and thus the funds that went with it, to any education institution willing to enrol their child.

2. A National Education Fund

The House of Commons would determine annually the size of the National Education Fund using taxpayers' money. All of the National Education Fund would be allocated to schools through the voucher scheme, although schools would be free to receive supplementary payments from parents, charities or businesses. The House of Commons, in setting the overall size of the National Education Fund, would determine the value of each voucher.

3. Independent schools

Every school should be made independent. Schools should be free to choose to teach as they wish, and the current tranche of national schemes initiatives, as well as the national curriculum, abolished. Schools that choose to do so could specialise, and the

44 // Direct Democracy

scheme would encourage wide diversity, with faith schools as eligible as those specialising in science or technology. Parental choice, rather than busybody panels of experts, would govern and guide schools.

Conclusion: wider choice in education, with greater accountability

Using vouchers to empower parents and schools to determine what kind of education their children and pupils receive might lead to a more orthodox or to a more progressive system of education. Best of all, it might simultaneously do both, leading to wider diversity and choice. Yet it is not the purpose of this pamphlet to advocate one approach to education over another, but merely to ensure that those who do are accountable for the results.

2.3 Accountable government

Direct democracy would ensure greater democratic accountability, not just over the delivery of public services through the system of local democracy described in section 2.2, but by making central government more directly accountable for national policy.

Making Parliament more accountable to the electorate

To make Parliament more democratically accountable, there should be no basis other than the democratic basis for sitting in Parliament. While the appointment principle has largely replaced the hereditary principle as the basis for sitting in the House of Lords, neither principle is democratic, and neither should be retained. However, beyond extending the democratic principle to the upper House (Senate?), more can be done to ensure that once elected, our representatives, in whichever House, remain accountable.

Proposal 4: Popular initiatives to let the people set the political agenda

Any legislative measure endorsed by a petition with in excess of 5 per cent of the electorate, would receive a reading in Parliament as an Initiative Bill. At 5 per cent, this threshold is deliberately at the lower end of the range of quorums used within those 24 US states with the right of popular initiative, to ensure that there was a full set of Initiative Bills debated in Parliament. There would, however, be a cap of 12 Initiative Bills per Parliamentary year, and where more than 12 Initiative Bills received the quorum, those 12 Initiative Bills with the greatest number of signatures would proceed. There would also most likely need to be a time limit of perhaps a year during which signatures could be collected.

Such a right of initiative would empower the electorate to set part of the legislative agenda, in part determining what legislation Parliament debated. Unlike either the Swiss or the US state systems, this system would enhance, rather than detract from, the role of our elected representatives, since it would remain for elected representatives to endorse or vote against popular proposals. The Swiss are able to trigger referenda on constitutional reform, or to hold referenda on legislation approved by their federal legislature. They do not, however, have an ability to set the agenda of their legislative, and their control is negative, a veto against those they have elected to represent them, not the ability to put forward new proposals. Within US states, popular initiative through petition usually triggers a popular referendum to ratify or reject the initiative. If the referendum is carried, the measure is binding on those in the state legislature elected to represent them.

There would be no restrictions on the subject of an Initiative Bill, other than that a Bill would need to be for a single subject, as

46 // Direct Democracy

is the case in most of the US states with a right of initiative. As is the case in Nevada, there may be some need for fiscal balancing requirements, whereby any proposal to increase public expenditure, would have to be matched by a proposal to either raise taxes or cut public expenditure elsewhere to cover the new fiscal outlay. Where the elected representatives had decided to reject an Initiative Bill, such a measure could not then be reintroduced during the lifetime of that Parliament. It would ultimately be for the People's Chancellor to determine if two different petitions constituted a separate initiative, or amounted to the reintroduction of a rejected proposal.

The People's Chancellor:

Overseeing the electorate's right of initiative would be the People's Chancellor, appointed by the Queen, and answerable only to the Queen to ensure total impartiality.³⁸ Like various State attorneys general in the US, the People's Chancellor would provide guidance and advice on the drafting of an Initiative Bill. They would also be responsible for ensuring that the petition accurately reflected the Initiative Bill's proposal. Any UK citizen wishing to initiate a legislative measure would outline their proposal to the People's Chancellor, who would have to advise the initiator on the precise framing of such legislation to bring into effect the initiator's desired change. The People's Chancellor would be responsible for validating a petition and determining how many signatures a petition had received.

The People's Chancellor would be allotted time each month for Parliamentary debates over Initiative Bills. The first reading, and any subsequent reading of Initiative Bills in Parliament would be the responsibility of the People's Chancellor, who could enter Parliament for the specific purpose of reading an Initiative Bill. It would then be

a matter for our elected representatives to either vote for, or against, the Initiative Bill, knowing as they did so that the measure had been approved by at least 5 per cent of the electorate. No longer would it be possible for elected representatives to remain silent on matters of concern to the public. No longer could they get away with delegating awkward questions to experts. Those elected would be put on the spot, and the people would hold them to account.

Conclusion: a Queen's Speech written by the people.

Traditionally an occasion for the government to announce its legislative agenda for the year, the Queen would continue to deliver a Speech in Parliament at the State Opening largely written for her by her Ministers. Having announced the government's agenda, she would then outline the People's legislative agenda, reading out a summary of the no more than 12 Initiatives Bills, which would each receive a reading during the Parliamentary year that followed.

Making executive institutions and judiciary directly accountable to Parliament

Our elected Parliamentary representatives, in whatever chamber they sit, should assume the power to appoint the various heads of publicly funded statutory bodies, as well as to ratify the appointment of senior members of the judiciary.

Proposal 5: Elected representatives to appoint heads of public bodies

Ninety-three per cent of the population claim not to know anything at all about the public appointments system³⁹ through which around 30,000 public appointments are made. Although knowing little, the majority of the population is deeply cynical

48 // Direct Democracy

about the system of public sector appointments, in which appointments are nominally made by Ministers, but largely decided by the unelected.⁴⁰ Paradoxically, public cynicism would perhaps only increase if the public learnt more about a system that, for example, appoints the representatives of large multinational pharmaceutical companies to make recommendations on what drugs the NHS should use.⁴¹

Public Appointments Committee

Our elected representatives in Parliament should be able to scrutinise the appointment of the heads of the more important NDBPs, regulators and other Commissioners, calling them to account at US-Senate style hearings, through a series of Appointments Committees of elected Parliamentarians. The Prime Minister should propose one or possibly a shortlist of candidates for the role. The Appointments Committee could refuse to ratify the candidate, forcing the Prime Minister to either suggest an alternative candidate, or set of candidates for the role, or, ultimately, to take the issue before the elected representatives in Parliament.

Conclusion: holding the 'experts' to account:

With the heads of publicly funded institutions and quangos made accountable to democratically elected representatives, they would be held to account for the delegated decisions that they take. For example, if those we elect were able to hold the heads of the Immigration Service and other quangos responsible for asylum applications and processing to account, there would be direct democratic scrutiny and accountability, which would enable an enlightened, non-partisan debate over such a sensitive topic. Ensuring that those responsible for adjudicating over asylum cases and those who head the various State agencies responsible for processing asylum applica-

tions are answerable to those we elect to Parliament, could see a more considered approach taken towards refugees and economic migrants. It is not the purpose here to advocate a US-style 'Green Card' entry scheme, but merely to suggest that without exposing central government institutions to scrutiny and holding an open democratic debate, they are unlikely to muster the will to adopt one.

Proposal 6: Elected representatives to appoint senior judges

Increasing judicial activism and the incorporation of the European Convention on Human Rights into UK law has seen judges taking decisions that are political. Having assumed a decision-making role that might once have been the preserve of those we elected, it is time to modernise our judiciary, ensuring that judges, now that they have entered the political arena, are democratically accountable. The creeping politicisation of the judiciary is a fact and cannot be wished away. If we are unable to reverse it, we should embrace it, enabling those we elect to confirm or reject judicial appointments. Currently, the Prime Minister, together with the Lord Chancellor, appoint senior members of the judiciary, although for practical purposes, the Permanent Secretary in the Lord Chancellor's Department has an extremely influential role. The power to appoint senior judges should be transferred to those we elect.

Judicial Appointments Committee

A Parliamentary Judicial Appointments Committee should appoint all senior judges for fairly lengthy fixed term, from a shortlist jointly compiled by the Prime Minister and the Lord Chancellor. The Judicial Appointments Committee hearings should be televised and open to the public to ensure complete openness and

50 // Direct Democracy

transparency, with those we elect able to question nominees on their background as a lawyer, or record as a judge. Successful nominees would be appointed for a fixed term, ideally longer than the maximum length of any one Parliament (five years), in order to ensure that no one single Parliament of a particular political complexion could completely transform the composition of the upper echelons of the judiciary. Once appointed, judges could not be sacked, other than by the ancient and still existing (if never used) provision for Parliament to dismiss them.

Conclusion: a more judicious judiciary

If held accountable to democratically elected representatives, judges may well retain the overtly political decision-making role that they have so recently assumed, yet they would be accountable for how they did so. Rather than turning the judicial clock back three decades, greater democratisation of the judicial process would ensure that those presiding over our Courts, would be answerable for how they discharged such responsibilities.

Making the executive directly accountable to the electorate

The purpose of direct democracy is to ensure that accountability is immediate. Where possible central government institutions should be made directly answerable to the people for the decisions that they take where it affects people's lives.

Proposal 7: Professional liability for civil servants

Too often decisions are made not by the electorate or their representatives, but by executive agencies, quangos and other statutory authorities or civil servants. Together, the delegation of decision-making through secondary legislation, combined with the poor

drafting of legislation, means that civil servants, and those working for various quangos and executive agencies, have tremendous scope to decide. Now that civil servants and others no longer merely advise, but also decide, they should be made accountable in terms of what they decide.

Professional civil service responsibility

Our civil servants and others, whether working in Ministerial Departments, executive agencies, statutory bodies or various NDPBs, must work as professionals with a level of personal liability that other professionals, such as doctors, engineers and architects, have. Civil servants must be personally liable to private litigation for implementing measures that are *ultra vires* in being beyond what Parliament had specifically sanctioned. The effect of professional liability would be to see civil servants taking out personal insurance cover against being sued, just as doctors, engineers, and architects must do.

Conclusion: clearer legislation, better regulation

Professional liability for the civil service would ensure better regulation and legislation. Individual civil servants drafting rules for which they could be made liable where the rules did not specifically correspond to what Parliament had sanctioned, would take care to ensure that regulations did corresponded with what our elected representatives had sanctioned. Civil servants would demand better legislation and greater clarity before acting. In terms of corporate ethos, civil servants would perhaps lose their appetite for excessive rule making, preferring instead to act with caution. The so-called mountains of red-tape, built up under successive administrations, would cease to grow, unless new regulations were specifically approved by Parliament, while certain existing regula-

52 // Direct Democracy

tions, that had not been sanctioned by Parliament, could be challenged through the courts.

Proposal 8: Democratising diplomacy

Crown Prerogative enables Foreign Office officials to negotiate treaties and conventions, which, in only certain circumstances, do those we elect debate. Only where a treaty has implications on expenditure or on UK law, such as Titles II, III, IV and V of the Maastricht Treaty, is the House of Commons able to vote. Direct democracy recommends 2 reforms that would ensure that all treaties and conventions needed to be ratified by Parliament, and that those that today would only require a Parliamentary vote, would also require ratification in a referendum.

Ratification of international treaties

Rules of Crown Prerogative should be reformed so that irrespective of a treaty or convention's impact on UK law, Parliament would have to ratify the treaty. However, any treaty that also had an impact on UK law would also have to be subject to a referendum. A treaty that required expenditure or changes to UK law would be subject to a simple majority referendum that would be binding on Parliament.

Renewal of treaties by each Parliament

Any treaty that also had an impact on UK law, and had been ratified in a referendum, would also have to be renewed by each new Parliament. Just as the European Convention on Human Rights at one time had to be continually reratified by Parliament, any supranational cession of power would have to be constantly renewed.

Conclusion: international agreements built on democratic consent

Direct democracy would make it impossible for unelected officials to negotiate on behalf of the nation's interests without the consent of the people.⁴² By ensuring that the electorate and their representatives were able to scrutinise, and if necessary reject, measures negotiated by unaccountable Foreign Office officials, international agreements could be made, but would carry a democratic legitimacy that many such agreements currently lack. A generation ago, unelected officials oversaw the process of delegating control over UK agricultural policy to unaccountable supranational institutions. The democratisation of diplomacy would make it impossible for career civil servants to take decisions of such magnitude, since it would no longer be for them, but for the people, to decide.

The growth of supranational government, whether under the auspices of the EU, NATO or the UN, has done more than anything else to leech away our democracy. Making diplomats, many of whom appear to have built their careers on trading away Britain's powers of democratic self-determination, directly accountable to the people, would not simply stem, but begin the process of reversing the flow, away from the unaccountable and the unelected, and back to the people of Britain.

3. The New Battle of Ideas

*There is no longer a real dispute between two philosophies,
between two . . . sets of principles about how people should be
governed.*

Janet Daley, 13 March 2002

British democracy used to be representative, yet today has become post-representative. Fundamentally, this change has been caused by the power of ideas. Throughout much of Britain's body politic 'top down' notions of democracy, first propagated by Jean-Jacques Rousseau, have (largely unconsciously) gained acceptance.

Top down democracy . . .

Rousseau believed that democracy was a process for reaching an objective and rational consensus as to the common good, or what he termed the 'General Will'. Rousseau's concept of the General Will is very different from the notion of the will of the people as expressed in elections, which he did not greatly regard as a basis on which to govern. Indeed to Rousseau, elections were 'no more than a sum of

particular wills' of people each influenced by their own private interests or what he called 'partial associations'. Rather than popular will, Rousseau deemed that the General Will, as defined by a political elite in terms of abstract notions such as freedom, equality and justice, constituted the legitimate basis for governing.

Today few people in Britain speak in terms of a General Will, yet the assumptions sown by Rousseau have flowered in our time. Within Britain's body politic, the idea that experts, technocrats and other arbiters of what is often called 'the public interest', are better able to determine what is best for the people, than the people themselves, has taken hold. Indeed, it is almost universally unquestioned as to why it is that when a decision is made 'in the public interest' it almost always means that the public play no part in the decision. The idea that it is an elite that is best able to decide a higher interest, used last century to justify the actions of commissars and autocrats across Europe, is being invoked in our time to legitimise the actions of European commissioners and technocrats.

The spectre that stalks Europe today is not that of Marx, but the ghost of Rousseau. The European Union seeks to achieve Europe's 'ever closer union' through the ever greater accumulation of power by the unelected and the unaccountable. The underlying assumption behind each of the successive European treaties has been that a Euro-elite is best able to determine what is in Europe's interest, what is *communautaire*. Yet is not the very term *communautaire* little other than a contemporary expression to describe that eighteenth century notion of the General Will?

. . . Versus bottom up democracy

Direct democracy is about making our democracy 'bottom up', making the governing subservient to the governed. Fundamentally, it means having faith that the people, and those the people elect to

56 // Direct Democracy

represent them, are ultimately better able to determine what is in their interests than any unaccountable elite. Popular elections are the means of aggregating the popular will, and popular will expressed via the ballot box, not an elite's interpretation of what is in the popular interest, is the basis on which we should be governed.

As well as being 'bottom up', direct democracy is also down-to-earth. Unlike the utopian socialists of yesterday or the Euro-superstatists of today, direct democracy is the antithesis of grandiose ideology. Direct democracy does not offer to build a perfect society for tomorrow, but more humbly, starts by offering to improve accountability in the running of our local hospitals and classrooms today.

Notes

- 1 Out of an electorate of 44.4 million, 18 million did not vote, compared to 15.5 million who voted either Labour (10.7 million) or Liberal Democrat (4.8 million).
- 2 See for example Professor Anthony King writing in the *Daily Telegraph*, 21 May 2001 'Why a poor turn-out points to a democracy in good health'.
- 3 For evidence of growing dissatisfaction with public services, see for example ICM's website (www.icmresearch.co.uk). In particular, view the ICM/Channel 4 poll of February 2001 and the ICM/Guardian poll of October 1997.
- 4 Defined as executive and advisory bodies, independent statutory authorities with power specifically delegated out by Parliament, national industries and public corporations, as well as NHS bodies.
- 5 The Cabinet Office (www.cabinet-office.gov.uk/quango/index/qorg.htm) claims that the number of Non-departmental Public Bodies stands at 1,035 (yet somewhat inexplicably ignores approximately 500 health service NDPBs). The British Council website indicates there to be some 4,700 local quangos. The *Express on Sunday* (19 December 1999, quoted in *The Great and the Good?* Martin McElwee, Centre for Policy Studies) claims there to be nearly 6,000 such executive institutions.
- 6 *Improving Management in Government: the next steps*. HMSO, February 1988.
- 7 *Public Bodies 2000*, Cabinet Office, Annex b. p. 167.
- 8 The Financial Services Authority, for example, has statutory powers under the 2000 Financial Services and Markets Act, which enables it to impose unlimited fines on companies that it retrospectively deems as having failed to have disclosed information that it may wish to use against them.
- 9 Lord Woolf's ruling on the Home Secretary's decision on Mr Mohammed Fayed's application for British citizenship.
- 10 *R v Secretary of State for the Home Department ex parte Leach* (1994 QB 198), which ruled

58 // Direct Democracy

- on the actions of a Minister with regard to the rights of asylum seekers to obtain social security benefits while their applications are being assessed.
- 11 For more details see command paper CM. 3782. October 1997. p. 11.
 - 12 See Nirj Deva, *Who really governs Britain?* Bow Group, 2001.
 - 13 An interesting insight as to the extent to which the current administration is concerned primarily with the appearance, rather than the substance, of governing, is provided by Andrew Rawnsley's *Servants of the People* (2001). See for example p. 25 'In all previous governments, the propagandists would have been outranked by the policy-makers, the mind before the mouth. Not in this one.'
 - 14 Gallup poll conducted between 21 May and 23 May 2001, and published three weeks before polling day. Respondents' answers are in response to the question 'what would you say is the most urgent problem facing the country at the present time?'
 - 15 Of these centralised health quangos, the overwhelming number are NDPBs, and therefore far less accountable to Health Ministers than the mere 5 quangos that are constituted as Departmental Public Bodies (DPBs), with some measure of accountability to the Ministerial department.
 - 16 Decisions of the NICE may be taken in secret. See House of Commons debate, Mr John Denham, *House of Commons Hansard Debates for 15 Jun 1999: Criteria for appraisals by the National Institute for Clinical Excellence*.
 - 17 Andrew Rawnsley's article in the *Observer*, 25 March, 2001.
 - 18 House of Commons Hansard Debates for 27 Mar 2001. Nick Brown 'The Government are considering whether to use vaccination. I have therefore authorised my representative in the European Union Standing Veterinary Committee to seek a contingent decision permitting the use of vaccination.'
 - 19 MORI survey with the Adam Smith Institute, *The Wrong Package*, 2001.
 - 20 1980 R V Metropolitan Police *ex parte* Blackburn.
 - 21 *The Principles of Policing and Guidance for Professional Behaviour*, Metropolitan Police, 1985, p. 9.
 - 22 1998 R V Chief Constable of Sussex, *ex parte* International Traders' Ferry Ltd.
 - 23 See Home Office circular 15/1985.
 - 24 Although proposed well after the 2001 General Election, the current range of measures contained within the Police Reform Bill and David Blunkett's proposals to make specific chief constables accountable to named Ministers, would do little to increase accountability to elected representatives, while centralising controlled around unelected institutions. Making chief constables accountable to Ministers, many of whom are themselves unelected appointees would do little to enhance *democratic* accountability.
 - 25 *Daily Telegraph*, April 2002, 'What happened to all the other bright ideas?'
 - 26 Home Office criminal statistics reported in *Daily Telegraph*, April 2002.
 - 27 *HM CPS Inspectorate Report*, May 2002.
 - 28 Circumstantial evidence of such abuse lies in the fact that while France grants asylum to 5 per cent of would-be applicants from Algeria, no less than 80 per cent of such applications are successful in the UK. Source: *Statecraft*. Margaret Thatcher. p. 277.
 - 29 Case of Adan and Aitseguer, Law Lords ruling, 19 December, 2000.

Notes // 59

- 30 It is interesting to note that the current Home Secretary's proposed Nationality, Asylum and Immigration Bill, echoing the 1996 Nationality and Asylum Act, proposes an almost identical policy of removing asylum applicants whose applications are 'clearly unfounded'. It is highly likely that the Bill, if ever passed into law, would meet the same fate as the 1996 Nationality and Asylum Act. Whether a Labour government or a Conservative government, this would appear to be further proof of the fact that those we elect are powerless to respond to democratic concerns about the large scale abuses of the asylum system.
- 31 Home Office immigration statistics released June 2000.
See www.homeoffice.gov.uk/rds/pdfs/hosb110.pdf
- 32 MORI survey with the Adam Smith Institute, *The Wrong Package*, 2001.
- 33 See A. Povey, *Plans, Plans, Plans – the centralisation of education policy*, Centre for Policy Studies 1999.
- 34 Nicholas Boles. 'The Centre cannot hold', *Blue Tomorrow: new visions for modern Conservatives*, Politico's, 2001.
- 35 See Electoral Commission web site for details www.electoralcommission.gov.uk.
- 36 Report of the IPPR / *Guardian* 'Public Involvement Awards 2000', Forword, p. 2.
- 37 See for instance Lee Craven's informed, thought provoking, and generally excellent, paper on health service reform based on the Singaporean health model, *A Radical Alternative to Wanless: Lessons from the Lion City*, The Bow Group, 2002.
- 38 An alternative to a People's Chancellor appointed specifically to fulfil this role could be a Lord Chancellor appointed directly by the Queen. For details on this proposal see Andrew Lilico's policy brief on the Monarchy published by the Bow Group, 2002.
- 39 See Mori survey, July 2000. Public Perceptions of Ministerial Public Appointments.
- 40 *Ibid.*
- 41 Commons Written Answers (18 May 1999) House of Commons Hansard Written Answers for 18 May 1999 (pt 9) Pharmaceutical Companies.
- 42 See Foreign Office memorandum 'Sovereignty and the European Communities' (FCO 30/1048 Public Records Office) for an example of Foreign Office officials attempting to deliberately conceal from the electorate the consequences of supranational agreements. Written in 1971, the memorandum suggested that it would take a generation for the people to realise the extent to which sovereignty was being transferred to supranational European institutions, and suggested it was essential that 'all political parties not ... exacerbate public concern by attributing unpopular measures . . . to the remote and unmanageable workings of the Community'.

