HOUSE OF LORDS

Constitution Committee

Uncorrected oral evidence: The UK's constitutional safeguards

Wednesday 28 October 2026

10.10 am

Watch the meeting

Members present: Lord Strathclyde (The Chair); Lord Beith; Lord Bellamy; Lord Bichard; Lord Griffiths of Burry Port; Baroness Hamwee; Baroness Laing of Elderslie; Lord Murphy of Torfaen; Lord Waldegrave of North Hill.

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Witnesses

Professor Anne Twomey, Professor Emerita, University of Sydney Law School; Professor Vanessa MacDonnell, University Research Chair in Democratic Constitutionalism and Associate Professor, University of Ottawa.

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Examination of witnesses

Professor Anne Twomey and Professor Vanessa MacDonnell.

Q65 **The Chair:** Good morning and welcome to this meeting of the House of Lords Constitution Committee. Today, we continue to take evidence in the committee's inquiry into the UK's constitutional safeguards. Later, we will be joined by Danny Kruger MP, but before that we are delighted to be joined via Zoom by Professor Anne Twomey, professor emerita at the University of Sydney, and Professor Vanessa MacDonnell, university research chair in democratic constitutionalism at the University of Ottawa. They will offer a comparative analysis of constitutional safeguards as they operate in Australia and Canada. On behalf of the Constitution Committee of the House of Lords, you are both very welcome and thank you for coming. Again, I remind committee members that, if they have any interests to declare, they should do so. I am not sure that there will be.

I will go straight into the questions. When it comes to comparative perspectives, in which we are obviously interested, what do you feel are the key similarities and differences between the constitutions of the UK, Canada and Australia? In particular, how do their constitutional safeguards differ? I suspect we will need different answers from each of you, because you will each have a different perspective.

Professor Anne Twomey: I think that Canada and Australia are quite similar in this regard. As for similarities with the United Kingdom, they relate mainly to Executive power, for example the prerogative; the way of forming government and those sorts of conventions that attach to the Executive; our relationship with the constitutional monarchy as well; and the system of parliamentary and responsible government. All those things we have strongly inherited from the United Kingdom and retain, and also a lot of parliamentary procedure and those sorts of things. *Erskine May* is a very significant book here in Australia as well.

As for differences, we have a federal system. The United Kingdom has been moving from a unitary system to a devolved one, so there are some similarities, but the federal system is obviously quite different. Primarily, it is our entrenched constitution. In Australia, the constitution cannot be amended without the agreement of the people in a referendum. That leads to issues about sovereignty of Parliament. We do not have the same system of sovereignty of Parliament because, with an entrenched constitution, the courts can strike down laws as invalid. That is a huge difference between the United Kingdom and Australia. There is also the House of Lords, as we do not have an appointed upper House. All our upper Houses now, at both state and federal level, are directly elected.

Finally, the other difference—it has changed in the United Kingdom—is the integration with Europe. For example, you still have the European Convention on Human Rights and those sorts of things where external bodies can make decisions that have an impact on the United Kingdom in a way that Australia does not, so we do not have that same kind of

relationship with other jurisdictions—for example, the European Court of Human Rights. We do not have that. I think those are the main differences.

The Chair: That final point about external organisations having a say over the British Government is very important. As you probably know, the ECHR is a controversial political subject. Anyway, the point is that it does not apply in Australia.

Professor Anne Twomey: Correct.

The Chair: Professor MacDonnell, I expect that you agree with much of what we heard, but is there anything essentially different?

Professor Vanessa MacDonnell: I absolutely agree. I think Professor Twomey is right. Highlighting the fact that Canada is a federation is quite important. To give some of the salient background factors, Canada is a settler colonial state and a plurinational democracy. Although Canada's institutions largely reflect the British heritage, in Quebec, where there is a francophone majority, private law continues to be governed by a simple code. Canada is also a country with over 500 first nations, Métis and Inuit communities, that are located across the country. In the past couple of decades, there has been a major resurgence of indigenous legal traditions. Those traditions are now taught in law schools around the country, so indigenous constitutionalisms increasingly coexist alongside the Canadian constitution and are recognised and applied by Canadian courts. Some of what I would like to suggest today is that those constitutionalisms and the entrenched rights of indigenous peoples can serve as an important constitutional safeguard.

The Chair: That final point is very interesting. There is no direct parallel obviously in the United Kingdom, but in indigenous constitutionalism where does the background come from? Are they ideas and thoughts that have been passed down through the generations, or are there written documents?

Professor Vanessa MacDonnell: It is very difficult to make any generalisations because there are so many distinctive communities across the country. It is fair to say that, generally, indigenous communities for the most part have relied historically on oral traditions, but as these constitutional traditions are now applied by Canadian courts, and as we see the development of indigenous platforms of dispute resolution as well, there is a practical need to write things down. We see increasingly those traditions committed to writing.

Q66 **Lord Bellamy:** Following on from that, we are considering whether Canada and Australia have constitutional safeguards that the UK could usefully adopt. We have already touched on entrenched rights and an atmosphere of constitutionalism, roughly speaking, in what you said. On the other hand, I think Professor MacDonnell in particular commented on whether what she describes as the hidden guardrails are strong enough to maintain democracy. I am very interested in what you think are the

most important safeguards in your constitution and whether the UK can learn from that and, vice versa, whether there are safeguards in the UK, de facto or de jure, that could usefully be considered in the context of Australia or Canada.

Professor Vanessa MacDonnell: I am very happy to talk about the different safeguards that exist, in particular the distinctive ones that flow from the existence of a written codified constitution, but I think that for this audience one very important thing to say, from the standpoint of a scholar working with a written constitutional tradition, is that in my view the quality of Canadian democracy depends in large part on the actions of individuals. These safeguards are not self-executing. Both the UK and Canadian systems of government depend heavily on political actors taking seriously their role and the limits on their authority. If they do not, in my view, there is no obvious safeguard that can counteract this—not the written constitution, not a Bill of Rights and not robust judicial review. We see this, for example, in the United States where there is a written constitution, yet we have seen a precipitous decline in the quality of American democracy due primarily to the disregard for constitutional norms.

It is important to highlight the fact that in Canada's system, as in the UK's, the quality of democracy depends heavily on political actors internalising certain norms of responsible behaviour. When this fails, the most effective check or safeguard is probably the people. That takes us back to the foundation of constitutional government. This, too, we see around the world in recent cases where authoritarian Governments have been toppled. How? In elections, by people demanding more from their Government. I will talk about the benefits of codification, but I think that, at the end of the day, the very familiar UK style—a sense that it is important for political actors to behave responsibly—is still a huge factor in the Canadian context.

Shall I briefly talk about the rights-based review, or shall we turn it over to Professor Twomey?

The Chair: We will have another question on codified constitutions in a moment, but Lord Waldegrave wants to come in at this stage and we will turn to Professor Twomey.

Q67 **Lord Waldegrave of North Hill:** It is very interesting hearing what you say. You are probably familiar with the slightly dated slogan, which some people say derives from Professor Lord Hennessy, of the "good chap theory" of government, better described by somebody else as the "good faith theory" of government. It sounds to me as if you have the same issues there—and the same strength, if people behave well. Looking at the world at the moment and the rise of populism in the bad as opposed to the good sense, do you see any particular vulnerabilities facing us that you do not face? Does anything make you think, "I'm glad I'm in Canada rather than the UK", or vice versa?

Professor Vanessa MacDonnell: It is fair to say that Canada has sometimes narrowly avoided the crises of democracy that we have seen elsewhere, but there are still lots of examples of troubling vulnerabilities. When I compare the constitutional state of affairs in the UK and Canada and perhaps high-profile incidents in both countries where democracy has been tested, I do not have the sense that there is some magic bullet or precise institutional structure that Canada has which the UK lacks and, were it only to be implemented, the quality of the democracy would be stronger.

Let me give you one example of what I think is a vulnerability in the Canadian context that is perhaps less of a vulnerability in the UK. Canada's federal system is highly Executive-dominated, chronically so, but maybe, we could say, less than abusively. We settled into a pattern of very strong Executive dominance. Prime Ministers in Canada wield an incredible amount of power. As a result, Parliament often plays a subsidiary role, in a way an inversion of the role that those two institutions are intended to play. That is not to say that Parliament does not play an important role, but, relative to the UK, I think Canada experiences stronger Executive dominance.

A Constitution Committee of the House of Lords with independent advisers is not something we have in Canada. My view is that that structure permits Parliament to access independent information about the constitutionality of government conduct in a way that does not exist in Canada. Canada has very robust pre-enactment rights review, but it occurs largely within the Executive. There is a little bit of reporting out that occurs there. Something called a charter statement is then tendered in Parliament, but parliamentarians are still to a large extent dependent on information they receive from the Executive about constitutionality. There is work that Canada could do to strengthen parliamentary accountability of rights and constitutionalism, and there we could learn something from the United Kingdom.

The Chair: Professor Twomey, is there anything you want to add to that, in terms of both the question just asked and the previous one?

Professor Anne Twomey: The one thing I would say about Australia that is quite different from virtually anywhere else is that we have a system of compulsory voting. That makes a huge difference. One aspect of compulsory voting is that it tends to weed out the extremes. When you have voluntary voting, the extremes of the sides are more motivating in getting people to come out and vote and, therefore, you can get distortions in the system. In Australia, the whole of the middle comes out to vote as well; it makes it very difficult to end up with extreme positions.

It also changes the way politics operates. For example, if you look at the United States, you see political parties concentrating on getting out the vote in particular areas. They assume that only certain sorts of people will vote for them and, therefore, their policies are directed in that way and not to other groups. You cannot do that in Australia because of compulsory voting. You need policies that will work across the board.

Compulsory voting makes a big difference. As for a safeguard, I think it is a significant safeguard in Australia that, hopefully, wards off the rise of the bad kind of populism. That is my first point.

Secondly, there are aspects of our entrenched constitution that make it extremely difficult for bad populists to come and distort the system, and basically entrench themselves in power. For example, the constitution says that Parliament can have no longer than a three-year term and then you must have an election. There is no choice about it. You could not extend your parliamentary term without changing the constitution. That requires a referendum. You have compulsory voting in a referendum. That makes it extremely hard to change the constitution.

There are entrenched aspects of the constitution that defend democracy. Sections 7 and 24 say that the Houses of Parliament have to be directly chosen by the people. Those words "directly chosen by the people" have consequences, so it has to be "the people". There is a question as to what that means and who is involved in "the people". Courts will interpret that. One consequence is that they cannot exclude groups on the basis of race, sex or anything else like that from being able to vote because of that constitutional aspect.

It would be very hard for autocrats effectively to take over and entrench themselves in power because it will always come back to the people in elections, and those voting rights are protected. We also have in our constitution an implied freedom of political communication. That also makes it extremely difficult for an autocratic Government to suppress political communication in relation to the other side.

The other really important point about the constitution is the separation of powers, in particular to the extent it protects the judiciary and keeps it completely independent from the Executive and legislature so that it is free to act to apply the constitution. It can strike down laws. I think that all those features help provide safeguards to protect the constitutional system.

The Chair: That is very helpful.

Q68 **Lord Bichard:** That is a really helpful contribution. I was going to raise the issue of mandatory voting. You pretty well answered everything I would have asked, except I wonder whether that is supported by active citizenship education. One thing in which we might be interested is whether we do enough here to educate people about the value of the constitution. In Australia, has it been supported by active citizenship education?

Professor Anne Twomey: That is a really interesting and controversial question. I would say that Australia has not done sufficiently well in educating its people on civics and citizenship, particularly in schools, and needs to do a lot better. Having said that, the system of compulsory voting places a burden on people to pay attention during election campaigns, because everybody knows they have to turn up to vote. You

can still do an informal vote. You are not forced to vote for particular candidates or parties; you can vote informally, but you have to turn up and get your name crossed off the list. The interesting aspect of that, if you look at it statistically, is that in the end very few people vote informally. When people know they have to turn up and vote, it pushes most of them into a position of paying attention to the political debate, and making a decision about who to vote for, whereas if you did not have that impetus of pushing you into the polling station you might sit back on your couch feeling lazy and think, "Oh well, they're all going to do what they like anyway. My vote doesn't really count, so I'm not going to turn up". So you wash that part out of the system.

The other interesting thing about compulsory voting is that it has indeed become part of your civic responsibility. Compulsory voting started at state level. I think it was Queensland that first implemented it. It was discovered that, once Queensland had implemented it at state level but it did not apply at federal level, when you had federal elections the Queenslanders, who had become accustomed to voting at the state level, would come out at very high levels at the federal level, even though they were not required to do so. Therefore, once you get used to voting on a regular basis, you will do it anyway regardless of whether it is compulsory; it becomes part of civic life. There are aspects of compulsory voting that put the burden on voters to think about how to vote and pay attention to the debate.

Having said that, it should also mean that we do better in educating people in schools, particularly about difficult aspects such as the federal system. I do not think we do that well enough, but we do it a bit and people are effectively forced by circumstance and also custom to educate themselves in relation to politics.

The other point to make is that compulsory voting is very popular here. Political parties from time to time wanted to get rid of it on the basis that one side thinks compulsory voting might favour the other side. Who thinks it favours whom tends to swap round from time to time, but in any event opinion polls very strongly support compulsory voting in Australia. It would be extremely difficult to get rid of it, on the basis that it is seen to be very much part of our culture.

The Chair: Professor MacDonnell, do you have any contribution to make on compulsory voting?

Professor Vanessa MacDonnell: No.

Q69 **Lord Murphy of Torfaen:** That was a fascinating description of compulsory voting, which generally I have long been in favour of. Whether it will ever happen in the United Kingdom is quite another matter. Last week in the House of Lords, Members debated whether there should be a written constitution in the United Kingdom. I would say that, had a vote been taken at the end of that debate, there would have been a majority in favour of, "No, we shouldn't". However, it would be quite interesting to hear from both of you about whether there is something in

our system, which is obviously part-written and part-convention, from which Canada and Australia could learn. Or is there nothing at all in our unwritten constitutional system here that would trump, to use that word, the Canadian and Australian written codified constitutions?

Professor Vanessa MacDonnell: Canada is well known for having this written codified constitution, but the unwritten components of our constitution continue to be extremely important. Here I refer not only to our historical inheritance and the political constitution that is well known in the UK, which continues to operate around Canadian political institutions, but also unwritten constitutional law. The Canadian Supreme Court has developed over decades a doctrine or jurisprudence of unwritten legal constitutional principles that plays a very important role in its constitution. In a way, it is impossible fully to codify a constitution. Canada's system, despite having these important written components, still relies heavily on unwritten norms of both a political and legal character.

It is likely true that certain aspects of codification in the Canadian context have been beneficial. The codification of Canada's Charter of Rights and the codification of Aboriginal and Treaty Rights have been quite important. I will talk less about Aboriginal and Treaty Rights because they may be less directly applicable in the UK context, but certainly the entrenchment of charter rights has created a culture of awareness of rights. It obviously then has given the courts a very important role in the oversight of rights complaints, but it has also led to the development of fairly significant mechanisms of pre-enactment review within the Executive. Something has been institutionalised within political institutions as a result of the entrenchment of the charter and the possibility of judicial review, which I think has given rights much more prominence than they had before the enactment of the charter. Prior to that enactment, Canada had common law rights and a statutory Bill of Rights, but something about that entrenchment and codification has proven very important.

There are other aspects of our constitution—for example, the amending formula. Some of these aspects of the written constitution create an important degree of clarity, but, whatever those benefits, the reality is that even what is codified is quite basic. You have a right to freedom of expression or to equality. That creates a foothold for political action or judicial review, but a lot more work remains to be done to give those rights life. There is an important role for the courts.

When the charter first came in, the focus shifted from political institutions to the courts and there was a sense that scholars should spend their time looking at how courts interpreted rights. One thing we failed to grapple with sufficiently was the fact that the experience of rights depends a lot on the actions of political actors working within political institutions. In recent years, we have come back around to realise that political actors are in a unique position to give effect to these codified rights and that this is really a whole-of-state project. Yes, those unwritten components of

the constitution that are so familiar in the UK are also an essential part of Canadian constitutional democracy.

The Chair: Professor Twomey, do you have any observations on codification?

Professor Anne Twomey: I feel that codification gives rise to advantages and disadvantages. Codified constitutions, particularly in relation to protecting democratic rights and fundamental things like separation of powers or whatever, are very important, but I would take a different perspective in relation to rights. Australia does not have a codified Bill of rights. Interestingly, that is also because there has been a popular pushback against it because of the concern that it really transfers rights away from Parliament and democratically elected representatives and into the courts, which are deciding constantly about conflicts between rights and how to adjust rights to manage that. In Australia, there has been a reluctance to do that. I think the general view is that, when it comes to things like social rights, a parliament is a better place to make those kinds of assessments, because Members of Parliament are democratically elected and it is their role to be able to make those kinds of judgment as to how you balance rights.

Entrenchment, however, is very important where Members of Parliament have a vested interest. For example, they might have a vested interest to manipulate matters where it comes to preserving their power. In Australia, the implied freedom of political communication is important as a constitutional right because it prevents Members of Parliament through the enactment of legislation from suppressing speech in relation to political matters and elections and so on. It ensures support for the political system.

Personally, I think the better way is to make sure that those kinds of rights where Members of Parliament may indeed have conflicts of interest or vested interests in achieving particular things are better dealt with in an entrenched way and more independently by courts. For the more social issues such as abortion, in the United States that is an issue for the courts, whereas in Australia it is an issue for parliaments. It is relatively uncontroversial because parliaments have made decisions that people accept. It is not an issue. We do not fight about that in the courts. Those social issues are appropriately dealt with by parliaments, whereas the ones that are key to maintaining the democratic system, separation of powers and those sorts of things are better off in an entrenched constitution. It is about balancing the two.

Lord Murphy of Torfaen: Thank you very much indeed. That is fascinating.

The Chair: Professor MacDonnell, is there something you would like to add?

Professor Vanessa MacDonnell: From a Canadian perspective, another category of rights that would be viewed as essential—and this is different

from the approach that Australia has taken—would be the rights of minorities. Those could be minority language rights. There has also been a strong sense that, because parliaments are majoritarian institutions, in the long term they sometimes have difficulty adequately protecting minority rights. There is also a sense that there is a certain category of rights such as the rights of religious minorities and of equity-seeking groups that the courts also play an important role in safeguarding because they tend to be insufficiently protected in the political process.

Q70 **Baroness Laing of Elderslie:** This has been fascinating. I certainly have learnt things that I did not know before. That might be because I am terribly ignorant, but I think it is because you give us such a good perspective on the matters we are investigating. I was going to ask Professor MacDonnell about the comparative advantages of a written constitution and a system of conventions, but, instead of asking you that, can I go back to what you said earlier and see if I interpreted it correctly? Are you saying that, regardless of whether there is a written constitution or a system of well-established conventions, there is actually no effective way to curb the power of an elected politician if that elected politician wishes to display what you referred to as a disregard for constitutional norms?

Professor Vanessa MacDonnell: Thank you for giving me the opportunity to elaborate on this. In Canada and probably other systems, the idea is that a range of constitutional safeguards exist. In Canada, we have rights, judicial review, the separation of powers, federalism, the presence of independent accountability officers, and an independent civil service. The idea is that, working in tandem, all those safeguards together operate in such a way as to protect the quality of democracy. That is the assumption in a lot of constitutional democracies.

What is so alarming is the way that we have seen established constitutional democracies in recent years be rendered vulnerable very quickly by the disregard by political actors—prime ministers, presidents, cabinet—of constitutional norms. The reality is that there are ways to manipulate any constitutional system for political advantage, and we have seen political actors succeed in doing that even in systems that we had previously understood to be robust.

In the Canadian system, in some of these recent high-profile instances where we have seen anti-democratic action taken, you hope that there is a political outcry. You hope that the civil servants inside government say, "This is not wise". You hope that the courts would strike down unconstitutional action if the matter comes before them. You hope that there is not a system-wide failure. What is extraordinary to me is the extent to which constitutions can be degraded when political actors do not accept or rebuff the norms of good behaviour. I do not think that the system on its own can ensure a remedy. Courts are very limited. Of course, they are unelected. They play an important role, but they cannot be the ultimate backstop for our democracy. They do not have the legitimacy to do that.

Baroness Laing of Elderslie: Is the only ultimate backstop the voter at the ballot box?

Professor Vanessa MacDonnell: I think so. I hate to say that as someone who spends an incredible amount of time invested in trying to make sure that these institutions remain strong. If you look at the way that authoritarianism has been pushed back around the world, in the end it is often the people who say, "This is not the way that we want to be governed". I do not know how to design a system that will work to prevent democratic backsliding on its own without a certain amount of political responsibility.

Professor Anne Twomey: I largely agree with that. You need people to respect the different roles and institutions, but you can put structures in place that aid that. A constitution that deals with separation of powers, ensures the independence of the judiciary, requires elections to be held, and requires freedom of political communication can help, as can creating independent institutions, anti-corruption commissions, auditors-general, ombudsmen, and a whole host of different organisations. To degrade the system, you have to really get in and degrade them all.

That is not to say that that has not happened in some countries—it has—but it is very difficult to achieve that, because you have a whole lot of friction points where people will ordinarily stand up and say, "This is not acceptable". Underlying all that is culture. In the end, culture is everything. There are countries in the world that have marvellous Bills of Rights, but if you do not have the culture to support the rule of law a marvellous Bill of Rights is completely useless.

At the moment in Australia, we still have a strong culture of rule of law, and if politicians do the wrong thing and press the boundaries in an inappropriate way there is outrage. An example of that was Scott Morrison and his secret ministries during Covid, when he appointed himself as Minister for a whole lot of different things on the basis that then he might secretly exercise power. The outrage in relation to that was palpable in the community. Culture and respect for institutions and the rule of law is important, and that is ultimately what will maintain the system. All systems are vulnerable, but the structures that you have in there already—the courts, entrenched constitutional rights and structures—help uphold that and the culture. It is a circular thing.

The Chair: That is very helpful. Thank you very much.

Q71 **Lord Bichard:** To come back to Professor MacDonnell, it is very difficult to stop a serial killer, but you try to put some structure in place to make it more difficult for him or her to succeed. I think that that is what Professor Twomey is saying. Can I ask you to elaborate on one thing, Professor Twomey, in the Australian model? You have this arrangement of an entrenched constitution or entrenched constitutional issues. A number of people who have given evidence to us suggested that we should go down that route. We all looked at it and thought, "How on earth are we going to get agreement as to what should be in that

entrenched constitution?" On a practical level, how did you manage to get to the point where there was sufficient agreement on the issues that should be entrenched and therefore need a referendum to change them?

Professor Anne Twomey: Historically for Australia, it was a consequence of choosing a federal system. If you have a federal system and you have to have distribution of powers, you cannot leave it to one side to be able to change everything, because a federal system would not work. Historically, that is the reason. Having said that, it took effectively 10 years of debating before they finally got agreement. Partly, that was about bringing together a whole lot of colonies to make what was, effectively, one big colony then. It still was not a nation but it brought them together. There was a lot more impetus behind it than just codifying things.

From your point of view, what is more relevant in Australia is not the federal level but the state level. State constitutions originally were brought in by the British, and the British took the view that, like the British constitution, they should be flexible and not entrenched. However, the Colonial Laws Validity Act permitted the entrenchment of provisions. It is different in every state jurisdiction. Every state does this differently. States in their constitutions have entrenched some aspects, and then other aspects of the written constitution are flexible as in ordinary legislation. For example, if you take the New South Wales constitution, maybe three-quarters of it can be amended by ordinary legislation, and then certain parts of it can be amended only if you have a referendum, or in some jurisdictions a special majority in Parliament.

So, yes, there is difficulty about choosing which ones, but the second thing is working out how you do the entrenching to begin with. One problem that you get at state level is if a Government have a temporary majority in Parliament but use their ordinary parliamentary powers to entrench something so that it cannot be changed in the future unless you go through a really difficult method. That can be abused as a way of entrenching policies of one political side that they want kept there for ever so that they can make sure that their opponents can never change it. That is very damaging. It undermines the whole ability of each generation to be able to change the law to meet its circumstances.

The one thing I would encourage you to do if you are looking at entrenchment is to look very carefully at the process of doing the entrenchment. Do you have to meet the same criteria to entrench that you need to change or unentrench it in future? If you are going to entrench something and say, "Well, you can only change it if you need a referendum", you should also say that you need the referendum to do the entrenching. You should not have a disproportionate way of saying, "I can entrench something by ordinary legislation, but I can only then alter it by referendum or special majority".

In looking at that, I would have a look at New Zealand. It has a constitution very similar to the United Kingdom. It does not normally have full kinds of entrenchment or a written constitution, but it has a bit

more of a customary form of entrenchment. If it helps the committee, I can send you an article that I wrote comparing entrenchment at the state level in Australia and entrenchment in New Zealand. You might find the New Zealand experience more suitable for a United Kingdom-type of existence when you do not have a fully entrenched federal constitution. New Zealand might be a better model to look at.

The Chair: Thank you very much. Lord Griffiths, do you have anything that you want to ask?

Q72 **Lord Griffiths of Burry Port:** A Welshman will need more than two minutes to say what he needs to say on this. You just touched on federalism at a time when in this country we are thinking about decentralising our government. They are not in comparison, one with another. For all that, we might need some help from both of you as we work out how to achieve decentralised government. We played with it in Scotland and Wales, and we have learnt some hard lessons, and we are still learning. We are about to explore the territory for taking that progress even further. I know that there are other pressures on our time. If that is the last word, I am very glad to have it.

The Chair: Actually, Professor Twomey and Professor MacDonnell, we are just about at the end of our time, but is there anything that you would like to add given the tone of our questioning and the direction in terms of constitutional safeguards or weaknesses? Indeed, have you any examples of constitutional crises or controversies in Canada or Australia that have revealed vulnerabilities in your constitutions that you wished to deal with?

Lord Griffiths of Burry Port: I would like to see the article on New Zealand.

The Chair: Yes, articles on New Zealand, or anything, would be gratefully received.

Professor Vanessa MacDonnell: Thank you. I see that Professor Twomey had her mic off, but I am happy to have her start this round of discussion. I have a little bit that I could say afterwards.

Professor Anne Twomey: I am trying to think what extra things I can say. On the federalism front, the one thing I would encourage you to do better than Australia is to work out a better system for federal financial relations. The thing that causes most trouble in Australia is money, when it comes down to it, and how money gets distributed to make the federal system work. Other problems such as duplication and the like can be dealt with relatively sensibly, but the money issues are the worst and the most difficult to deal with. In terms of fixing things, that is where I would look.

Independent institutions and offices are important for these sorts of things in Australia. Having what is sometimes called the fourth branch of government, and particularly anti-corruption bodies, is a really good

safeguard because in the end they have pushed politicians and the like to behave better than sometimes they do in terms of manipulating things.

The greatest threat that I see is from the Executive taking the view that once you get elected you are entitled to do whatever you want and that anyone or anything who gets in the way, be that Parliament, the courts or independent bodies, is an irritant that should be removed and has no legitimacy. That is the most dangerous area when it comes to the constitution. We need to strengthen our other institutions, our parliaments and courts, and strengthen public respect for them. In particular, one thing that I have been concerned about in Australia—I gather it is a problem in the United Kingdom as well—is Parliament effectively surrendering its control over matters: for example, Henry VIII clauses and too much delegation of power to the Executive through delegated legislation. It is a big problem in Australia. I gather it is a problem in the United Kingdom as well. It is ultimately very dangerous. If you could be in a position where someone could prorogue Parliament and start governing without it just using Executive power that has been delegated, that is the way authoritarian Governments will take over. I would look closely as a Parliament at ensuring that you do not give up your powers to the Executive and you keep very strong scrutiny measures and control, particularly over things like not only appropriation but approval of government spending as well.

The Chair: Thank you very much. Professor MacDonnell, do you have a minute or two?

Professor Vanessa MacDonnell: I will say two things. One is that democracies worldwide are vulnerable right now. If you think about the rise of populism, environmental concerns, the recent global pandemic, artificial intelligence, the rising cost of living and housing shortages, these are pressures. All these issues or concerns place pressure on democracies and on politicians. There are internal threats to democracy that come from within the system, but there are also external factors that make governing well a challenge.

In this regard, I will talk about something related that occurred in Canada. It is an example of how the system can work well. In the middle of the pandemic in 2022, a trucker convoy occupied downtown Ottawa and blockaded international border crossings. The idea was that these truckers were opposed to vaccine mandates, but very quickly it became a massive protest with all sorts of anti-democratic elements. In any event, the federal Government ended up declaring a state of emergency that was in place for nine days before it was rescinded. This was the first time that Canada's modern emergencies legislation had been used. It started as being something about opposition to vaccine mandates. It became a profound crisis for public order and raised concerns about the risk of democratic institutions being interfered with.

What happened next? A commission examined the declaration of emergency and the conditions that led to the convoy. That commission concluded that the declaration of emergency was lawful, but then the

matter went before the courts, which concluded the opposite: that the declaration was not justified and that there were significant violations of constitutional rights. That case is now going to the Supreme Court.

You hope the system as a whole produces a rigorous assessment of what happened and that there is an ability for different actors in the system to keep democracy on the rails. It also recognises that democracies are facing profound challenges right now. The hope is that there is a collective institutional response that in the end results in institutions being strengthened rather than weakened.

The Chair: Excellent. Thank you both very much indeed. I am afraid we have come to the end of this evidence-taking session. We will have a very brief pause while we change the witnesses. I assure you that your views from Canada and Australia have been well noted here and are extremely valuable. We are all very grateful to both of you for having joined us, one very late at night and one very early in the morning. Thank you very much. Goodbye.