ANALYSE ET COMMENTAIRE DE TEXTES EN ANGLAIS

Durée : 6 heures

Analysez et commentez, **en anglais,** les cinq documents suivants :

Document 1

Our acceptance of parliamentary sovereignty, by contrast, distinguishes us from all other members of the European Union, the United States, almost all the former Dominions and those former colonies to which this country granted independent constitutions. In all these countries the constitution, interpreted by the courts, has been the supreme law of the land, with the result that legislation inconsistent with the constitution, even if duly enacted, may be held to be unconstitutional and so invalid. [...]

To my mind, it has been convincingly shown that the principle of parliamentary sovereignty has been recognised as fundamental in this country not because the judges invented it but because it has for centuries been accepted as such by judges and others officially concerned in the operation of our constitutional system. The judges did not by themselves establish the principle and they cannot, by themselves, change it.

This is not a conclusion which, thus far, I regret, for the reason very well expressed by Professor Goldsworthy: "What is at stake is the location of ultimate decision-making authority — the right to the 'final word' — in a legal system. If the judges were to repudiate the doctrine of parliamentary sovereignty, by refusing to allow Parliament to infringe unwritten rights, they would be claiming that ultimate authority for themselves. In settling disagreements about what fundamental rights people have, and whether legislation is consistent with them, the judges' word rather than Parliament's would be final. Since virtually all significant moral and political controversies in contemporary Western societies involve disagreements about rights, this would amount to a massive transfer of political power from parliaments to judges. Moreover, it would be a transfer of power initiated by the judges, to protect rights chosen by them, rather than one brought about democratically by parliamentary enactment or popular referendum. It is no wonder that the elected branches of government regard that prospect with apprehension."

I agree. The British people have not repelled the extraneous power of the papacy in spiritual matters and the pretensions of royal power in temporal in order to subject themselves to the unchallengeable rulings of unelected judges. A constitution should reflect the will of a clear majority of the people, and a constitutional change of the kind here contemplated should be made in accordance with that will or not at all. [...]

We live in a society dedicated to the rule of law; in which Parliament has power, subject to limited, self-imposed restraints, to legislate as it wishes; in which Parliament may therefore legislate in a way which infringes the rule of law; and in which the judges, consistently with their constitutional duty to administer justice according to the laws and usages of the realm, cannot fail to give effect to such legislation if it is clearly and unambiguously expressed.

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Is there, then, a vice at the heart of our constitutional system? Some would answer that there is not, since although Parliament has the theoretical power to legislate in a way that infringes the rule of law and fundamental rights it can in practice be relied on not to do so. No doubt the prospect of legislation discriminating against blue-eyed babies or red-haired women can be effectively discounted. But it is not at all hard to envisage legislation infringing the rule of law in less obvious ways [...] and a constitution should, ideally, give protection against minor aberrations as well as those which are gross. [...]

The last ten or twelve years have seen a degree of constitutional change not experienced for centuries. [...]. One may hope that the sovereignty of Parliament and its relationship with the rule of law may be seen as a matter worthy of consideration if, as I suggest, there are some rules which no government should be free to violate without legal restraint. To substitute the sovereignty of a codified and entrenched Constitution for the sovereignty of Parliament is, however, a major constitutional change. It is one which should be made only if the British people, properly informed, choose to make it.

Tom Bingham, *The Rule of Law*, Penguin Books, London, 2011.

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Document 2

Without justice there is no rule of law, and the present economic crisis presents all those who are concerned about the rule of law with both problems and opportunities. [...]
Of course, the rule of law can mean different things. At its most basic, the expression connotes a system under which the relationship between the government and citizens, and between citizen and citizen, is governed by laws which are followed and applied. That is rule by law, but the rule of law requires more than that. First, the laws must be freely accessible: that means as available and as understandable as possible. Secondly, the laws must satisfy certain requirements; they must enforce law and order in an effective way while ensuring due process, they must accord citizens their fundamental rights against the state, and they must regulate relationships between citizens in a just way. Thirdly, the laws must be enforceable: unless a right to due process in criminal proceedings, a right to protection against abuses or excesses of the state, or a right against another citizen, is enforceable, it might as well not exist.
The rule of law is a topic which is often discussed in ringing terms, with inevitable rhetorical references to the Magna Carta, Human Rights, and Tom Bingham's brilliant book. Everyone agrees that it is essential for any modern civilised democratic country to have the rule of law. But in a country where we have had parliamentary democracy, uninterrupted by invasion, revolution, or tyranny for over 300 years, it is difficult to strike a real chord with most people outside the legal world when talking about the rule of law. Most non-lawyers take it for granted and think of it as some abstract idea which may have had some relevance in the UK long ago.

[...] Overall, justice in the United Kingdom is in pretty good shape, in the sense that we have a society which is governed by the rule of law, and which is reasonably civilised and successful. Hence, it may be said, the risk of complacency to which I have referred. But, while things are generally not too bad, I detect two real problems in relation to justice. Both those problems may be summarised in one word, accessibility: accessibility to the law and accessibility to the courts.

[...] So far as the Government is concerned, most people would have no difficulty in understanding, indeed in accepting, the desire to cut costs on every possible front. As a country, the UK has been, and apparently still is, spending more than it can afford, and it must make cuts. However, some aspects of expenditure are ring-fenced, and those aspects whose financial allocation is reduced are not all reduced equally. Given the fundamental importance of the rule of law as discussed earlier in this talk, I would suggest that any proposed cost-cutting in that area should be scrutinised particularly carefully.

Cutting the amount available for the courts risks increasing delays and decreasing the quality of justice. Although there have been such cuts in the past few years, they have been just about manageable. Cuts in the amount available for legal aid are of greater concern. Such cuts are sadly not new. Since the introduction of legal aid, eligibility has been progressively reduced: at its inception in 1950, around 80% of the population was eligible, whereas by 2008, the proportion was down to about 30%. It is true that, over that period, the average person's wealth and income had significantly increased in real terms, but so had the cost of legal advice and representation. And the 30% figure applied before the austerity-related reductions made by the 2012 reforms. Cutting the cost of legal aid deprives the very people who most need the protection of the courts of the ability to get legal advice and representation. [...]

I am conscious that it is easy for an appellate judge to lose touch with aspects of the world of legal advice and litigation, which is such an important aspect of the rule of law, and that the risk of losing touch now that I am in the Supreme Court, is even greater than when I was in the Court of Appeal. I am not so far gone as to believe that there are any easy answers to the question of how to ensure justice at any time, let alone during a period of austerity.

Lord David Neuberger, President of The UK Supreme Court, "Justice in an Age of Austerity", 15 October 2013.

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Document 3

It was because he (Mr. C. Grant) thought the danger imminent, and that the exigency of the crisis could be met in no other way, that he would vote for the bill. It had been erroneously stated, that this measure was a suspension of the constitution; whereas, it was merely a remedy for a case contemplated by the constitution. [...]

Was there nothing disclosed in the reports that manifested designs against the state? We had plots; we had secret oaths; we had organised societies, committees, subcommittees, and delegates, blasphemous, and seditious songs; and, above all, the prostitution of the press to the most infamous purpose of destroying all loyalty to the throne and all reverence towards religion; thus making the people immoral, impious, and turbulent upon system. [...] By these dangerous doctrines the poor were taught that they could only find their just level in the disorders of the state, and seduced from their duties of loyalty and honesty. These were the dangers against which this measure was intended to protect the public peace, the public morals, and the national faith; and much as he valued that sacred bulwark of our liberties, the Habeas Corpus, he would say, that he valued the sacred principle of public order and religion still more.

It was well known that this country had of late years taken a great start in population, wealth, manufactures, and political consequence; but it could not be denied, that in this change there were causes of danger generated which did not exist before. Great masses of people were assembled in single districts, whose occupations were precarious, and who, as they had not improved in morals or advanced in education in proportion as they had increased in numbers and physical force, might, in a season of distress, be excited by turbulent and unprincipled demagogues to disturb the national tranquillity, and endanger the constitution and religious institutions of the state. It was said by an honorable gentleman that all that the people wanted was, not insurrection, but food and employment. He allowed that their discontents might be allayed by prosperity; but who was to ensure that prosperity? or how was public order to be preserved till it returned? It was strange to hear that poverty and distress, which constituted the source of the danger, converted into an argument to disprove its existence. But it had been said, admit distress to be a reason for suspending the constitution, and there were no limits to such tyrannical interference. He could not allow this argument to be well founded. [...]

When it was asked, were not the ordinary laws sufficient for repressing these causes of danger, by punishing popular excesses or seditious attempts? he would answer, that ordinary laws were sufficient for ordinary times; and that the suspension act was merely intended to arrest the progress of evils which would deprive them of all their efficiency, and to prevent that state of things which, if once realised, would render confusion irreparable. In the case of individuals, prevention was better than punishment; in the case of nations, prevention was the only safe policy, and the other alternative was impossible. It could not for a moment be admitted as a question with regard to the state, whether we were to avert an approaching evil, or to enter into a struggle to defeat it. In such a struggle the constitution might survive, but it could not be expected to come out of it unimpaired. This observation seemed to apply with peculiar force to those who argued against the suspension, on the ground that it should never be resorted to except in a season of general disaffection. The effect of this bill would be to prevent general disaffection, by giving a power to restrain the efforts of those who were endeavouring to spread it; as, when it arrived, nothing but a civil war could be expected to ensue.

Mr. Charles Grant, MP, "Habeas Corpus suspension bill, third reading," House of Commons, *Hansard*, vol. 36, c. 1213-1216, 27 June 1817.

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Document 4

In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights. [...] Indeed, such legislation as that here in question is inconsistent not only with that equality of rights which pertains to citizenship, national and state but with the personal liberty enjoyed by everyone within the United States. [...] It was said in argument that the statute of Louisiana does not discriminate against either race but prescribes a rule applicable alike to white and colored citizens. But this argument does not meet the difficulty. Everyone knows that the statutes in question had its origin in the purpose, not so much to exclude white persons from railroad cars occupied by blacks, as to exclude colored people from coaches occupied by or assigned to white persons. Railroad corporations of Louisiana did not make discrimination among whites in the

matter of accommodation for travelers. The thing to accomplish was, under the guise of giving equal accommodations for whites and blacks, to compel the latter to keep to themselves while travelling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary. The fundamental objection, therefore, to the statutes is that it interferes with the personal freedom of citizens. [...] If a white man and a black man choose to occupy the same public conveyance on a public highway, it is their right to do so, and no government, proceeding alone on grounds of race, can prevent it without infringing the personal liberty of each. [...]

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty. But in the view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved. [...]

The arbitrary separation of citizens, on the basis of race, while they are on a public highway, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the Constitution. It cannot be justified upon any legal grounds.

If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race. We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with the state of the law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. The thin disguise of "equal" accommodations for passengers in railroad coaches will not mislead anyone, nor atone for the wrong this day done. [...] For the reasons stated, I am constrained to withhold my assent from the opinion and judgment of the majority.

Justice John Marshall Harlan, Dissent to *Plessy v. Ferguson*, 163 U.S. 537, 1896.

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Document 5

Through four years of experience this New Deal attack upon free institutions has emerged as the transcendent issue in America. [...]

In these instances the Supreme Court, true to their oaths to support the Constitution, saved us temporarily. But Congress in obedience to their oaths should never have passed these acts. The President should never have signed them. But far more important than that, if these men were devoted to the American system of liberty, they never would have proposed acts based on the coercion and compulsory organization of men.

Freedom does not die from frontal attack. It dies because men in power no longer believe in a system based upon Liberty.

Mr. Roosevelt on this eve of election has started using the phrases of freedom. He talks sweetly of personal liberty, of individualism, of the American system, of the profit system. He says now that he thinks well of capitalism, and individual enterprise. His devotion to private property seems to be increasing. He has suddenly found some good economic royalists. And he is a staunch supporter of the Constitution. [...]

Four years ago, we also heard many phrases which turned out not to mean what they were thought to have meant. In order that we may be sure this time, will Mr. Roosevelt reply in plain words: Does he propose to revive the nine acts which the Supreme Court has rejected as invasions of the safeguards of free men? Has he abandoned his implied determination to change the Constitution? Why not tell the American people before election what change he proposes? Does he intend to stuff the Court itself? Why does the New Deal not really lay its cards on the table?

But their illegal invasions of the Constitution are but the minor artillery with which this New Deal philosophy of government is being forced upon us. They are now using a more subtle and far more effective method of substituting personal power and centralized government for the institutions of free men. It is not by violation of the Constitution that they are making headway today. It is through taking vast sums of the people's money and then manipulating its spending to build up personal power. [...] Public funds are used right and left to subsidize special groups of our citizens and special regions of the country. At public expense there is a steady drip of propaganda to poison the public mind. Through this spending there grows a huge number of citizens with a selfish vested interest in continuing this centralization of power. It has also made millions of citizens dependent upon the government.

[...] Does Mr. Roosevelt not admit all this in his last report on the state of the Union: "We have built up new instruments of public power" which he admits could "provide shackles for the liberties of the people." Does freedom permit any man or any government any such power? Have the people ever voted for these shackles?

[...] The transcendent issue before us today is free men and women. How do we test freedom? It is not a catalogue of political rights. It is a thing of the spirit. Men must be free to worship, to think, to hold opinions, to speak without fear. They must be free to challenge wrong and oppression with surety of justice. [...] Freedom demands that these rights and ideals shall be protected from infringement by others, whether men or groups, corporations or governments.

The conviction of our fathers was that all these freedoms come from the Creator and that they can be denied by no man or no government or no New Deal. They were spiritual rights of men. The prime purpose of liberal government is to enlarge and not to destroy these freedoms. It was for that purpose that the Constitution of the United States was enacted. [...]

And again, I repeat that statement of four years ago – "This campaign is more than a contest between two men. It is a contest between two philosophies of government."

Herbert Hoover, "This Challenge to Liberty" speech, Denver, Colorado, 30 October 1936.