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Britain's elections: fit for purpose in the 21st century?

I was looking for a good but not so well-known quote about democracy to start this evening, but I have to say I came back in the end to the classic Winston Churchill remark about democracy being the worst system of government yet devised, apart from all the other forms of government so far tried. I like it because it does not try to hide the limitations of democracy but also brings out its fundamental superiority because of its legitimacy based on the choice of the people.

In that spirit, I want to do four things this evening. First, make clear what the Electoral Commission does and does not do. Second, set out the strengths of the British electoral system which have served us so well. Third, explain why these are no longer enough to guarantee our democratic integrity in future. And fourth, touch on how we can start to change things.

The role of the Electoral Commission

Let me start with what we do, on the reasonable assumption that while you know we exist, you may have never been quite sure of our exact role. Let me say right from the start that we have nothing to do with electoral boundaries. And of course we do not run elections directly ourselves, though we can perform that role for referendums, as we did in 2016.

We therefore have to work closely and positively, as we do, with governments and local authorities across the country. But as an independent body created in 2000 and accountable to the UK Parliament, as well as increasingly to the Parliaments in Scotland and Wales, we see ourselves as having three main tasks, to help maintain voter confidence in the democratic process.

The first is to ensure the continued delivery of free and fair elections, focusing above all on the needs of electors. We encourage people to register to vote; monitor electoral processes and campaigns in real time;

support and challenge local authorities; and work with the UK's governments to make sure all goes well.

The second is to regulate political finance: sending out guidance; publishing all the information we receive about donations and spending; promoting understanding of the rules set by parliament; proactively pursuing breaches of these rules; and acting as the registrar of parties and campaigners.

The third is to be a centre of expertise on electoral matters, using our knowledge and insight to improve the experience of voters, to increase the transparency, fairness and efficiency of our democratic system, and to help adapt it to the digital age.

Overall, the Commission is determined to be a robust and transparent regulator, whatever the political sensitivities, and an active participant in debates about the future of our democracy.

Of course we have to rely on Parliaments to change electoral law and therefore usually on governments' willingness to initiate legislation, but we can create regulations in some areas, and make recommendations in others. We regularly make proposals about how to reduce the risks of electoral fraud, improve our system of electoral registration, tighten up rules about political finance or improve the accessibility of voting for those with a variety of disabilities.

I note in passing that the electoral picture in the UK is diversifying rapidly, because of the increasing devolution of electoral powers to the governments in Scotland and now Wales. As a UK-wide Commission, we are part of this devolutionary journey and look forward to the challenges it brings.

Strengths of the UK system

How does the British electoral system match up to its task?

It has major strengths, which reflect the long history of our democracy. Above all, the results of elections are extremely rarely contested, however great the passion of the campaigns. The processes of registering voters, and casting and counting votes, are carried out with

great rigour and transparency. Elections are generally free from intimidation or major scandal. Our surveys consistently show very high levels of public satisfaction. This is a precious legacy – as we can see when we look at other countries around the world where results can be highly contested and the idea of democratic alternation is far from embedded in the culture.

Similarly, while there is room for more reform, we have one of the most transparent regimes in the world governing donations to political parties and their spending during election campaigns, and in general a culture of compliance. Money for elections is obviously important, but the sums involved are small compared with many other countries, largely because TV advertising is banned. For example the big two political parties have limits for their national general election campaigns of around £19 million each, and they usually do not spend up to those limits.

There is much to be proud of here, and much which illustrates that genuine democracy is more about the strength of civil society than about electoral systems. The 800 years since Magna Carta have not been spent in vain.

Risks to the UK system

So is everything rosy in our electoral garden? Sadly, the answer to that is no. Our systems are under strain in important respects. I would go so far as to say that we could, in not so many years from now, find ourselves facing a perfect storm where the credibility of our electoral processes could be in peril. Why do I say this?

One underlying point is the reverse side of the coin of our strengths. Our system depends largely on trust accumulated over many centuries. But trust can be lost much more quickly if doubt begins to creep in. When foreign observers come to look at our elections, they are usually impressed by what they see: calm processes of voting and counting, and automatic acceptance of the result by the vast majority of people. But they often also comment that, without

that trust, our processes could be considerably more vulnerable than we suppose and that we risk falling behind best practice internationally.

Our own observation as a Commission is that the electoral system is beginning to strain at the seams and is vulnerable in some key respects. I see five main areas of concern.

Electoral law

The first is the sheer complexity of our electoral legislation. The current legal framework, which has not been comprehensively reviewed since the nineteenth century, is no longer fit for purpose. Over 50 Acts of Parliament and 170 Statutory Instruments affect the delivery of elections. Every time a new type of election or referendum is initiated, a new set of legislation is created. As well as being voluminous and fragmented, much of the law is hard to understand, because of the way new and old provisions fit together and the use of outdated language. There are obvious inconsistencies between the laws governing each electoral event.

The problem is well known. We asked the three UK Law Commissions to look at it some years ago, and they published their welcome recommendations in February 2016. If implemented, these would result in much clearer and more effective legislation. This would benefit not just those who administer elections but everyone in the electoral process, from candidates to voters.

Unfortunately, implementing the review has largely been put on hold by the government, because of lack of Parliamentary time. There has recently been welcome agreement to the drafting of secondary legislation to address some of the inconsistencies. But the chances of new primary legislation are slim. Our simple view, and that of others in the electoral business, is that the Law Commissions' recommendations should be implemented in full as soon as possible. This should be a high priority for all political parties.

Resources

The second area of strain, closely related to the first, is on the resources available to run elections, above all in local authorities. They have been affected by spending cuts, like all the public sector. And this is not just about money. Experienced electoral administrators are retiring and not being replaced, and staff needed for basic functions like counting are increasingly hard to find and recruit.

Meanwhile the demands on all those associated with elections are growing inexorably. New elections have been put in place – most recently the Combined Authority Mayorals. Different elections have different rules. Processes accompanying valuable reforms to the registration process such as Individual Electoral Registration and the ability to register online, have led to increased workloads for Registration Officers. As an example, of the almost 2.5 million online applications made in the run-up to the 2017 election, some 40% were by people already on the register. They were unable to check their status because at present there is no possibility to do so online.

The Association of Electoral Administrators issued a *cri de coeur* following the latest general election, making clear that, without some serious changes, they feared that the system might start to fail. This must not be ignored.

Electoral fraud

The third area of concern is around fraud and perceptions of fraud. There has long been a paradox about public opinion here. While people are largely satisfied with how elections are run, there is a persistent and widespread perception of a significant level of fraud. More than one third of respondents to our surveys after the 2017 general election thought some fraud had taken place, and less than half believed that there were sufficient safeguards to prevent it.

We should keep this firmly in context. Very little of public perception seems to be based on actual personal experience. Data collected from police forces across the country shows that in 2016, 260 complaints were reported, but only two of these resulted in conviction.

Significant measures have also been taken to tackle electoral fraud in recent years, largely following our recommendations. Rigorous ID requirements for postal votes were introduced in 2006 and 100% checks are carried out to verify that each vote is returned by the person to whom

it was issued. Since the introduction of Individual Electoral Registration in 2014, there has been a reduction of alleged cases of fraud relating to registration.

Nevertheless perceptions of fraud are bound to worry us. There was much media and political concern at the time of the last election about the possibility that some people, particularly students, had voted more than once. There is little actual evidence of this so far, with only a handful of cases requiring investigation by the police, but because there are 381 separate voter registers in this country, which it is not practical to interrogate collectively, it is close to impossible to identify whether voting twice might be happening on any scale.

Another concern is about possible voter intimidation and fraud within particular communities, such as we have seen in the past within parts of the Bangladeshi community in Tower Hamlets. These problems may be limited to specific areas, and even individual wards, but we nevertheless need to take them seriously and address them vigorously, not least through making sure that the local electoral authorities, the local police and indeed the political parties do all within their power to enable fair and peaceful polls.

Many people worry about the integrity of postal votes, despite the 100% ID checks I mentioned. There are certainly justified concerns about issues such as handling of bundles of postal votes by parties or campaigners. Both we and Sir Eric Pickles, in his welcome review of electoral fraud, have made recommendations for change in this area. The UK government has accepted many of these in principle but we now need to implement them.

We have also been recommending for some time that voters should show photo ID before voting, as they have had to do in Northern Ireland for some time now. This has some public support – when asked what single measure would be most effective in preventing electoral fraud, 52% of voters polled in 2016 said ‘a requirement to show photo ID at a polling station’. The UK government is running trials in a few areas at next May’s local elections to see how well this might work. We will be evaluating these.

We have been pressing for this change not because we believe that voting for someone else – personation, in the jargon – is necessarily a major problem now. But the opportunity for fraud of this kind is clearly there. We want to address this before it becomes a problem, and part of

a wider reduction of trust in the system. It does not seem unreasonable to demand proof of identity before voting, if we have to do so simply to collect a parcel, for example. It is certainly something which many other countries do routinely.

Unfortunately this proposal risks becoming a political football, with fears that it may prevent from voting those who do not have photo ID, and who already tend to be from marginalised groups. I certainly recognise the concern – we estimate that some 3.5 million people do not have photo ID at the moment. However this concern could be addressed by a requirement to provide a free elector's card, with photo, as has been done with great success in Northern Ireland. We estimate the cost of introducing this for the rest of the UK could be achieved for no more than £3 million a year.

Another potential area of major concern is about cyber attacks. There is an obvious worry that our actual electoral processes could be subverted in some way. For now, this specific risk seems relatively small, at least for UK-wide general elections, because our voting system does not lend itself to hacking: it is heavily paper-based. Given the risks, including from states like Russia with form in this area, this is clearly a strong argument against moving to online or electronic voting. But, as I will argue later, this does increase different kinds of risks, notably of young voter disengagement.

Campaigning

The fourth area of concern is how we respond to the changing nature of modern campaigning. In the latest general election, parties were increasingly using digital campaigning methods, and targeting particular groups of voters with specific messages. A lot of messaging can be done for relatively small amounts of money. There is nothing illegal or wrong about this, and it is certainly not part of the Commission's role to discourage campaigning, either by parties or so-called third-party campaigners, as long as they are registered and their activities transparent. On the contrary we want to see voters energised and encouraged to vote. We ourselves use social media to encourage everyone to register to vote, and target demonstrably under registered groups, such as young people and home movers.

Our existing methods of monitoring and regulating campaign spending apply fully to internet-based campaigning. If a political party buys a

database or software to micro-target voters, the expenditure involved has to be declared to us and published. We monitor social media campaigning in real time, and are ready to intervene as necessary in anything which breaks the political finance rules. We talk regularly to the parties and others about what they are doing and have the right to ask for their records if we are worried about particular methods of campaigning. The Information Commissioner is checking that personal data is not being misused. Interest groups are following what happens on the internet closely too, and making public what they find. So the idea that this is a dark space where no-one knows what is going on is not justified by the facts as they stand.

Nevertheless there are worries out there about what social media might do to our democracy over time. Part of the concern is about so-called fake news. There is plenty of room for legitimate worry about this, but we are clear that we cannot become some kind of truth commission for political campaigning.

There are other concerns too. Outside interference in a campaign is not just about hacking of electronic systems. It can be selective release of stolen material designed to favour one side or another, or just to confuse voters and undermine faith in democracy. Facebook and Twitter have been used for political advertising in the US by Russian-based groups. It would be foolish to imagine that none of this has happened or could not happen here. Our regulatory role is limited to UK-based activity, but we are alert to the wider risks, and in touch with others who might be able to shed light on these issues.

Our key focus is to make sure that there is maximum transparency and accountability around everything that is being done. Voters have a right to know who is trying to influence them, and who is spending money to do so. We have been recommending for some time that existing laws about the need for an imprint on written electoral material, to show where it comes from, should be fully applicable to online material too. The same should be true of the nature, origins and financing of bots. The money behind all political advertising should likewise be clear. We are talking to the likes of Facebook, Google and Twitter to see what more can be done. We are also conducting a number of investigations into groups or individuals that have run campaigns, as part of our regulatory activity and enforcement policy.

This is a fast-moving target which I am sure the UK's parliaments will want to look at closely, to see how existing legislation could be amended and extended to keep our elections safe.

Expectations in a digital world

My fifth concern is about voter expectations in the 21st century. Fears of hacking, and of votes disappearing into some kind of electronic black box from which a doubtful result eventually emerges, are an obvious damper on any moves towards online voting. There is no easy way around this. Even if we could find an IT solution which we ourselves could be confident was fool-proof and hack-proof, the problem of wider political and public doubt about the process and the result would still be hard to overcome. Most other comparable countries have come to similar conclusions for now.

Nevertheless, we need to recognise that, for the rapidly increasing proportion of the population who are digital natives, the idea of voting with paper and pencil can seem laughably old-fashioned, when nearly everything else, including important and sensitive personal actions, can be done online. Could this at some stage become a problem, turning off young people not only from voting but from the whole political process? If I had been speaking before the Scottish and EU referendums, I would certainly have been more concerned about participation rates among the digital generation. As it is, the intensity of feelings about both votes seems to have galvanised the young to engage in political debate and vote in greater numbers, including at the latest general election.

This is welcome. Nevertheless, adherence to current processes for too long could easily come to symbolise a wider political and democratic system which is out of touch, with worrying consequences – and at a time when liberal democracy is already under attack from more authoritarian and supposedly more effective forms of government. Our voter surveys say that around 50% of the population already support the availability of online voting. It is hard to imagine that this figure will fall in the future.

One suggestion to prepare for future eventualities in this area would be to trial some form of online or electronic voting for groups who struggle to reach the polls in person and for whom postal voting is not necessarily an easy answer either – for example overseas voters, and armed forces

stationed abroad. This would help equip us with practical experience for the future.

Modernising voting is not of course just about the internet. How sure are we that sticking to voting on Thursdays is the best way in today's world? Or voting on one day only? Or only in traditional polling stations like schools and church halls, as opposed to supermarkets or train stations? What about advance voting, as is now available in countries like Canada, New Zealand and Australia; or mobile polling stations; or the ability to vote in any polling station?

I am not necessarily advocating any of these. But I do think we need to keep looking at them, and avoid ruling out change because it is not the way we have done things hitherto – and because in any case we have the best democracy in the world, don't we? I note in passing that the appetite for experimentation and change seems to be much greater in Edinburgh and Cardiff than at Westminster.

My overall point is that there is no room for complacency about our current electoral system, and plenty of reason to worry that, if we do not go on adapting, we may wake up to find that, far from having the best system in the world, we have one which is not only vulnerable but is also poorly appreciated by new generations of voters.

The need for action

So what can and should we do? We need to consider proposals for reform where they make sense, even where there is a cost involved. Protecting and improving our democratic processes is as worthwhile a cause as there is, in my eyes, and the sums we are likely to be talking about are relatively small.

The Electoral Commission is working to ensure that we are ourselves up to speed with current thinking and current technology in some of these fundamental areas, in this country and internationally, so that we can be a fully informed part of the debate.

Meanwhile we already have a menu of proposals for change which we hope governments and parliaments will adopt soon.

I have already mentioned some: the need for a major overhaul and modernisation of electoral law; the importance of making sure that local authorities have the money and support they need to go on running our elections well; the obligation to go on tackling the risks of electoral fraud wherever we find them, for example by insisting on photo ID before people vote in person; the requirement to ensure greater transparency around internet campaigning and finance; and the desirability of considering whether there are ways we could modernise our voting system without compromising its integrity and credibility. We have made many other detailed recommendations.

But let me mention one other fundamental change we would like to see, and which would have the advantage of underpinning other future reforms our parliaments might want to make. This is reform of the electoral register and the registration process. I have already mentioned the dispersed registers and the volumes of work for registration officers from duplicate applications.

The process of keeping registers up to date itself is also old-fashioned and expensive, relying as it does on a stream of letters from Councils to check who lives where. Large amounts of time and money are put into this process, and yet we estimate that some 7 million people are still not on the registers at all, or not registered correctly.

Changes to make this simpler, better and cheaper to run, are possible with low level investment. More consolidated or centralised electoral databases would help, as is the case in Northern Ireland, and is currently being considered in Wales. At least the existing registers should be able to be collectively interrogated and an online look-up facility provided for those wanting to apply online and unsure whether they are already registered.

We have also proposed that electoral registration officers should be able to match data to national databases, such as those held by the Drivers and Vehicle Licensing Authority or the Department of Work and Pensions, and that automatic registration could support the process, for example when people are first issued with their national insurance number. Our surveys suggest that some 60% of voters would support such a change.

To be fair, the government recognise the problem and has been trialling ways of improving the annual canvass. These are a positive start, but much remains to be done. More fundamental changes of the kind I have

suggested have been made in countries elsewhere, without the sky falling in.

To conclude, we have a responsibility to voters to keep on improving the system and making voting easier, more accessible and safer. There are always costs and political risks in change, but the investment is worthwhile if it means our precious democracy remains vibrant, credible and appreciated by all groups in society. The costs and political risks of doing too little will in the end be greater.