
Unwritten Rules: Britain's Constitutional Revolution

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Unwritten Rules

Britain's Constitutional Revolution

When the New Labour government led by Tony Blair took office in May 1997, one of its most distinctive policies was its program of constitutional reform. Indeed, few British parties have ever campaigned so consistently on constitutional issues. From its first days in power, Labor promoted its constitutional reform agenda, which includes devolution to Scotland and Wales, an elected mayor and council for London and possibly other

BY DONLEY T. STUDLAR

urban areas, removal of the voting rights of hereditary peers in the House of Lords, incorporation of the European Convention on Human Rights into British law, a Freedom of Information Act, and electoral reform at various levels of government, including a referendum on changing the electoral system for Members of Parliament. The nature of Labour's constitutional proposals, including their inspiration, implementation, and impact, will certainly play a dominant role in the future of British politics.

Constitutional Principles

The United Kingdom is comprised of four constituent parts—England, Scotland, Wales, and Northern Ireland—all under the authority of the Queen in Parliament in London. The constitution is the structure of fundamental laws and customary practices that define the authority of state institutions and regulate their relations, including those of the state with its citizens. Although the British Con-

stitution is in principle very flexible, the fact that it is contained within no single document makes it difficult to change. Moreover, the socialization of Britain's political elites has produced a political culture based on custom and convention. The participants in government are reluctant to change the practices which brought them to power.

Even though Britain is under the rule of law, that law is subject to change through parliamentary sovereignty. Instead of a written constitution with a complicated amendment process, a simple majority of the House of Commons can change any law, even over the objections of the House of Lords. Individual rights are protected by ordinary law and custom, not by an entrenched Bill of Rights.

Although limited devolution has been utilized in the past—prominent examples include the relative autonomy in Northern Ireland between 1921 and 1972 and, more recently, the change in local government taxation that ultimately contributed to the down-

fall of Margaret Thatcher as Prime Minister in 1990—the central government retains the authority to intervene in local affairs. In Britain's centralized, unitary system, the voters are asked once every four or five years to elect a team of politicians to rule them. Under the single-member-district, simple-plurality electoral system, the outcome is usually a single-party government (prime minister and cabinet) chosen based on a cohesive majority in the House of Commons, a fusion of power between the legislature and the executive. Referendums have been few and are advisory only—Parliament retains final authority. The judiciary seldom makes politically important decisions, and even then it can be overridden by a parliamentary majority. Thus, in the United Kingdom almost any alteration of the interrelationship of political institutions is constitutional in nature.

Constitutional issues were among the few over which there were major party differences during the 1997 Gen-

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eral Election campaign. Labour and the Liberal Democrats, the third-strongest party, had agreed on an agenda for constitutional change developed in consultation over several years. The Conservatives, under John Major, upheld traditional British constitutional principles: the unwritten constitution, civil liberties guaranteed only by laws of Parliament, maintenance of the unitary state, and a House of Lords composed of hereditary peers and life peers, appointed by the government.

Other features of the British constitution have also resisted change. Unauthorized communication of government information is punishable by law, making the British government one of the most secretive among Western democracies. Cities do not elect their own mayors, or, since the mid-1980s, even their own metropolitan governing councils. The House of Commons is one of the few remaining legislatures elected by the single-member-district, simple-plurality electoral system, which rewards a disproportionate share of parliamentary seats to larger parties with geographically concentrated vot-

ing strength. As a result, the Labour and Conservative parties continued to dominate the House of Commons, to the chagrin of Liberal Democrats, despite a continued pattern of multi-party voter trends since 1974 among the general electorate.

Even though the new Labour government proposed to change some of these procedures and to consider reform in others, there were good reasons to doubt its commitment. Traditionally, constitutional reform had been of little interest within the party; like the Conservatives, Labour embraced the almost untrammelled formal power that the "elective dictatorship" of British parliamentary government provided for a single-party majority in the House of Commons. When in opposition, Labour sometimes voiced decentralist and reformist concerns; in government, however, it was usually as centralist as the Conservatives.

Labour's Constitutional Promises

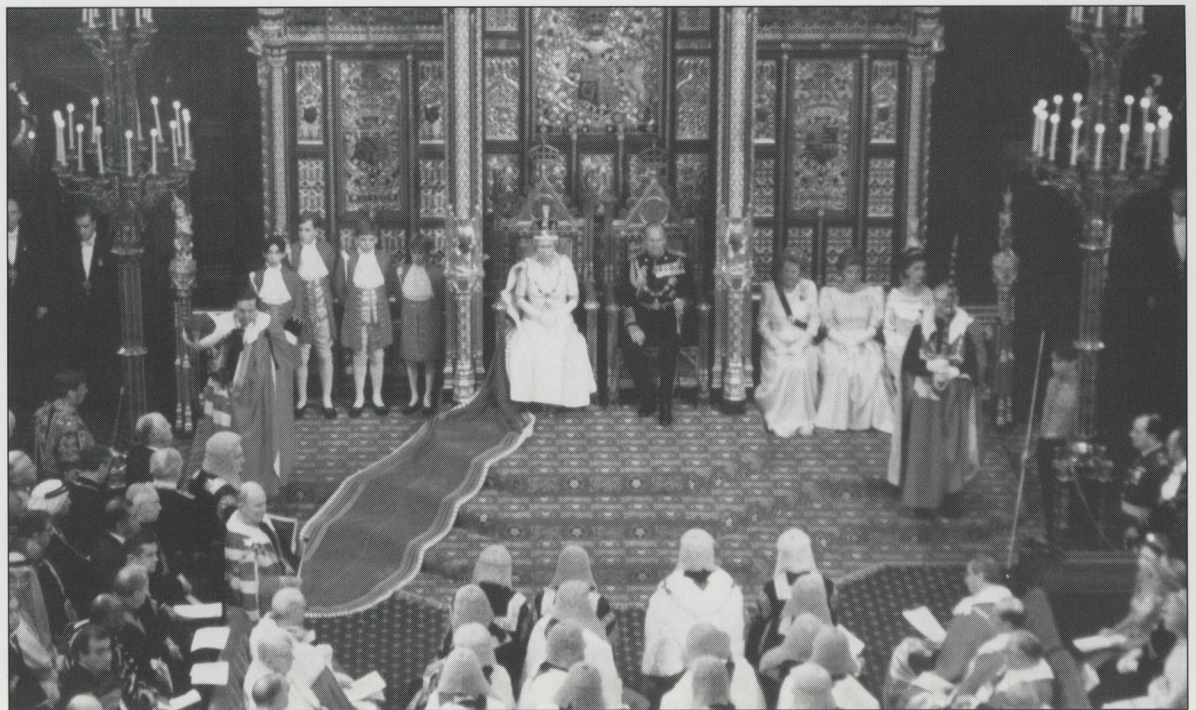
The most radical aspect of Labour's election manifesto was con-

stitutional reform. This program was designed to push the normally passive, relatively deferential British public into becoming more active citizens. In addition to choosing their rulers once every five years in a parliamentary election, they would vote for other levels of government with greater authority and could enjoy enhanced individual rights. More electoral opportunities, both at different levels of government and within the voting process itself, would provide a wider range of choice for citizens.

Like his immediate predecessors as party leader, Neil Kinnock and John Smith, Tony Blair had for some years advocated an infusion of a more participatory citizenship into British constitutional practices. In his 1997 book *New Britain*, Blair explicitly condemned the centralization of British government:

"The era of big, centralized government is over . . . Any government which wants to change Britain for the better has to care about political renewal . . . It is essential to meeting the challenges of new times . . . Britain is

New Labour has taken long-awaited steps toward revamping British Constitutional Law.



the most centralized government of any large state in the Western world. . . The first right of a citizen in any mature democracy should be the right to information. It is time to sweep away the cobwebs of secrecy which hang over far too much government activity. . . Perhaps the oddest and least defensible part of the British Constitution is the power wielded by hereditary peers in the House of Lords."

In other pre-election statements, Blair called Labour's constitutional program "democratic renewal," argued that there had been 80 years of erosion of consent, self-government, and respect for rights under governments of both Left and Right, and contended that the Left's mission is concerned with extension of political rights as well as economic and social equality.

Program for Change

Several events and trends focused Labour's thinking on constitutional reform as never before. Labour suffered four consecutive general election losses (1979, 1983, 1987, 1992) even though the Conservatives never achieved above 43 percent of the popular vote. Eighteen years of being out of government led to fears that Labour might never get back into power by itself again.

Groups interested in constitutional reform were evident. The third party in Britain, the Liberal Democrats, have long been interested in changing the electoral system to have their voting strength better represented in parliament and also have advocated decentralization and greater protections for civil liberties. Since 1988, a nonpartisan lobby group, Charter 88, has advocated not only most of the reforms that Labour eventually embraced but also others, such as a full-scale written constitution and bill of rights. Other influential thinkers on the moderate left argued that social and economic change in an increasingly middle-class Britain depended on greater popular participation and limiting central government authority. In Scotland, where the Con-

servatives had continuously declined as an electoral force, the Scottish Constitutional Convention encouraged devolution of power through cooperation across party and group lines. This experience eventually led Labour and the Liberal Democrats to form a pre-election commission on constitutional matters, which continued after the election in the form of a special cabinet committee on constitutional reform.

Skeptics have argued that public support for constitutional change is a mile wide and an inch deep. Surveys indicate that the public usually supports constitutional reform proposals in principle without understanding very much about them. Intense minorities, such as Charter 88 and the Electoral Reform Society, have fueled the discussion. During the 1997 election campaign constitutional issues featured prominently in elite discussions of party differences but did not emerge as a critical voting issue, except perhaps in Scotland.

New Labour had multiple incentives in developing an agenda for constitutional change. It provided a clear sense of Labour distinctiveness from the Conservatives, especially important when there were so few differences in social and economic policy between the two parties. It was designed to alleviate threats to Labor support by Scottish and Welsh nationalist parties arguing for more autonomy. There was also the longer-term prospect of realigning the party system by co-opting the Liberal Democrats and their issues into a more permanent government of the center, thereby reducing both the Conservatives and die-hard socialists of the Labour party left wing to permanent minority status. What is unusual is that, even with the large majority that Labour gained in the May, 1997 election, they have not abandoned electoral reform.

Two Years Later

No British government since the early twentieth century has presided

over such a large agenda of constitutional reform. There are new legislative assemblies in Northern Ireland, Scotland, and Wales, a report from the Independent Commission on the Voting System advocating a change in the electoral system, and legislation progressing to remove hereditary peers from the House of Lords. The incorporation into British law of the European Convention on Human Rights has been completed. Legislation on a Freedom of Information bill, however, has been delayed, suggesting forceful bureaucratic opposition. In May, 1998, London voters accepted a proposal for the city to be governed by a directly-elected mayor and strategic authority; similar procedures are planned for other urban areas.

One indication of New Labour's commitment to elements of this constitutional reform agenda was the speed with which action was taken. White papers (intentions to legislate) on devolution to Scotland and Wales were published immediately after the election, and referendums were held shortly thereafter in each country. Support for devolution was shown to be stronger in Scotland than in Wales. Legislation was duly introduced into parliament to create the new legislatures. Elections will take place in May 1999 for the new bodies.

80 percent of the population of the United Kingdom, however, lives in England, which has been treated as a residual consideration in the plans for decentralization. Tony Blair has stated that he would be willing to form devolved governments in "regions with strong identities of their own," but, not sensing any immediate demand for them, the government has postponed such plans.

72 percent of London voters approved plans for an elected mayor and statutory authority in the May 1998 referendum, but only 34 percent turned out. The Mayor of London will be the first major directly-elected executive in the United Kingdom, a constitutional

innovation which may lead to a greater personalization of politics and institutionalized lobbying for urban concerns.

Britain signed the European Convention on Human Rights in 1951. Since 1966 it has allowed appeals to the European Court of Human Rights at Strasbourg, where it has lost more cases than any other country. During the first session of parliament under New Labour, a law was passed incorporating the European Convention on Human Rights into domestic law. Now British judges will make decisions about whether Britain is conforming to the Convention. As in the past, however, it is still up to parliament to decide whether the judges' decisions will be

tion, perhaps by regions, would be preferable. In response, Tony Blair has promised to appoint life peers in consultation with a special advisory commission and to appoint a Royal Commission to recommend the second stage of House of Lords reform. Furthermore, in late 1998 he compromised further by allowing 91 hereditary peers to remain until the second stage of Lords reform is completed.

Although Prime Minister Blair indicated that he was not "personally convinced" that a change in the electoral system was needed, he appointed an Independent Commission on the Voting System in December 1997. Its goal was to recommend an alternative to the

recommendations, others were not so reticent. Conservative leader William Hague, fearing that a change in the electoral system would realign the party system permanently against the Conservatives, promised Tony Blair "the fight of his life" if the latter tried to implement the report. Even within the Labour party, many cabinet ministers and members of parliament oppose any change in a system in which Labour retains the power to obtain a single-party parliamentary majority.

Some analysts, however, argue that the most significant constitutional change in United Kingdom has been brought about not by Labour but by three actions of Conservative governments—joining the European Community in 1972, approving the Single European Act (1986), and signing the Maastricht Treaty (1991). EU law supercedes British law in those areas where the two conflict, and the European Court of Justice has judicial review over United Kingdom law. Already one-third of total legislation in the United Kingdom comes from the European Union.

Skeptics have argued that public support for constitutional change is a mile wide and an inch deep.

implemented.

Despite this flurry of activity during the Blair Government's first year in office, the tougher questions—electoral reform for Westminster elections, freedom of information, and House of Lords reform—were postponed. Currently the United Kingdom remains one of the most secretive democracies in the world, under the doctrine of executive prerogatives of Ministers of the Crown.

House of Lords reform appears simple on the surface since the House of Commons can eventually override any objections from the Lords. Politically, however, it is quite complicated. New Labour has pledged to abolish voting by hereditary peers, leaving only the appointed life peers, many of whom have substantial political experience, in place as a second chamber. Without a more comprehensive reform of the House of Lords, however, the power of the Commons over the Lords would continue and perhaps even be enhanced with an entirely patronage-based second chamber. Critics have suggested that a form of direct or indirect elec-

current electoral system for the House of Commons, backed by a government pledge to put any proposed change to a referendum. In October 1998, the Commission recommended what is called "Alternative Vote Plus." The single-member district system would be retained, but instead of casting a vote for one person only, the electorate would rank candidates in order of preference, thus assuring a majority rather than a plurality vote for the winner. There would also be a second vote for a "preferred party." These votes would be put into a regional pool, with 15 to 20 percent of the total seats being awarded to parties based on their proportional share of these second votes, a favorable development for smaller parties.

Even such a relatively mild reform, however, has generated substantial political conflict, as expected when the very basis on which politicians hold their seats is challenged. Although Prime Minister Blair "warmly welcomed" the Commission report and invited a period of public debate on its

Conflicting Views

Labour's program of constitutional change has already brought about some changes in Britain, but the larger impacts are yet to come. Instead of near-uniform use of the single member district, simple plurality electoral system, now there are several different systems: Single Transferable Vote (a form of proportional representation with candidate choice) in Northern Ireland, party list proportional representation for the June 1999 European Parliament election, alternative member systems (combination of single member district and party list proportional) for the devolved legislatures in Scotland and Wales and the London Council, and a popularly elected executive for London. Plurality elections remain the norm only for the Westminster parliamentary and local government elections. Until 1997, there had been only four referendums

in the history of the United Kingdom. Within nine months of taking power, Labour held four additional referendums (in Wales, Scotland, Northern Ireland, and London), with two others promised, on changing the Westminster electoral system and on joining the European single currency.

Broadly, four interpretations of these developments have been voiced by commentators, as outlined below. We might term these the (1) popular social liberalism, (2) lukewarm reform, (3) symbolic politics, and (4) doomsday scenarios. These contending explanations exist at least partially because Labour itself has never outlined a coherent theory of its constitutional reforms beyond Blair's pre-election formulations. There is to be no overall constitutional convention; instead there have been a series of ad hoc measures, to some degree dependent on demand.

The American analyst of Britain, Samuel H. Beer, has compared Blair's reforms to the popular social liberalism of the early twentieth century Liberal governments, who restricted the power of the House of Lords and attempted to devolve power to Ireland, among other things. In the wake of the First World War, even though government spending grew substantially, the Conservatives electorally came to dominate a political Left divided between an insurgent Labour Party and the remaining Liberals. Social and constitutional reform under Blair is a substitute for a more traditional Labour program of increased government spending and is aimed at establishing the long-term political dominance of a revitalized center-left, either with or without the Liberal Democrats.

Another constitutional scholar, Philip Norton, argues that New Labour's proposals are radical in concept but moderate in form and effects. Similarly, Anthony Barnett of *Charter 88* says that the government practices *constitutus interruptus*. Another British academic, Patrick Dunleavy, has

suggested that constitutional reform for New Labour represents continuous but financially cheap activity when the government is afraid of appearing to be another Labour "tax and spend" administration. This allows a sense of achievement based on a permissive consensus among the public but amounts to little substantive change, at least until electoral reform is confronted.

Finally, there is the doomsday scenario, as envisioned by the Conservative former editor of *The Times*, William Rees-Mogg. He argues that Labour's constitutional changes erode democracy in the United Kingdom. They will result in a semi-permanent Labor-Liberal coalition in the Westminster parliament, Scotland, and Wales, with a weakened patronage-based House of Lords. A further transfer of power to European Community institutions will lead to the United Kingdom losing its sovereignty within a bureaucratic European super-state.

Future Obstacles?

Institutional rearrangements often have unanticipated consequences. Although New Labour legislation on constitutional matters claims to leave parliamentary sovereignty undisturbed, it is likely that this constitutional convention will be compromised even more than it already is under Britain's membership of the European Union. Devolution is likely to become de facto entrenched, as the process of decentralization has in other European countries. Although specific powers are granted to each devolved government, disputes over which level has authority over certain policies will inevitably arise. Some type of adjudication commission or court for such jurisdictional disputes may be formed. Even without a comprehensive Bill of Rights, incorporation of the European Convention on Human Rights may mean a stronger, more politically active judiciary. House of Lords reform, if it is not to be simply an appointed chamber reflecting the wishes of the government of the day,

could also lead to a more symmetrical bicameralism.

Incorporation of the European Convention on Human Rights, as well as a limited form of joint authority with Ireland over Northern Ireland and possible membership of the European common currency and central bank, suggest that Britain may be moving into new patterns of international shared authority in certain areas heretofore considered exclusively within the realm of the sovereign state. Regional policies of the European Union even may be helping stimulate ethnonationalist demands. If the Scottish National Party, still committed to independence for Scotland, achieved a majority in the Scottish Parliament, the United Kingdom could be faced with a "Quebec scenario," whereby control of a level of government enhances rather than diminishes claims for independence.

The "third way" ideas of Anthony Giddens, influential in the New Labour government, advocate a restructuring of government to promote "subsidiarity" (the taking of decisions at the lowest level possible) and correcting the "democratic deficit" through constitutional reform, greater transparency, and more local democracy. In such a process, Britain would become a more complex polity institutionally. Habits of conciliation, cooperation, and consent would have to be developed rather than the usual reliance upon parliamentary laws and executive orders.

The electoral system, however, may be the lynchpin of the British parliamentary system as it currently exists. Thus even the relatively mild changes proposed might have the biggest impact by realigning the party system. Whatever one's view of the desirability and impact of the changes, New Labour under Tony Blair has pursued its campaign pledges on constitutional reform. Although tactical retreats have occurred on some issues, this agenda promises to be a major part of British politics for the foreseeable future. ■