

A Revised British Constitution: Tony Blair's Lasting Legacy?

DONLEY T. STUDLAR

Since its re-election to a third consecutive term of office under Tony Blair's leadership in 2005, assessments of "New Labor's" long-term effects on the British constitution have become more numerous and more reflective, especially since Blair pledged to leave the prime ministership by the time of the next election, which he later moved up to 2007. The most distinctive campaign policies of the first New Labor government in 1997 were those on constitutional reform. From its earliest days in power, Labor promoted its constitutional reform agenda: (1) devolution to Scotland and Wales, (2) an elected mayor and council for London and potentially other urban areas, (3) removal of the voting rights of hereditary peers in the House of Lords, (4) incorporation of the European Convention on Human Rights into British law, (5) a Freedom of Information Act, and (6) electoral reform at various levels of government, including a referendum on changing the electoral system for Members of Parliament. These reforms, plus a stable agreement for governing Northern Ireland, the constitutional implications of membership of the European Union, the question of modernization of the monarchy, and the Labor government's recent legislation for a separate Supreme Court, will be considered here. The article analyzes the nature of Labor's constitutional proposals, including their inspiration, implementation, and potential impact.

Traditional British Constitutional Principles

The United Kingdom as a state in international law is made up 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 interrelationships, including those to citizens of the state. Although in principle very flexible, in practice the "unwritten" British constitution (no single document) is difficult to change. The socialization of political elites in a small country leads to a political culture in which custom and convention make participants reluctant to change practices that brought them to power.

Even though Britain is under the rule of law, all constitutional provisions are subject to change through parliamentary sovereignty. Instead of a written constitution with a complicated amending process, a simple voting majority of the House of Commons can change any law, even over the objections of the House of Lords if necessary. Individual rights are protected by ordinary law and custom, not by a constitutionally entrenched bill of rights.

Officially Britain remains a unitary state, with all constitutional authority belonging to the central government, rather than a federal state with a formal, even if vague, division of powers between the center and a lower level. Some commentators argue that Britain should be considered a "union-state," since the relationship of the four parts to the central government is not uniform. Although limited devolution has been utilized in the past, especially in Northern Ireland, 1921—1972, central government retains the constitutional authority to intervene in lower-level affairs, including local government. At a parliamentary general election, voters are asked once every four or five years to choose a team of politicians to manage the central authority based on having majority support in the House of Commons at Westminster. Under the single member plurality (SMP) electoral system, the outcome usually has been a single-party government (prime minister and cabinet). This is a fusion of power between the legislative and executive branches. Referendums have been rare and are only advisory; parliament retains final authority on all legislation. The judiciary seldom makes politically important decisions. If a court finds that the executive has exceeded its lawful authority, such a decision can be overridden by having a parliamentary majority pass an appropriate law, even retrospectively. Thus, in the United Kingdom almost any alteration of the interrelationship of political institutions can be considered constitutional in nature. Constitutional issues were one of the subjects of major party debate during the 1997 election campaign. Labor and the third party, the Liberal Democrats, had developed an agreed agenda for constitutional change. The Conservatives upheld traditional British constitutional principles, including the unwritten constitution, no guarantees of civil liberties except through the laws of parliament, maintenance of the unitary state, and a House of Lords composed of hereditary peers and some life peers, the latter appointed by the prime minister.

Other features of the British constitution have also resisted change. British government has been one of the most among Western democracies, with unauthorized communication of information punishable by law.

Large cities did not elect their own mayors or even their own metropolitan governing councils. The House of Commons is one of the few remaining democratic legislatures elected by the single member district, simple plurality electoral system, which rewards a disproportionate share of parliamentary seats to larger parties having geographically concentrated voting strength. Thus the membership and organization of the House of Commons has remained largely two-party despite having a multiparty electorate since 1974.

Even though the elected Labor government proposed to institute reforms of several of these procedures, there was doubt about its commitment. Like the Conservatives, traditionally Labor had embraced the almost untrammelled formal power that the "elective dictatorship" of British parliamentary government provides for a party with a majority in the House of

Commons. Although Labor sometimes voiced decentralist and reformist concerns when in opposition, in government it usually proved to be as centralist as the Conservatives.

Labor's Constitutional Promises

The most radical aspect of Labor's 1997 election manifesto was constitutional reform. This program was designed to stimulate the normally passive, relatively deferential British public into becoming more active citizens with a wider range of choices. In addition to parliamentary elections, they would vote in more frequent referendums and for other levels of government with significant authority. In addition, they would have more individual civil rights.

Prior to becoming prime minister, Tony Blair had advocated a more participatory British citizenship. In his book *New Britain*, Blair criticized the traditional Westminster system as too centralized, secretive, and unrepresentative. Blair called Labor's constitutional program "democratic renewal." He argued that since World War I there had been an erosion of consent, self-government, and respect for rights under governments of all parties in Britain; a leftist party true to its own instincts should extend political rights as well as pursuing its recognized goals of economic and social equality.

Developing a Program for Constitutional Change

Several events and trends focused Labor's thinking on constitutional reform. Labor had suffered four consecutive general election losses (1979, 1983, 1987, 1992) even though the Conservatives never achieved above 43 percent of the popular vote. Eighteen consecutive years out of government made Labor fearful of ever returning as a single-party government. The possibility of permanent opposition made the party more receptive to arguments for weakening central authority.

Groups interested in constitutional reform grew more numerous. The third party in Britain, the Liberal Democrats, long have advocated several of these reforms, including decentralization, increased protection for civil liberties, and changing the electoral system. The latter would allow them to have their voting support more proportionally represented in parliament. Since 1988, a nonpartisan lobby group, Charter 88, has proposed a number of reforms, including even a written constitution and a bill of rights. Other influential thinkers on the moderate left argued that a precondition for social and economic change in an increasingly middle-class Britain was to encourage citizen involvement by limiting central government authority. In Scotland, the broadly-based Scottish Constitutional Convention encouraged devolution of power. The Electoral Reform Society has been an active proponent for a more proportional voting system. Eventually Labor and the Liberal Democrats formed 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 the specifics. Intense minorities, such as Charter 88, fueled the discussion. Although constitutional issues featured prominently in elite discussions of party differences during the 1997 campaign, they did not emerge as a critical voting issue, except perhaps in Scotland.

New Labor had multiple incentives for the development of an agenda for constitutional change. It provided a clear sense of party distinctiveness from the Conservatives, especially important when there were only minimal differences on social and economic policy. It also helped to alleviate threats to Labor by Scottish and Welsh nationalist parties arguing for more autonomy and even independence for their regions. There was also a longer-term prospect of a realignment of the party system through the cooptation of the Liberal Democrats into a more permanent alliance of the center, thereby reducing both the Conservatives and die-hard socialists of the Labor party left wing to permanent minority status. The large single-party majority that Labor surprisingly gained in the House of Commons in the 1997 election did not discourage it from pursuing most of its constitutional reform program.

Constitutional Change under Labor

It is commonly stated in the British press that Labor's constitutional agenda, considered as a whole, represents the most fundamental changes in 400 years. There are now legislatures with devolved powers in Northern Ireland, Scotland, and Wales. All but 92 hereditary peers have been removed from the House of Lords, with the pledge of the eventual elimination of those as well. Although a report from the Independent Commission on the Voting System advocated a change in the electoral system for the House of Commons, no government legislation was proposed. The European Convention on Human Rights has been incorporated into British law through the Human Rights Act and is effective. A Freedom of Information Act was passed and implemented. In 1998, Londoners voted favorably for a referendum proposal for the city to be governed by a directly-elected mayor and assembly; these elections were held in 2000 and 2004. Other cities have now adopted this measure through referendums. The judiciary has been separated to a degree from the other branches of government.

The Labor government immediately set out to implement more decentralized authority, subject to its acceptance through referendums in the affected regions. The Scottish Parliament has more authority, covering nearly all of domestic policy as well as limited taxation powers while the Welsh Assembly is responsible for implementing legislation after the primary

bills have passed through the Westminster House of Commons but has no taxation powers. Elections in each region in 1999 and 2003 were held under a combination of the traditional single member district, simple plurality electoral system and party list proportional representation; these yielded no clear majority in either legislature. Instead, Labor Liberal Democrat coalition governments and minority governments have been formed. Both have functioned largely as anticipated, with another round of elections due in 2007. With an organized women's movement taking advantage of the opportunity to choose legislators in a new institution without incumbents, women's representation in both devolved chambers has been high, with the Welsh Assembly becoming the first in the world with a majority of women in 2003.

Perhaps surprisingly, no major disagreements on the constitutional allocation of powers have occurred. The Welsh Labor party has advocated greater authority for the Assembly, stopping short of taxation, and the Westminster Labor government has brought forward a bill for this purpose. Nevertheless, the "West Lothian" question has still not been seriously addressed. This refers to the fact that now MPs from Scotland can still vote on legislation affecting England, Wales, and Northern Ireland even though the devolved Scottish Parliament has authority over the same issue there. If the Welsh Assembly had similar powers as the Scottish Parliament, the problem would be that much more complex.

Eighty percent of the population of the United Kingdom, however, lives in England, which has been treated as a residual consideration in the plans for devolution. Labor has promised to form devolved governments in "regions with strong identities of their own," as expressed through voting in referendums. However, when the region showing the greatest amount of interest, the Northeast, was offered limited devolution in 2004, it was rejected overwhelmingly. Nevertheless, with encouragement from the regional aid policies of the European Union, the Northeast does have a considerable amount of administrative devolution, even if it lacks legislative devolution.

The Mayor of London is the first modern directly elected executive in the United Kingdom. The introduction of party primary elections for mayoral candidates led to less central party control over candidates and a more personalized contest. The first mayor, re-elected in 2004, was a dissident leftwing Labor MP and former London official, Ken Livingstone, who has proven to be relatively conciliatory in office.

Northern Ireland is a perennial problem, a hangover of the separation of Ireland from the United Kingdom in 1922. Six counties in the northern part of the island of Ireland, with the majority of the population consisting of Protestants favoring continued union with Great Britain, remained in the United Kingdom. Many Catholics north and south remain convinced that there should be one, united country of Ireland on the island. This fundamental division of opinion over which country should have sovereignty over the territory led to organized violence by proponents of both sides; some 3,600 people have died in sectarian violence since 1968. The provisional Irish Republican Army (IRA) was the main organization using violence in the cause of a united Ireland.

The Good Friday Agreement of 1998, brokered by the U.S. administration of Bill Clinton, was a peace accord that promised a different future through new institutions. In 1999, devolution of power from the Westminster parliament to the Belfast parliament ushered in a period of what the British call "power sharing," or "consensus democracy." This entailed not only joint authority over internal matters by both Protestants (Unionists) and Catholics (Nationalists) through the requirement of super-majorities in the Northern Ireland Assembly and executive, but also regular consultation between the United Kingdom and Ireland. Both countries pledged that Northern Ireland would remain part of the United Kingdom as long as a majority of the population in the province wishes. The latest census showed Protestants to be in the majority, 53 to 44 percent.

Referendums on the Good Friday Agreement passed overwhelmingly in both Northern Ireland and the Irish Republic; the latter also repealed its constitutional claim over the province. As expected, devolved government in Northern Ireland has been rocky. Groups representing formerly armed adversaries, including Sinn Fein, closely linked to the IRA, assumed ministerial positions in the power-sharing executive. Some dissident factions refused to renounce violence. The major issues have been the need for verification of the decommissioning of weapons and renunciation of violence by the IRA, incorporation of Catholics into the overwhelmingly Protestant police service, and divisions among Protestants about how far to cooperate with the new government. In October, 2002, accusations of IRA spying on the government led to the suspension of the Northern Ireland Assembly and government for the fourth time in three years. Direct rule from the central government in London replaced the power-sharing executive. Elections in November, 2003 resulted in the Democratic Unionist Party (DUP), which had opposed the Good Friday Agreement as a "sell out" to Catholics, becoming the largest Protestant party while Sinn Fein became the largest Catholic party. This further complicated discussions.

Subsequently the IRA moved to decommission its weapons caches and to discourage criminal activities of its members. In September 2006, the Independent Monitoring Commission confirmed the dismantling of most of these internal IRA structures, leading Prime Minister Blair to declare that "the IRA campaign is over." He considered this to be a clear commitment to move from violence to politics. Protestant paramilitary groups also have disarmed. Nevertheless, choosing a new, power-sharing executive was stalled by the deep cleavages and lack of trust. When these disagreements frustrated the hopes of the British and Irish governments for returning devolved authority to the province, in the St. Andrews Agreement they gave the parties in Northern Ireland a deadline to begin reconstituting the power-sharing executive. This

would be done according to a plan whereby Sinn Fein would recognize the authority of the police (now composed of 20% Catholics), and in return the DUP would agree to a power-sharing arrangement led by it and Sinn Fein. The new government would not assume office until late March, 2007, to allow a test of Sinn Fein's support for the Northern Ireland police as well as a new legislative election. Despite progress in making peace, "normal politics" has not emerged in this most abnormal part of the United Kingdom.

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. Under New Labor, a law was passed incorporating the European Convention on Human Rights into domestic law. British judges rather than European judges now make the decisions about whether Britain is conforming to the Convention, which enhances the ability of British citizens to raise issues of human rights in domestic courts. Parliamentary sovereignty supposedly is maintained because Westminster retains final authority on whether judicial decisions will be followed, but in practice the British government has lodged appeals in such cases with the European Court of Human Rights in Strasbourg. Under the Human Rights Act, suspected terrorists have appealed against government detention and extradition to countries where they could face persecution. More generally, there has been concern about courts upholding human rights over legitimate crime and security concerns of the public. In response, the government has rejected legislation but urged officials, including judges, to place a higher value on public safety concerns. However, this has raised questions about interference with judicial independence in deciding individual cases. Constitutional scholar Vernon Bogdanor has argued that the Human Rights Act is now "fundamental law," which suggests it is beyond the ordinary reach of parliament.

The first-term Labor government later addressed other measures of constitutional reform—the electoral system for the House of Commons, freedom of information, and the House of Lords. The Freedom of Information Act eventually enacted creates an independent Information Commissioner's Office and allows public access to more government information, but within considerable limits. Information goes to the ministry involved, with an Information Commissioner handling appeals. However, department ministers still can overrule decisions of the Information Commissioner. When the act was implemented in 2005, there were both rumors of departments destroying information beforehand and new revelations of what had transpired in previous governments, usually upon inquiries from media organizations. Nevertheless, British governments can still withhold a large amount of information. Overall, the United Kingdom remains one of the most secretive democracies in the world, under the doctrine of executive prerogatives of ministers of the crown. On the other hand, the British government wants to keep its citizens under close watch. An independent study issued in 2006, called *A Report on the Surveillance Society*, found the United Kingdom to be "the most surveilled country" among Western industrialized democracies.

Superficially House of Lords reform appears simple since the Parliament Act of 1949 allows a government majority in the House of Commons to override any objections from the Lords. However, the capacity of the Lords to delay legislation makes reform difficult to complete, especially when there is no agreement about new arrangements. New Labor pledged to abolish voting by hereditary peers, leaving only life peers appointed by the prime minister remaining. Life peers are often senior political figures who want a more limited political role after a long career in the House of Commons. Critics labeled this a plan to make the second chamber one consisting solely of "Tony's Cronies," an entirely patronage-based body under prime ministerial influence. In order to accomplish some early reform despite such criticism, Prime Minister Blair accepted a temporary arrangement in 1999 allowing 92 hereditary peers to remain in the House of Lords while eliminating 667 others. Labor also established an independent commission to advise the Prime Minister on Lords appointments.

There followed a plethora of proposals for the second stage of Lords reform from several official sources, including a Royal Commission, the government, a joint cross-party parliamentary committee of MPs and peers, and a cross-party group in the House of Commons. These ranged from a fully elected to a fully appointed second chamber, but getting agreement was difficult. Critics have complained that the government's preference for a largely appointed chamber, plus possibly further limits on the power of the Lords to delay legislation, would lead to a weakened second chamber, less able to act as a check on the government. In contrast, a body with at least some elected members would provide greater democratic legitimacy. Both the Conservatives and Liberal Democrats back a partially-elected second chamber. Although still committed to eventual elimination of the remaining hereditary peers, the government has agreed not to demand party unity but to allow a free vote in parliament on the question of the new composition of the Lords.

The latest government plans, as previewed for a White Paper (intention to legislate), are for a mixture of 50 percent election and 50 percent appointment, with quotas for women and ethnic minorities, no single party majority (many peers already sit as "cross-benchers," or independents), a reduction in the membership from 741 to 450, a limit of three terms of parliament for all members (no more than 15 years), phased in over several years, and possibly a different electoral system. Tony Blair has indicated that consensus among members of both houses on the legislation is necessary for it to proceed. A free vote is promised in the new session of parliament which commenced in November 2006, but agreement may continue to be elusive.

Although the Prime Minister 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 to consider alternatives to the current electoral system for the House of Commons. In 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 distributed regionally, with 15—20 percent of the total seats being awarded to parties based on their proportional share, a favorable development for smaller parties.

Even such a relatively mild reform, however, generated substantial political controversy, as expected when the basis by which legislators gain their seats is challenged. The proposed change was criticized not only by the opposition Conservatives, but also by Labor members because it might make it more difficult for Labor to obtain a single-party parliamentary majority. With Labor winning 55 percent of the seats in the election of 2005 with only 35 percent of the popular vote (and only 22% of the electorate), there were renewed calls for a new voting system. But nothing has been done. In 2003 the government decided to move toward greater separation of powers among the executive, legislative, and judicial branches of government. Previously the Lord Chancellor was a member of all three parts—a minister in the cabinet, head of the judiciary (including authority to appoint judges), and also Speaker of the House of Lords. The highest appeals court has been the Appellate Committee of the House of Lords (Law Lords) consisting of the Lord Chancellor, twelve life peers specially appointed for this purpose, and other members of the Lords who have held high judicial office. The Labor government rearranged the duties of the position of Lord Chancellor, retaining the title for court administration and ceremonial functions but creating a new position, Secretary of State for Constitutional Affairs, to deal with areas such as devolution, human rights, and data protection. Nevertheless, under Blair both of these positions have been held by the same person. The government also introduced legislation to remove the judiciary from the House of Lords and to designate the highest appellate court as the Supreme Court, with a reformed Judicial Appointments Commission to make recommendations for such positions. Despite controversy, parliament eventually enacted the Constitutional Reform Act, which established the new Supreme Court and is due to take effect by 2008. Some commentators have argued that an independent judiciary could move to establish its ultimate constitutional authority by upholding “the rule of law” even over parliamentary sovereignty, as Supreme Courts in the United States, the European Union, and Israel, among others, have done.

Some analysts argue that the most significant constitutional change in the United Kingdom has been brought about not by Labor but by three actions of Conservative governments— joining the European Community (now European Union) in 1972, approving the Single European Act (1986), and signing the Maastricht Treaty (1992). Lord Denning famously observed that the European Union is an incoming tide that cannot be held back. Within the expanded areas of EU competence, EU law supersedes British law, including judicial review by the European Court of Justice. Almost one half of total annual legislation in the United Kingdom now arises from the European Union, and members of the government, civil service, and even judiciary are in almost daily contact with their counterparts in the EU and in other countries on EU matters. In the negotiations over the proposed EU Constitution, Britain was largely successful in maintaining its “red lines” against further centralization of the EU. Although Tony Blair promised that the United Kingdom would hold a referendum on the Constitution, its defeat in referendums in the Netherlands and France in 2005 allowed him to cancel the British referendum, thus avoiding further rancorous debate on this issue.

Britain continues to be a leading member of the “awkward squad” of countries within the EU who want to maintain strong state sovereignty within the organization rather than surrendering more authority to a supranational organization. It remains one of only three long-standing EU members not to join the European Monetary Union and its currency, the euro. If Britain were to join the central bank and adopt the euro, then control over monetary policy would effectively pass into the hands of the European Union. The Chancellor of the Exchequer (Treasury Secretary) periodically announces whether economic conditions meet the five tests necessary for him to recommend that Britain should converge with Euroland. Tony Blair indicated that this step would only be taken with public support in a countrywide referendum.

Although not on the Labor party agenda of constitutional change, the role of the monarchy has also come under increased scrutiny in recent years. The Queen’s Golden Jubilee Year in 2002, celebrating the first 50 years of her reign, was not a happy one, with two deaths and scandals in the royal family. A resolution of the Scottish Parliament, supported by some MPs and Lords at Westminster, has petitioned the government to allow the monarch or her spouse to be a Roman Catholic, a practice forbidden by the Act of Settlement (1701) at the end of a period of religious wars. The heir to the throne, Prince Charles, has proposed removing the monarch’s connection to the Church of England in favor of the title of a more general “defender of faith” in what is now, despite appearances, a highly secularized country.

More vaguely, the government has suggested moving toward a “people’s monarchy”—a simpler, slimmer, and less ritualized institution, perhaps with a gender-neutral inheritance. This would be more congruent with the lower profile “bicycle monarchs” common in other European countries. For the first time since Queen Victoria, there is substantial, if muted, public expression anti-monarchist (republican) sentiments, largely in elite circles on the Labor left. However,

tampering with this traditional institution, still widely revered by the public, requires extremely careful preparation as many are opposed to change.

Conflicting Views on the Effects of Constitutional Change

Labor's program of constitutional renewal already has brought about some changes in Britain. Instead of near-uniform use of the simple plurality electoral system, there are now five different systems in operation: Single Transferable Vote (a form of proportional representation with candidate choice) in Northern Ireland, party list proportional representation for European Parliament elections, alternative member systems (a combination of single member district and party list proportional) for the devolved legislatures in Scotland and Wales and the London Assembly, and a popularly elected executive through the Supplementary Vote (voting for two candidates in order of preference) for London. Plurality elections remain the norm only for the House of Commons at Westminster and English local government elections.

Until 1997 there had been only four referendums in the entire history of the United Kingdom. In its first year of office, Labor held four additional referendums (in Wales, Scotland, Northern Ireland, and London). Other countrywide ones, however, on the EU constitution, the European single currency, and the Westminster electoral system, have been canceled or postponed. There also have been local referendums on elected mayors and potentially others on regional government. Despite these increased opportunities for participation, voting turnout at all elections has plunged, reaching a low of 59 percent in the Westminster parliamentary elections of 2001 and barely increasing in 2005; turnout for the second devolved elections also decreased.

Broadly, commentators have offered four interpretations of these developments. We might term these the (1) popular social liberalism, (2) lukewarm reform/symbolic politics, (3) radicalism, and (4) constitutional incoherence. These contending explanations exist at least partially because Labor itself has never outlined a comprehensive theory behind its constitutional reforms. Constitutional reform has consisted of a series of *ad hoc* measures rather than a general constitutional convention.

The well-known American analyst of Britain, Samuel H. Beer, has compared Blair's reforms to the popular social liberalism of the early twentieth century Liberal governments, which included restricting the power of the House of Lords and devolving power to Ireland. After the First World War, however, the Conservatives came to dominate Britain electorally as the Left divided between an insurgent Labor Party and the remaining Liberals. In the first term of office for New Labor, social and constitutional reform served as a substitute for a more traditional Labor program of increased government spending. This was important for establishing the long-term political dominance of a revitalized center-left by appealing to the "median voter."

Another constitutional scholar, Philip Norton, has argued that New Labor's proposals are radical in concept but moderate in form and effects, e.g., lukewarm reform. Similarly, Anthony Barnett of Charter 88 claims that the government practices *constitutus interruptus*. Another British academic, Patrick Dunleavy, has suggested that constitutional reform for New Labor represents financially cheap activity at a time when the government is wary of alienating its middle-class supporters by appearing to be another Labor "tax and spend" administration. This amounts to little substantive change, however, until the two critical questions, electoral reform for the House of Commons and Britain's long-term relationship to the EU, are addressed.

Although there has been some grudging acceptance from constitutional conservatives who originally opposed change, they are still fearful of the implications of some reforms. The former editor of *The Times*, William Rees-Mogg, envisions Labor's constitutional changes eroding democracy in the United Kingdom through a semi-permanent Labor-Liberal governing coalition in Westminster, Scotland, and Wales, a House of Lords based on patronage, and a more centralized, bureaucratic European superstate. More sanguinely, *The Economist* foresees a weakening of Westminster's authority through the combined forces of devolution and a more integrated European Union. More recently it has warned that Blair's reform program will be judged a "hypocritical failure" unless it produces a democratically-elected second chamber.

Finally, another prominent British political scientist, Anthony King, has argued that Britain no longer has a coherent set of constitutional principles. Because of the piecemeal constitutional changes over the past quarter century by both Conservative and Labor governments, traditional interpretations of the British constitution no longer adequately describe contemporary practice. But no alternative theory has emerged as a guide. Britain has moved away from its traditional status as a majoritarian democracy (all-powerful single-party governments based on holding a majority of seats in the House of Commons) without becoming a fully-fledged consensus democracy, featuring proportional representation and coalition governments.

Further Constitutional Change on the Horizon?

The second and third Labor terms have consolidated and extended constitutional reforms despite their lack of emphasis in party election manifestos and discussion during election campaigns. In a White Paper in 2006, the Labor government endorsed further, if gradual, reform through elected mayors and more decision making power to local councils in England.

If Gordon Brown succeeds Tony Blair as Prime Minister, a more active constitutional reform agenda may be pursued. In his 2006 Labor Party Conference speech, Brown spoke of revitalizing the devolution agenda to give individuals and communities, including regions and local councils, more control over their own lives, including local referenda, and even hinted that Britain might need a written Constitution to enshrine its values. He also indicated that he thought it right to allow parliament to vote on war decisions, heretofore an executive prerogative, but one that became controversial in the wake of how Blair took Britain into the Iraq war on bad information. Whether such promises to shift power from the central executive would hold up when faced with the exigencies of government is an interesting question.

The Conservatives have opposed measures such as an appointed House of Lords, the Human Rights Act, further devolution to Wales, and the new Supreme Court, plus, of course, greater European Union authority over member states. They have proposed strengthening the House of Commons against the executive and an elected House of Lords. More recently, party leader David Cameron has proposed a British Bill of Rights as a better-balanced substitute for direct enforcement of general European standards through the Human Rights Act. He has established a committee under the chairmanship of former cabinet minister Kenneth Clarke to develop plans for a Conservative policy on the future of democracy. Some form of “English votes for English questions” in parliament (the West Lothian question) will be the focus of that policy. The Liberal Democrats have the most radical positions on constitutional reform, advocating a written constitution, a bill of rights, and a more proportional voting system. An English Constitutional Convention has been formed to press for self-governing powers for that part of the United Kingdom. Others fear, however, that establishment of such a body would lead to the breakup of the country because of the unevenness of population distribution for four devolved legislatures.

Despite Labor’s constitutional reforms, commentators refer to what is often called the “Blair paradox.” While the Labor government led by Blair has engaged in various constitutional innovations for decentralization and individual rights, it has not disturbed the core of the strongly executive-centered Westminster system. In fact, by dominating the cabinet, the extensive use of politically-appointed advisers throughout the executive, attempting, not always successfully, to keep the House of Commons under strong party direction, rarely attending parliamentary debates, and desire to have a completely appointed House of Lords, Blair’s style has been claimed, debatably, to be more “presidential” than that of previous prime ministers. Ross McKibbin condemns the Blair government for having eviscerated any constitutional reform, including changing the electoral system, which would restrain single-party executive authority.

Nevertheless, institutional rearrangements often have unanticipated consequences. Although New Labor legislation on constitutional matters claims not to disturb the principle of parliamentary sovereignty, this constitutional convention has already been compromised. Congruent with the process of decentralization in other European countries, devolution is likely to be entrenched *de facto* if not *de jure*. Some observers have begun calling Britain a “quasi-federal” political system. Although specific powers are granted to each devolved government, disputes over which level has authority over certain policies will eventually arise, especially if the governments are led by different parties. Even without a comprehensive Bill of Rights, incorporation of the European Convention on Human Rights may mean a stronger, more politically active judiciary, a form of creeping judicial review. House of Lords reform has become so controversial because it is a struggle over how much the second chamber should be allowed to check the House of Commons and the sitting government. 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 areas heretofore considered exclusively within the domain of the sovereign state.

Regional policies of the European Union even may be helping regions circumvent British central authority and sustaining ethnonationalist demands. If the Scottish National Party, still committed to independence for Scotland, ever wins a majority in the Scottish Parliament, the United Kingdom could be faced with a “Quebec scenario,” whereby control of a subordinate level of government enhances secessionist claims. The SNP wants Scotland to join the EU as an independent state.

The “third way” ideas of Anthony Giddens, influential in the New Labor government, propose 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. This would demand cultivating habits of conciliation, cooperation, and consent rather than the usual reliance upon single party government, parliamentary laws, and executive orders. Already this has occurred through the formation of coalition governments in Scotland and Wales as well as in Northern Ireland. Having additional levels of elected government also has created difficulties for central party organizations attempting to exert control over their parties in these jurisdictions.

The electoral system, however, may be the linchpin of the British parliamentary system as it currently exists. Even the relatively modest changes proposed by the Commission on the Voting System could realign the party system. Because of fears this arouses within the Labor party, electoral reform at Westminster is unlikely to occur in the near future.

DONLEY T. STUDLAR is Eberly Family Distinguished Professor of Political Science at West Virginia University and served as Executive Secretary of the British Politics Group from 1994 to 2005. This article originated as the 1998 Taft Lecture, delivered to the undergraduate Honors recognition ceremony of the Political Science Departments University of Cincinnati. The first printed version appeared in *Harvard International Review*, Spring 1999. This revised version was prepared in November, 2006.

Copyright © 2007 by Donley T. Studlar Ph.D. Reprinted by permission of the author.

Whatever one's view of the desirability and impact of the changes, New Labor under Tony Blair has largely pursued and fulfilled its 1997 pledges on constitutional reform. Although delays and retreats have occurred on some issues, the implications of these changes will continue to be felt in British politics for some time to come. Especially if further changes occur under his successor, then Tony Blair may go down in history similarly to the popular social Liberals of the early twentieth century, as a constitutional innovator with a long-lasting legacy.