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XXTH CONFERENCE, HERSTMONCEUX
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22-25 APRIL 2015

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A CALENDAR OF CENTURIES

Magna Carta 1215

It is impossible to consider the topics of the XXth Conference at Herstmonceux Castle without placing them in historical context. It may be different in other cultures. But for English speaking peoples, their democratic institutions grew out of their history and the struggle for a measure of popular control over the governance of society. I refer to change, over the centuries.

As it happens, the occasion of this conference coincides with a number of centennial events. In order to understand the outcomes, we must reflect on the way they were shaped by great events that we remember centuries later.

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There is, of course, an important difference between politics and history. The Australian historian, Inga Clendinnen, explained the great divide between politics and history in these words:¹

“The discipline of history demands the rigorous self-criticism, the patient, even attentiveness, and a practised tolerance for uncertainty. It also requires that pleasure be taken in the epistemological problems which attend the attempt to recover the density of past actuality from its residual traces. These are not warrior virtues.”

The ideological warriors in our societies demand that a national political story should be told in simple, fixed and inviolable terms. However, the lesson of centennials is that, taking the popular mind back to the messy business of history can cause patriotic celebrations to misfire. History has a tendency to raise more questions than celebrants want to hear. Political ideologues of Left and Right, seek to own their national narratives. In bellicose ways, they demand obedience to a simple story and mythological interpretations. By attempting to avoid such errors, it should be possible to capture relevant elements from history without adopting a starry-eyed nationalistic view of everything that has happened.²

The first of several centennials is, symbolically, of the greatest importance. I refer to the surrender by King John at Runnymede to the Great Charter (*Magna Carta*) presented to him by the barons of his kingdom.

¹ Inga Clendinnen cited in Peter Cochrane, “The Past is not Sacred – A Dangerous Obsession with Anzac” in J. Schultz and P. Cochrane (eds), *Enduring Legacies* (Griffith Review 48), Griffith University, Brisbane, 2015, 13 at 24.

² Cochrane above n.1.

According to modern research, King John was an energetic monarch who travelled extensively throughout England, attempting to modernise government services. However, he was personally unlovely and ill tempered. His political objectives included an unhappy obsession with re-claiming the territories in France that he saw as belonging to his paternal lineage. For that purpose, he was constantly demanding preparation for continental adventures. Because they were extremely expensive, he imposed burdens on the leading citizens of England which they challenged. Their challenge came to a head on 12 June 1215. This was the first centennial in my series.

The barons of England confronted King John at the site of the old pre-Norman council meeting place, dating back to King Arthur. The King claimed an indisposition by reason of gout. The barons would have none of this. They refused to see him in his privy chamber. When he was brought on a chair into their presence, they failed to stand. They presented him with their Charter and insisted that he sign. As he did. This event became a metaphor for the insistence of the English people of limitations on the great power of government.³

In England, only two clauses of the *Charter* remain in effect. These are Clause 39 that declares that no free man shall be imprisoned or dispossessed of property without a lawful judgment or requirement of the law of the land. Clause 40 is the most famous provision stating that ‘to no man will I sell; to no man will I deny or delay justice’.

³ Told in David Carpenter, *Magna Carta* (Penguin, London, 2015); A. Arlidge and I. Judge, *Magna Carta Uncovered* (Hart, 2015); J.C. Holt, *Magna Carta* (Cambridge); N. Vincent, *Magna Carta: the Foundations of Freedom 1215-2015* (Third Millennium, London, 2015).

There were other limits upon which the barons insisted. These included free trade in and out of the kingdom (Clauses 41, 42); faithful determination of accurate weights and measures (Clause 35); limits on the imposition of taxes upon the City of London only by common consent (Clause 12); provisions for the enforcement of debts to Jews, Christians being forbidden to lend or borrow for reward by the laws of Usury (Clause 33); and respect for the Scottish King and Welsh Princes (Clauses 58, 59). Still, it was Clause 47 that most offended King John. This was the so called 'security clause'. It obliged county sheriffs to take an oath to the *Charter* and to procure the election of local knights to afford an assurance that its promises would be obeyed. This alternative source of power in England was most hated by John. He resolved to be free of it.

No sooner was the *Magna Carta* signed, and the barons had departed Runnymede, but John sent emissaries post haste to Rome to procure annulment of its provisions. Pope Innocent obliged on 24 August 1215, issuing a Papal bull to quash the Great Charter. That step initiated one of the least remembered revolutions of English history.

The barons invited Prince Louis in France (whose wife Blanche was the granddaughter of King Henry II) to come to England as King in John's stead.⁴ This was a precursor to the Glorious Revolution of 1688 that was later to overthrow James II and substitute the joint reign of Mary and William III from the Netherlands who were jointly invited to take over the Kingdom. In the event, however, King John died. His crown passed to his son of 9 years, named King Henry III. A civil war was averted.

⁴ D. Jones, *Magna Carta, the Making and Legacy of the Great Charter* (Head of Zeus, 2014), reviewed in Ferdinand Mount, "Back to Runnymede", *London Review of Books*, 23 April 2015, 15.

Moreover, Henry III thrice confirmed the *Magna Carta*. He did so in 1216, in 1217 and in 1225.

It was the last of *Magna Carta* version which was most widely reproduced. It omitted Clause 47, but was otherwise faithful to the original. Hundreds of copies were made. For the most part, these are the copies that are still known and cherished in England, and with counterparts on display in Canada, Australia and the United States of America. There could be no more plain and visible evidence of restrictions on governmental power than the text of the *Magna Carta*.

Later rulers of England felt ambivalent about these restrictions. Oliver Cromwell imposed a silk tax and, when it was challenged by reference to *Magna Carta*, he denounced it as “Magna Charter, Magna farta”. He saw himself as above the irksome restrictions accepted at Runnymede. Still, those restrictions entered the imagination of the English subjects. They inspired the *Bill of Rights* that accompanied the “Glorious Revolution” of 1688. Even more importantly, they were the intellectual foundation for the demands of the American settlers, in their Revolution of 1776. In all of the political struggles that followed, the intellectual foundation was the concept that the power of rulers, in the English tradition, was subject to restraint and restrictions. The barons were an elite. But many of their demands resonated with a notion of power limited by law. That demand must be understood in considering democracy, change and values in the 21st Century.

Waterloo and Vienna 1815: I leave aside the sixth centennial of the Battle of Agincourt in October 1415. Its chief significance today related to the outrage we now feel at the action of Henry V in slaughtering a

large number of French prisoners, who had surrendered. I also pass over the fifth centennial of the opening of Hampden Court Palace in 1515: the opulent home of Henry VIII, Mary I, Elizabeth I, of the place of the imprisonment of Charles I and site of the original performances of plays by Shakespeare and musical compositions by Georg Friederich.

The second centennial of the Battle of Waterloo (and the Congress of Vienna that followed it) certainly affected more directly the shape of domestic affairs in Europe, and thus the World in the century after, up to our own time. In a sense, the Battle of Waterloo, whose anniversary remembers 18 June 1815, was a direct outcome of the American Revolution of 1776 and the French Revolution of 1789.

The Revolution of the American colonists grew out of the refusal of the British Parliament to extend to their colonial settlers in North America, the liberties that they claimed to enjoy at home as subjects of the King. The *Declaration of Independence* protested against what the settlers saw as the tyranny of King George III. Especially his purported imposition on them of taxes without their approval in Parliament; his imposition on them of compulsory billeting of soldiers in private homes; and his use of the general warrant, to permit official searches without express judicial approval. All of these complaints constituted a demand to subject the King to popular will. They were resisted at the time, because the King and Parliament considered that the impositions they applied were reasonable and necessary to the role of the Crown in providing defence and government to the settlers at considerable cost to the British taxpayer.

The French Revolution of 1789 led to the execution of the French monarch, repeating the ultimate assertion of popular sovereignty and copying the trial and execution in England of Charles I in 1649. The Revolution in France gave rise to the autocratic rule, and later reign, of Emperor Napoleon [I]. It was his turbulent ascendancy that was finally brought to an end at Waterloo, in present day Belgium. The peace conference at Vienna that ensued, effectively established a long period of international peace in Europe, reinforced by shifting treaty arrangements between the five European empires (of Britain, France, Prussia, Austria and Russia).

Behind these alliances, developed the first efforts of the international community (ironically sometimes initiated by the Russian Tsar) to accept as binding principles of international law that would prevent or discourage the renewal of the wars that Napoleon had initiated and that plagued Europe until Waterloo. It was the collapse of the treaty system in what became the Great War (1914-18), that we now call the First World War, that directly shaped the world in which we live today. Nevertheless, behind the treaty arrangements of Vienna, two centuries ago, competing models of domestic government emerged that helped to influence the shape of the democratic institutions that were ultimately to prevail.

The German, Austrian and Russian systems resisted popular democracy. However, in the United States of America, France and Britain and their colonies, the notion of accountability of government to the citizens began to grow in influence and operation. The electoral franchise in Britain itself was expanded by the *Reform Acts* of the 19th Century. The extension of the franchise to women, in response to the

suffragette movements, was postponed by the advent of War in 1914. It was immediately secured following the War, although, at first, at a differential minimum voting age. This was set at 21 for men but 30 for women. Seemingly, women could be trusted to vote; but only when they became more mature. Learning the lessons of the loss of the American settlements, the British governments of the 19th Century quite quickly established in the colonies comprising settlers (Canada, Australia, Newfoundland, New Zealand and South Africa) legislatures that were elected by periodic votes of widening classes of eligible colonial electors. Upon one view, the Great War of 1914-18 became the battleground of the struggle between the values of democracy and self-determination (on the one hand) and autocracy and aristocracy (on the other).

Great War Dardanelles and Armenia: The first centennial is being remembered at the time of this conference. The Great War began in August 1914. It was an immediate outcome of the breakdown of negotiations between Austria/Hungary and the Central Powers (including Germany) and Serbia (supported by Russia). Reviewed in retrospect, the negotiations almost resolved the differences but foundered on the Austrian insistence (and the Serbian refusal) to control the independent the inquiry that would examine the circumstances leading to the assassination of Archduke Franz Ferdinand and his Duchess, in Sarajevo.⁵

The European railway timetables locked the warring nations into a huge conflagration that each side expected to win, swiftly and decisively. Instead, both on the Eastern and Western Fronts, the competitors were halted in the mud, rain and snow of the trenches. Trench warfare

⁵ Christopher Clark, *The Sleepwalkers* (Allen Lane, 2012), cited Cochrane, above n.1, 19.

robbed both sides of early victory. Each side looked for ways to break the frustrating and costly deadlock of arms. Doubtless remembering Agincourt where the new English longbows helped Henry V to prevail, both sides searched for technological weapons that would break the *impasse*. Britain and France embraced tanks, aeroplanes and improved guns. Germany and the central powers looked to less discriminating weapons including *Zeppelin* bombers, submarines and asphyxiating mustard gas.

On to this scene came a most remarkable British politician, Winston Churchill. A student of military history, Churchill advocated the conduct of the greatest amphibious military operation to that time in world history. Its object was to utilise sixty thousand soldiers of the French and British armies, backed by the Royal Navy, to induce a rapid collapse of the Ottoman Empire. This, it was hoped, would lead to the seizure and occupation of Constantinople; the provision of immediate relief to Tsarist Russia; and the application of a pincer movement most greatly feared by the Central Powers. Churchill believed that it would renew the war on two fronts which had long been the greatest fear of Germany, guided in this respect by the military doctrines of Graf von Schlieffen. He had taught that Germany should always strive to avoid fighting a war on two fronts. Churchill dominated the British decision-making process. Depressed by the prospect of a prolonged stalemate the Allies were trapped in blindness and miscalculated Turkey's ability to defend itself on its own ground. The same mistake was later to be repeated in Vietnam.⁶ Churchill's scheme was adopted through the "fatal power of a

⁶ R. O'Neill, cited Cochrane, above n.1, 22.

youthful enthusiasm to convince older and slower brains”. Thus “the tragedy of Gallipoli was born”.⁷

The battle of the Dardanelles began a century ago in March 1915. In fact, Turkey, to this day, celebrates the defeat of the Royal Navy which it identifies as having occurred on 18 March 1915. Despite large resources and an unchallenged reputation, the Royal Navy failed to force the Dardanelles by sea power. It had hoped to force surrender by training the undoubted firepower of its warships on Constantinople. The naval defeat arose from misinformation, poor maps, inadequate mine clearance; and lack of nerve. The result was the fateful decision to press ahead with the amphibious landing at Gallipoli on 25 April 1915.

Exactly a century ago, that remarkable battle was about to be joined. The aim was to secure overland what the Royal Navy had failed to secure by sea. It was to prove a futile hope. The Turkish forces had found a brilliant leader, Mustafa Kemal. Later, Kemal Atatürk, he was to be the founder of the new Turkish Republic and a great exponent of secular government in a region that, to this day, is bedevilled by religious extremism.

Australian and New Zealand soldiers fought together in the newly created ANZAC Corps. The heroism and sacrifices of their young soldiers is commemorated annually. All too soon, the Allied soldiers were stuck in the mud of a new venue of trench warfare. The chance of a strategic victory had been lost. The only truly successful military feature of the Gallipoli campaign was the near perfect retreat and withdrawal. This was accomplished by skill and deception by 9 January

⁷ Charles Bean, *The Story of ANZAC* (1921), cited Cochrane, above n.1, 23.

1916. The loss of so many young lives, including from Britain, Ireland and France, created critical outrage, especially after the War. In Ireland, it hastened the end of the Unions of Britain and Ireland and allegiance to the British Crown. In Australia (where two referendums to permit military conscription had been defeated) it began the process towards entire legal independence of the nation from Britain. The war on the Western Front continued with terrible losses on both sides. The sacrifices were to reshape world history after 1918.

A century ago exactly, three events occurred that gave the world an image of the future of war:

- * On 22 April 1915, for the first time, at Ypres, the German Army released poisonous asphyxiating gases in violation of *The Hague Conventions*. This initiative forced a retreat from the French and Canadian lines. However, they quickly recovered. And the soldiers on both sides were issued with gas masks;
- * On 7 May 1915, the *Lusitania*, British passenger ship, was sunk by a torpedo fired by a German U-boat. This caused the death of 1200 passengers and crew. It was a foretaste of underwater warfare targeting civilian and other vessels yet to come; and
- * On 31 May 1915, for the first time, London was bombed from a *Zeppelin* dirigible aircraft. This too was to herald the new danger from the air to which civilian populations were to be increasingly exposed in time of war.

It was the realisation of the enormous cost of warfare, in terms of human lives and property, that ultimately propelled the nations of the World to realise that the need for new principles to move beyond the power and sovereignty of individual states. This in turn led to calls to build more effective rules of international law. This realisation would, in turn, give birth to the League of Nations (in 1919) and, upon its failure, to the United Nations Organisation (in 1945). Out of the ashes of mighty conflicts came important global developments. The outcome of the two world wars and the narrative that has been woven around the efforts of the victorious Allies, especially since 1945, provides the background for consideration of some of the issues of modern democracy beyond the periodical conduct of elections.

DEMOCRACY AND CHANGE

Growth of Electoral Democracy: The assertion of the power of the people, in both the United States and French Revolutions, set the course for the gradual embrace of democratic forms in a majority of national polities after 1790.

In particular, because of the loss of the American colonies the United Kingdom learned a lesson for the British Empire. The Imperial Parliament granted legal and political independence and self-government successively to Canada (1867); Australia (1901); Newfoundland (1907); New Zealand (1908) and South Africa (1910). Plans for the evolution of India to independent self-governing status were repeatedly postponed in the 1930s until, following the conclusion of the Second World War, the move could be delayed no longer. Thus began the steps towards independence (and often republican status)

successively of India (1950), Pakistan (1956) and Ceylon (1948 (after 1972 as Sri Lanka)). The independence movement of colonial nations and peoples gathered pace in Africa, beginning with Ghana (formerly the Gold Coast), in 1956 and Nigeria (1960).

The newly freed British dominions beyond the seas experimented with new institutions of governance. Adoption of the republican form expanded rapidly after 1960. Earlier, in 1923, Australia had introduced compulsory voting on the part of all registered electors. Female suffrage was first granted to New Zealanders in 1893, followed quickly by the colonies of South Australia in 1894 and Western Australia soon after. The countries of Europe were slower to grant women the right to vote, including France (1944) and Switzerland (1971). Full equality of voting rights to women was not granted in Portugal until 1976. Full female suffrage was only adopted in the United States in 1920, following the passage of the Nineteenth Amendment to the Constitution. Racial laws in South Africa persisted until 1991 when the government of State President F.W. de Klerk under enormous international pressure, accepted the termination of apartheid. Its collapse coincided neatly with the collapse of the Soviet Union following the fall of the Berlin Wall in 1989.

Having formal provisions in the law for universal electoral voting does not necessarily achieve the reality of democracy. The elections in the former Soviet Union and, today, in North Korea, show that this is so.

Voting features: Every country that claims to be democratic has elements in its voting law that are peculiar to it. Thus, New Zealand has special voting rights for citizens of Maori ethnicity. Many countries

confine the electoral roll to their own citizens. However, others, usually for historical reasons, permit non-citizen residents to vote in certain circumstances. Or they permit historically anomalous electors to cast a ballot. Thus, in the United Kingdom, various persons who were or are overseas subjects of the Queen, or citizens of the Irish Republic, are permitted to vote. Until the 1980s there were similar historical exceptions in Australia. However, these categories have now been closed. Many countries confine capacity to vote to persons aged over 21 years. However, in recent times a growing number of countries (Australia included) have lowered the voting age to 18 years. In some countries, sensing political advantage, governments have proposed (and some legislatures have even proceeded to provide) for voting by persons over the age of 16 years.

Apart from the provision for the election of constituency candidates on a universal electoral roll, many countries permit the election of candidates by reference to affiliation with particular political parties, as such. Thus, in New Zealand, there is both an individual candidate list and a list providing for political parties. In Germany, in order to gain representation in the Bundestag, parties must secure a minimum threshold aggregate vote. This is a limitation on democratic representation. However, it is designed to balance the counter-availing interest of excluding candidates having tiny support so as to favour clear political outcomes and “firm” government.

It is beyond the scope of these remarks to go into the details of such local variations. The variety of destructive features needs to be noted when reflecting upon what “democracy” means in a contemporary political sense:

- * *First past the post:* The provision for the election for a constituency candidate, who secures the highest aggregate vote in the constituency, is the oldest system (first past the post or FPTP). It still prevails in the United Kingdom and formerly in many Commonwealth countries, including Australia. However, it has been increasingly abandoned. Although it encourages the possibility of clear outcomes in national and sub-national elections, according to a principle that most people can understand, it may frustrate the achievement of overall democracy. It also tends to favour large political parties. Effectively, it disenfranchises persons who feel strongly about particular issues which they wish to reflect in their vote. The position in the United Kingdom in the election current at the time of this conference is a good illustration. In Scotland, all of the major political parties (Conservative, Labour and Liberal Democrats) oppose Scottish independence. They all favour continuance of Scotland within the United Kingdom. It appears that the Scottish Nationalist Party (SNP) may secure a majority of seats in Scotland because its candidate will top the constituency poll. Yet, in some, at least, of those seats, there could be a majority of electors opposed to the programme of the SNP. The first past the post voting system does not allow a reflection of the aggregations of agreements and disagreements. To that extent, it may be an inefficient monitor of overall democratic opinion. It may unduly emphasise single issue politics;

- * *Proportional voting:* In many European countries, candidates are returned to the legislature on the basis of the proportional vote in

favour of their party list. In Australia, there is a variation of the proportional system for the election of the Senate in the Federal Parliament. This permits, and encourages, the return of legislators who will reflect the diversity and differences that exist in society. Opponents complain that it diminishes the potential for clear and firm government, and adherence to a simple national narrative. The astonishing persistence of politics in the United States of America in terms of the Republican (GOP) Party and the Democratic Party is only made possible by the existence within each mammoth party of coalitions of interest groups (such as the Tea Party Republicans and Left Liberal Democrats) who reflect particular policies and objectives;

- * *Preferential distribution:* An attempt to reconcile the advantages of the foregoing competing systems of voting can be found in the Australian system for the distribution of electoral preferences. There are also variations of this system. Some envisage compulsory numbering of all candidates offering for election so as to require the distribution of preferences if no single candidate secures an absolute majority. This, it is hoped, will maximise the chance of the eventual return of a candidate whose overall views will be closest to those held by a majority of the electors in the constituency concerned. A variation of this system is, “optional preferential distributive voting”. This permits, but does not require, the elector to number or rank the candidates. This is now the system of preferential voting in force in the Australian federal election. A referendum for the introduction of a version of this principle was held, and rejected, in the United Kingdom pursuant to the agreement of the Coalition parties. Both the Conservative

Party and the Labour Party opposed the suggested change. It is possible that, in the light of the rapid growth in the first party preference for the SNP, that they might now wish to reconsider their earlier opposition;

- * *Voting above the line:* Another option for elections is to acknowledge the reality of the role that political parties play in the electoral process in modern democracies. This may be introduced by the identification on the ballot paper of the political party, if any, with which the named candidate is connected. Care must then be taken to avoid use by candidates of party names likely to mislead voters concerning the party alignment of the candidate. This was a feature it is said to have affected the return of at least one Senator in the most recent Australian federal election. Upper House elections often attract large numbers of candidates and new, small political parties in Australia because of the preferential voting system. The consequential ballot papers have sometimes been huge and cumbersome. For that reason, a simple procedure for voting has been introduced providing for ranking political parties “above the line”. However, that innovation can then trap the elector into “supporting” whoever the political party has agreed should receive its second and subsequent preferences of its candidates. The distribution of such preferences will often result in outcomes that the electors concerned could not possibly have envisaged or even imagined. The spectre of backroom deals by political parties is a possible democratic reason to reject this feature of the present Australian federal electoral system.

Enough has been said in this short review of competing procedure for reflecting democratic wishes to show that electoral democracy in a modern democracy is neither simple nor straightforward. Further variations on the themes would be introduced if my survey had included a review of the increasing use (including in India, the largest democratic system in the world) of election machines and digital technology. Electoral democracy is an ideal for which different procedures are available.

In terms of democratic principle, the procedure that maximises the reflection of the diverse wishes of the voting electorate, appears to be the one that best advances the interests of democracy as a practical principle of government. To a greater or lesser extent, the electoral systems of every country and voting jurisdiction displays strengths and weaknesses. The hope is to maximise the strengths and minimise the weaknesses.

Flaws in elections: Whatever the formal system for the collection and counting of electoral votes, there are several flaws that affect the potential of an election to advance the democratic principle in a practical context:

- * *Key marginals:* In most countries accepted as broadly democratic, electoral campaigning today tends to concentrate on “key seats” which, on previous experience or current polling, have identified themselves as “marginal”. That is, they contain electors who are liable to change their allegiance from the last election and to vote for an opposition party. If reflected by enough electors in other marginals this may result in a change

of government. Such “marginal” electorate tend to be easily identifiable. Generally, they are comparatively few. Because of this, much practical electoral attention by political parties and their dedicated supporters is commonly focused on the opinions and interests of voters in those particular seats. The consequence has been a distortion of national or state or regional interests by excessive attention to the local concerns or single issues identified as important to electors in such marginal seats. High importance being ascribed to the single issue of Scottish constitutional independence may be a case in point. Its potential outcome in the election in the United Kingdom, proceeding at the time of this conference, could even be such that a relatively small number of electors could effectively control the choice of the party or parties that form next government of the United Kingdom. Alternatively, that issue could play a decisive role in the makeup of the next national parliament which is what happened for forty years in the United Kingdom after the failure of W.E. Gladstone’s Home Rule proposal for Ireland.

- * *Participation drop:* Additionally, the numbers of persons in recent years who have actually joined political parties has declined substantially in many countries accepted as “democracies”. Interest in, and loyalty to, particular political parties has fallen away, in circumstances of growing disillusionment about the reality of electoral politics. The reciprocity of loyalty and fidelity to principles on the part of those who decide electoral and political strategies and those who support them is now increasingly open to question;

- * *Staffers:* In many countries, the candidates being selected by the now relatively small numbers of party members, for submission to the electors, increasingly come from persons who have effectively spent their adult careers working in the interests of the chosen political party. In previous generations and centuries, politicians typically entered the legislature at a later age in life, after having gained experience in professions, trades and other occupations, exposing them to a wide range of human experience. Today, many political leaders and large proportion of elected legislators are persons who have not spent much time outside the hothouse of politics. This may tend to give them a warped and even cynical approach to the idealism that many electors think should motivate the resolution of high political issues. In a democracy instead, the art of politics is often viewed from the outside as a game to be won. This may result in a lack of cooperation ‘across the isle’ so as to make the legislative institution work more effectively – a feature of democracy that existed in earlier generations but is much less evident today, in many “democratic” countries;

- * *Gender representation:* Typical in many (if not most) countries is the comparatively low representation of women as the candidates selected for submission to the electors in so called “winnable” marginal seats. Women commonly secure selection for unwinnable or “low chance” electorates. In some developing countries, a target is set by law for the election of a given proportion of women so as to overcome the dominance of established male politicians (and their families and friends) over

the electoral process. Typically, women constitute half of the general population. It is desirable that they be represented in the legislature in increasing numbers. However, the situation of politics in Bangladesh throws doubt upon any suggestion that women are necessarily more instinctively attracted to compromise than men are;

- * *Low compromise:* The experience of many countries in recent years has been that compromise in electoral politics has become more difficult. The Tea Party movement in the United States of America has reduced the willingness of candidates and elected representatives to seek out bipartisan agreement. This problem has sometimes been reinforced by increased hatred towards political opponents. In many modern “democracies” political candidates have been vilified and excoriated by their opponents. History teaches that a functioning democracy requires opposition and disagreement. But it also postulates a measure of agreement, at least in those matters that are essential to the well-being and life of the nation or which are less significant and need to be conceded so as to concentrate disagreement upon essentials.

- * *Political exclusions:* In most countries, particular categories of electors have, in the past, been excluded from the electoral role. Sometimes this has been done for perceived political advantage. Thus, prisoners and young voters may be excluded from voting because it is suspected that they will favour the side opposite to the one that controls the legislative majority enacting such exclusions. This has been especially so in the case of

prisoners. In recent years, this risk has resulted in court decisions defending the rights of prisoners, as citizens, to participate in elections. The outcome has been a series of protective decisions in Canada;⁸ the United Kingdom in the European Court of Human Rights;⁹ and in Australia.¹⁰ Some politicians have expressed the strongest opposition to such judicial protection of the principles of democracy. For example, the decision of the European Court of Human Rights on the issue has been attacked as incompatible with the sovereignty of the British Parliament. Yet the effective exclusion of electors (generally from particular ethnic minorities) from voting in the United States of America can often be ascribed to weak court protections deployed against strategies controlling electoral rolls, voter identification; and the exclusion of categories designed frankly to support one side of party politics. In such cases, courts must be vigilant to uphold and protect a “level playing field” for democratic decision-making.

- * *Cost of campaigns:* Of equal concern is the costs that are involved in modern electoral campaigns. Television and other advertising is generally only possible where huge amounts of campaign funds are raised. Those funds may advantage particular parties or groups in politics. Those who donate large sums will often have expectations of rewards or at least outcomes. The issue of electoral funding is one vital for the proper functioning of a modern democracy;

⁸ *Sauvé v Canada (Chief Electoral Officer)* [2002] 3 SCR 519 at 585 [119].

⁹ *Hirst v United Kingdom [No.2]* (2005) 42 EHRR 41.

¹⁰ *Roach v Electoral Commissioner* (2007) 233 CLR 162 at 177-179 [13]-[20]; 203-204 [100]-[102]; cf at 220 [163].

- * *Beyond majorities:* Democracy is often said to be the reflection of the will of the majority. But this can be a naive and limited view of electoral democracy, as it is now practised. In the current age true democracy will not only reflect majority views. It will also sometimes soften majority votes. It may do this by introducing into the legislature itself proper representations of some of the diverse and minority views that exist in society. It may also invoke the scrutiny and supervision of courts to ensure that the fundamental rights of minorities are protected, even against the will of the majority. In the United States, majority political opinion favoured prohibition of miscegeny: the marriage of persons of different races. However, in *Loving v Virginia*,¹¹ the Supreme Court of the United States held that such laws were impermissible in a constitution that was relatively “colour blind”. Similar issues are now being considered in many countries in relation to legislative proposals for and against marriage equality (same sex marriages). That issue is before the Supreme Court of the United States at the time of this conference. It demonstrates that electoral integrity is not the only mechanism essential to ensure the attainment of democracy in today’s world.

It follows that democracy is undoubtedly a complex notion. It requires the interaction of many institutions that have developed over history to fulfil the democratic ideal. Those institutions include a reliable and

¹¹ *Loving v Virginia* 388 US 1 (1967), Warren CJ for the Court. The argument is the Supreme Court of the United States on same-sex marriages in Kentucky, Michigan, Ohio and Tennessee was heard on 28 April 2015 with a decision expected in June 2015.

uncorrupted electoral system. Electoral democracy is essential to the existence of democratic governance. It is necessary to achieve that objective. But alone it is not sufficient to fulfil the aspirations of democracy. In addition to the majoritarian democratic elements in society, there is a need also for non-elected, even elite, institutions of government to perform their role in harmony with the elected officials. These non-elected officials may include the head of state (in non-presidential systems); the military with its deference to civilian government; the civil service bureaucracy who faithfully serve whoever is elected to government; and the judiciary who must be independent, impartial and competent and separated from the elected politicians. An independent and vigorous media, in all its forms, is also essential to democracy so is a vigorous civil society and uncompromised economy.

There are many further issues that need to be examined in elucidating the challenges of values and change to democracy in the present world. Amongst these, the growth of international institutions and of international law (and the suggested consequential emergence of a 'democratic deficit') in the making of law that binds actions of citizens in their own countries, needs to be addressed.

THE TEMPERATE DEMOCRATIC IDEAL

Winston Churchill, whose clever idea failed in the Dardanelles once said that democracy was the worst system of government, except for every other system that had been tried. The challenge for our World in the 21st Century is to overcome cynicism, disengagement, disillusionment and indifference (especially among the young). And to reinvigorate the politics of idealism, principle and diversity. How these noble goals can

be secured, maintained and protected is the challenge that democratic countries face in 2015.

The concurrence of this conference in Herstmonceux Castle, with United Kingdom national election to be held on 7 May 2015, has focussed the minds of all participants on the very practical considerations raised by the grand theme of our symposium. Once again, we pay tribute to our convenor, Professor Agnes Herzberg, for her presence and good timing in selecting this theme, in this country, at this time. And in our World at a moment of many new challenges to the temperate features of successful democratic government.

