Constitutional reform
Redrawing Britain’s institutions

CONTRIBUTORS
Dawn Oliver • Keith Ewing • Patrick O’Brien • Christine Riding
Patrick Dunleavy • Magnus Smidak • Øivind Bratberg • Atle L. Wold
Editorial
Reform to conserve

Constitutions are essential sources of stability. Indeed, in many ways this is what they are for: formalising a basic agreement about the political rules of the game and the institutional framework for the politics of the state.

Britain is well-known for its unwritten constitution, which means that formally, Parliament is entitled to enact constitutional change through ordinary legislation. Yet, the British constitutional settlement has also proved to be a remarkably stable one, weathering the shifting political winds over centuries and accommodating democratisation and the development of parliamentary government.

What happens when these basic features of a political regime are themselves put to the test and challenged? Today, a number of the institutions we relate to the British system of government are faced with demands for reform. Some of the proposed changes concern leftovers from aristocratic institutions (e.g. the House of Lords), others in turn deal with key components of the British way of “doing politics”. There is also an element of “Europeanisation” in this development, a step away from British exceptionalism which may in itself be a reason why proposals for change in many cases have been met with fierce opposition.

For the present issue of British Politics Review we have asked a range of scholars to reflect upon these issues, and their political and judicial consequences. Britain is at a crossroads when it comes to reforming and conserving its system of government. Can ancient institutions and manners be transformed? Should they be transformed? And what is the source of the legitimacy and authority of old conventions?

Ranging from the electoral system via the House of Lords to civil liberties and the power vested in Westminster’s architecture, our contributors address these issues from different and thought-provoking perspectives.

One of the articles, by Patrick Dunleavy, is a prolonged version of a text developed for the LSE politics and policy blog at http://blogs.lse.ac.uk/politicsandpolicy/. We take the opportunity here to commend to our readers these scholarly exchanges, offering reflective thought on ongoing political events in a manner that is now being taken up also by Norwegian universities.

Øivind Bratberg and Kristin M. Haugevik, Editors
A written constitution for the United Kingdom?

By Dawn Oliver

The UK is almost unique in not having a written constitution, a single document which contains most of the most important rules of the system of government and which has specially protected legal status. Why? Britain has been fortunate in not experiencing a “constitutional moment” when a new constitution was needed since the restoration of the monarchy after Cromwell’s Commonwealth in 1660 and the eventual “glorious revolution” of 1688, which transferred much of the power of the monarch to Parliament.

Of course there are many rules in the British system that are enforceable by the courts. As far as obedience to the legal rules is concerned, the rule of law – in the sense that the executive is subject to the law in most of what it does – is deeply embedded in the culture. It has almost never been seriously contemplated in recent years that the government and other public bodies are above the law or could refuse to obey a court order.

But one of the rules of the British constitution is that Parliament has legislative supremacy. It is this rule that differentiates the UK from most, but not all, other systems of government. Thus, if Parliament were to legislate in breach of important principles such as the rule of law or human rights, our courts would uphold that rule. From time to time, and notably in the recent jackson case, courts in the UK have hinted that they might refuse to give effect to an Act of Parliament which undermined the rule of law in a fundamental way. But so far that has not happened, and in my view it is most unlikely to happen. If it did, it would pit politicians and the courts against one another and the legitimacy of the courts could well be damaged – and with it the rule of law. The doctrine of parliamentary supremacy thus places a very great responsibility on politicians not to abuse their legislative power. In his Glencoe of 1677, Glendevie noted that: “The British constitution presumes, more boldly than any other, on the good faith of those who work it.” I suggest that it is this cultural aspect of the system which explains how the UK manages without a written constitution.

There are also many informal rules in the UK which complement the law by setting out how public bodies should behave and what should happen if these informal rules are breached. These include constitutional conventions (e.g. individual and collective ministerial responsibility to Parliament, and the Sewel convention (which limits the House of Lords’ power to block legislation based on commitments in the election manifesto of the government party) and a great many codes (e.g. the Ministerial Code, the Civil Service Code), statements of principles (e.g. the Seven Principles of Public Life), and Memorandums of Understanding (e.g. on relations between the UK government and the devolved bodies in Scotland, Wales and Northern Ireland). The fact that these rules have no legal force again places considerable responsibility on politicians and public bodies. Why are these rules obeyed? Again in my view it is because of the Gladstone insight, the fact that the system relies on what has also been called a “good chaps” theory of government. The fact is that all parties, plus the general public and the press, expect good conduct of public bodies, and there is public revulsion when they misbehave, and the knowledge of this element of public opinion reinforces the willingness of politicians and others to comply with these requirements.

Discussion arises in the UK from time to time as to whether the country should adopt a written constitution. Broadly speaking, if a document called a Constitution were to be adopted, the choice would be between a document which simply states the present position, or one which seeks to reform and then entrench a reformed system. As far as a document which simply states the present position is concerned, while this might be possible it would be difficult to achieve agreement on what to include and what to exclude. Would it only include legally enforceable rules? Would the conventions of individual and collective ministerial responsibility be included, together with the fact that they are not legally enforceable? If the purpose of writing down the present arrangements was to make them accessible to “ordinary people”, only the basic and most important principles would be included, but a very confusing picture would be conveyed by the document if it did not include reference to ministerial responsibility. If the document were detailed and lengthy it could be incomprehensible to ordinary people.

It would be difficult to find broad agreement across the political spectrum on the wording of even the most well established basic principles of the system, and it would be virtually impossible to prevent various groups from coming up with proposals for reform. If it were felt that a written constitution should go beyond articulating the main rules of the present system and set out a reformed system, there would be controversy about what if anything is wrong with the present system and what if anything needs to be reformed, and how. In the absence of urgency, my own sense is that it would be very difficult, even impossible, to get agreement between the parties or between the UK and the devolved bodies on matters such as: whether the Supreme Court should have the power to set aside “unconstitutional” legislation passed by the Parliament; whether there should be a new British Bill of Rights, and if so what it should contain; whether there should be a separate legislature and executive for England; whether there should be an explicit right to secede for Scotland and the other devolved bodies in the UK; whether the Upper Chamber should be elected; whether the Church in England should be reformed or abolished.

Even if agreement were reached between the main parties and the devolved bodies on these and many other issues, the next problem would be securing the legitimacy of such a document among the public. There would be debates about whether a referendum should be held before the written constitution was adopted. My own sense is that in the absence of some disaster or crisis or other urgency the turnout in a referendum would be low and the vote would probably be ‘no’. Even if the vote were ‘yes’, if the turnout were low the new Constitution might not be regarded as legitimate for long, or even in the short term. Together, these arguments provide strong leverage to those who are against a written constitution for the UK. It also suggests that agreement on a constitutional venture remains a distant prospect.
Civil rights in Britain: too easily sacrificed on the altar of authority

By Keith Ewing

In the second week of August, Britain’s political classes were gripped by panic as a number of English cities experienced “rioting” and looting on a scale unknown in modern times. The situation was eventually brought under control, with the Metropolitan police flooding the streets of London with 16,000 officers.

No one can question the damage or devastation that was done in the three or four days of destruction. Nor can anyone excuse some of the dreadful criminal acts that took place, some of which were captured on camera for the world to see. And while four families were left to mourn the deaths of sons and brothers, countless others had businesses, homes and possessions destroyed.

The second week of August was not a good week. But if this was true of the disorder and looting, it was also true of the “clean-up”. Now in the grip of a hysterical media, the country responded through the courts in a period of a few days, processing of 796 of the 1,600 arrested beginning with the mass arrests and the hysterical media, the country responded.

Yet this was by no means the end of it, with one local authority announcing that it had moved to evict a single-mother and her young daughter from their social housing. This is because her son had been charged with violent disorder for his part in the lawlessness. Not even waiting for the 18 year old to be found guilty of the offences charged, English justice was beginning to look like the justice of the lynch-mob.

Wandsworth council was nevertheless applauded by a vengeful press, agents provocateur in the campaign to have the families of “rioters” and looters evicted, as well as now to have their social welfare benefits stopped. But Wandsworth was not alone, the Daily Mail reporting that Manchester City Council was preparing to evict “the family of a 12-year-old boy photographed stealing a £7.49 bottle of wine from a Sainsbury’s store”.

In a chilling turn of events, the wild-west posse was demanding not only that the adolescent “rioters” be punished, but that they and their families be rendered homeless and destitute. Once evicted, the families would have no right to be re-housed, being “intentionally homeless” in the new Kafka-esque world to which their “rioting” children unwittingly had led them.

Network sites during periods of unrest, these sites having played a part in the “organisation” of the violence; and (c) that the government was considering whether a “wider power of curfew” is necessary.

For those seeking an even more “robust” response, Mr Cameron announced that rubber bullets were available for the police, while water cannon was now to be placed on 24 hour stand-by, raising the spectre of “rioters” (and presumably protestors) being hosed down on the streets of London for the first time ever. All despite advice about the impracticability of equipment of this kind for dealing with fast moving events.

It is when human rights claims are most necessary that they appear most invisible. Times like this. No one had the courage in that first week to raise such claims, apart from the Wandsworth tenant served with notice of eviction, noting that her “human rights are being taken for granted”. No one is listening, except to sneer. The talk now is of responsibilities not rights. Rough justice has displaced legality.

By the end of the week, one of Britain’s leading civil liberties NGOs had made two web-postings, one to applaud the “measured and proportionate response of police and government”; the second to provide re-assurance that Liberty is “a critical friend to the police”, opining – in the face of a dispute between the police and the government about the response to the disorder - that we must “give credit where it is due”.

So not from our political leaders the defiant and dignified re-affirmation of core values in times of adversity. Indeed, the only note of dignity was to be heard from Mr Tariq Jahan, the father of Haroon Jahan, murdered in Birmingham while protecting shops from being attacked. In a widely applauded interview of great humility and power, Mr Jahan called for calm and repudiated the demand for revenge.

In as compelling and noble a commitment to the rule of law as one is ever likely to hear, Mr Jahan was prepared to leave matters to the ordinary forces of the law. “What goes around, comes around” he was heard to say, in words directed to the killers of his son. The forces of law and order had much to be grateful to him for his disarming intervention. But not everyone was prepared to follow Mr Jahan’s example.

This is what happens when the personnel of the State lose their inhibitions, and when in a parliamentary democracy all branches of government join forces and hunt with the mob. It is what happens when legislature, executive and judiciary behave in a way that is as great an affront to civilised values as the conduct of the mainly unemployed young men they so rightly condemned. It is an ugly sight.
Judicial independence and the UK Supreme Court

By Patrick O’Brien

The UK Supreme Court (UKSC) will be two years old on 1st October. It replaced the judicial committee of the House of Lords which had, in various forms, been the court of final appeal in Britain for 600 years. Chief amongst the arguments for replacing the House of Lords with a Supreme Court was the idea that Britain required a proper separation of powers; a legal system in which judges were completely independent of Parliament and the executive. The UKSC has (with other reforms) delivered a formal separation of powers but has it had any effect on judicial independence?

The UKSC has gained symbolic independence. It now resides in a grand building on Parliament Square which, chosen with wonderfully British historical sensibility, is both new (having been renovated extensively) and 100 years old at the same time and is a significant improvement on the cramped rooms the judicial committee had occupied in Parliament since the Second World War. The Law Lords are now Justices of the Supreme Court, and so share professional titles with their powerful brethren on the American Supreme Court rather than with members of the House of Lords across the square from the new court (although the Justices will still be referred to as ‘Lord/Lady X’). It seems reasonable to assume that with this new-found symbolic power the Justices of the UKSC will feel more confident in their role.

Allied to this symbolic independence is functional independence. UKSC Justices and members of the Houses of Parliament are no longer colleagues. Although there was a loose convention that the Law Lords did not speak in debates in the Lords this was not uniformly observed; in particular when it came to debates that touched on legal matters. Judges and parliamentarians no longer share facilities and so are less likely to encounter each other informally in the course of their working day. The separation may not be entirely positive. Attacks on judicial decisions, and occasionally on the personal integrity of judges, have become an increasing feature of political discourse in recent times. Both judges and politicians may have to work a little harder than they did to ensure that they fully understand one another.

The UKSC now has financial independence – up to a point. In the Lords funding for the court came out of the budget for Parliament and was rarely a matter of controversy. The move across Parliament Square has given the UKSC a separate staff, separate systems and a separate estate from Parliament. All of this requires a separate budget, one which is now significantly higher than that required by the Law Lords when they occupied a small set of rooms in Parliament. The budget has been the subject of disagreement between the UKSC and the Ministry of Justice. In a recent lecture Lord Phillips, the court President, complained that UKSC funding arrangements do not satisfactorily guarantee the institutional independence of the court and that the court was, in reality, dependent on whatever it could persuade the Ministry to contribute to its budget each year (8 February 2011; this lecture was the launch event for the Judicial Independence Project). Speaking on the Today Programme the next morning Ken Clarke, the Minister for Justice and Lord Chancellor, responded that he supported the independence of the UKSC, but that this did not extend to the pay and conditions of administrative staff and related non-judicial costs.

Does the UKSC have increased decisional independence? Are the Justices of the UKSC more willing to engage in judicial review than were the Law Lords? This is the rub of any discussion of judicial independence. A cautious answer: it would appear not – at least not yet – if only because the Law Lords had already demonstrated remarkable independence of spirit long before the move to the UKSC (e.g. the Behrnan case in 2004 in which the UK’s derogation from the ECHR in respect of terrorist detention orders was ruled invalid). This is not surprising. Empirical studies suggest that formal protections of judicial independence are of less importance than informal ones. If judicial independence is not valued by politicians and by citizens judges cannot hope to remain independent. Britain has always scored very well in respect of the independence of individual judges. The idea that a judge would be bribed or punished for her decisions, or that a minister would tell a judge what to decide, has for at least two centuries been regarded as absurd. We should not, therefore, expect the UKSC to make much difference to judicial independence. Indeed, a more significant (although subtler) increase in judicial independence could be detected in the late 1980s and early 1990s, when changes in personnel at the highest levels led to a more activist judiciary that was a little more sympathetic to litigants and little less willing to accord government the benefit of the doubt, particular in relation to core civil liberties.

What about the future? As Lord Phillips’ exchange with Ken Clarke demonstrated, the cost of the UKSC is likely to continue to be a source of friction, at least so long as the financial crisis continues. And severe criticism of judges by politicians and the media has become a prominent aspect of public discourse in recent times, most worryingly from the Scottish Justice Secretary, who threatened to withdraw Scottish contributions from the UKSC because of its decision in the Nat Fraser case, commenting that “he who pays the piper calls the tune” (The Scotsman, 2 June 2011). There is nothing wrong with criticism of judges as such, but there are some indications that politicians and commentators are less legally literate and less sympathetic to the role of the judge as an independent arbiter, leading to personal criticism of judges simply for doing their jobs. If this continues, it is possible that over time judges may become a little more cautious: expressing criticisms of government a little more softly, or hesitating to act when they have discretion to do so.

Nonetheless, in connection with the controversy over journalistic ethics and phone-hacking (current as I write) all parties have been anxious to implement a “judge-led” inquiry. This suggests that the expertise and the independence of a judge is still highly valued in Britain. While this remains the case the core of judicial independence will not be threatened: judges will continue, as they have for centuries, to decide cases without fear or favour. The creation of the UKSC has added a layer of formal and symbolic independence to this tradition, but its substance remains the same.
Electoral reform following the 5 May referendum on AV

By Magnus Smidak

Where next for electoral reform? The result of the 2010 General Election was extraordinary in a number of ways. The First-Past-the-Post (FPTP) electoral system, often admired for its tendency to return strong single-party governments, completely failed in its duty this time around.

For the first time in over 35 years, the British electorate woke up on May 7th to a hung parliament. Then in less than a week, the Conservative Party and the Liberal Democrats agreed a coalition deal and a programme for government – the first coalition government outside wartime Britain. It was the result of an electoral system which ensures the equal value of all votes, reflects all points of view in the electorate and strengthens the accountability of individual representatives to the voters. 

AV, sometimes known as Instant Run-off Voting, is not proportional representation, but rather a more sophisticated version of the Two-Round system which is widely used in France. For the Liberal Democrats - a party so often hamstrung by Britain's electoral system – this was compromise on its preferred option of the Single Transferable Vote (STV-PR). As for the Labour Party, it had promised a referendum of AV in its election manifesto, although the party remained deeply split on the issue. The Conservatives have always opposed reforming the voting system. Herein lay the problem with the whole referendum campaign: it was for a change that no one really wanted.

What was at stake?

For the electoral reform movement, the stakes could not have been higher. The AV referendum was truly a once-in-a-generation opportunity to replace the discredited FPTP system with something different after so many false dawns. However, for some activists it was a very bitter pill to swallow because the cherished goal of proportional representation was not even to be considered. The Liberal Democrats had staked the reputation of its leader, Nick Clegg, and quite possibly its future electoral viability on winning the referendum vote. The party had sacrificed a considerable amount of support and goodwill by joining forces with the Conservaties, and delivering electoral reform was supposed to have made it all worthwhile.

Conversely, David Cameron had staked his reputation on securing a No vote as many in his party, with an eye on their own seats, believed he had conceded too much in agreeing to the referendum pledge. Hence, the two governing partners found themselves on completely opposite sides of the debate. For the new leader of the Labour Party, Ed Miliband, it was arguable whether it mattered which side would win. The party's commitment to reform is not deep and tends to fluctuate with its electoral fortunes. Although Miliband was committed to a Yes vote, he could not hope to impose his will on the rest of party and nor did he try.

What went wrong?

Voting reform is not an issue that typically resonates in Britain. It rarely bothers the public. Rather than defending the existing system because they felt it was unfair and unrepresentative. This does not indicate a lack of appetite for reform. The second is that AV was the wrong reform which came about in the wrong way.

"There can be two readings of the result. The first is that there is no appetite for reform. The second is that AV was the wrong reform which came about in the wrong way." 

There can be two readings of this result. The first is that there is no appetite for reform. The second is that AV was the wrong reform which came about in the wrong way. The referendum pledge was dealt as a bargaining chip behind closed doors to seal a coalition deal. Had there been a constitutional convention or citizen's assembly (following the example of British Columbia and Ontario in Canada) tasked with exploring the reasons why reform is necessary, examining all the electoral reform options available and putting them before the public so they could make an informed choice, FPTP might be history by now.

Over six million people voted to change the electoral system because they felt it was unfair and unrepresentative. This does not indicate a lack of appetite for reform in Britain. Although it is reasonable to assume that reform for Westminster will be off the agenda for many years to come, if FPTP fails to return a majority government again in 2015, we could be revisiting this issue sooner than we think.

For more about the ERS, visit their website at http://www.electoral-reform.org.uk/

Dem leader Nick Clegg, the conditions for success were never bright.

Nevertheless, polling evidence at the start of the campaign suggested that a slim victory was possible. Hoping to capitalise on the expenses crisis, the Yes camp opted for a "peoples' campaign" strategy. Although it succeeded in creating a very effective grass roots organisation, ultimately the campaign messages didn't cut through and served principally to alienate potential supporters in parliament. With the exception of a few small-circulation broschures, the media, the majority of MPs and the Conservative Party machine weighed in against a Yes vote. The No camp was better organised, better resourced and unencumbered with trying to sell a difficult product to a sceptical public. Rather than defending the existing FPTP system, the campaign focussed on sowing confusion and doubt over AV. Within a few weeks of the campaign, the Yes camp lost control of the agenda and found itself reacting to events as they unfolded. Once concerns over the cost and complexity of the new voting system were fixed in the public consciousness, the referendum could not be won. The result was devastating: an overwhelming two to one vote against AV. Only 10 electoral regions out of 440 voted in favour.

The way forward?

There can be two readings of this result. The first is that there is no appetite for reform. The second is that AV was the wrong reform which came about in the wrong way. The referendum pledge was dealt as a bargaining chip behind closed doors to seal a coalition deal. Had there been a constitutional convention or citizen's assembly (following the example of British Columbia and Ontario in Canada) tasked with exploring the reasons why reform is necessary, examining all the electoral reform options available and putting them before the public so they could make an informed choice, FPTP might be history by now.
The evolution and abolition of regional governance in England

By Øivind Bratberg

Subnational dilemma.

Change of government should mean a change in the order of things, an opportunity to draw a line upon the incumbent government and set in motion an alternative plan. Nowhere is this view of political transition clearer than in majority-based political systems, where Britain has conventionally been the ideal type. A basic tenet of this model is that victory at the election implies a mandate for change.

The 2010 election did not yield an outright majority to any party and therefore confused some of the preconditions of the Westminster model. One could be excused for thinking that a culture of negotiation might seep in. Yet, as the last year has shown, in all areas where agreement has been reached between the two parties of coalition, the government operates as majority governments do: implementing its programme with little in the way.

One field where change has been radical is in the structure for territorial government; more precisely, regional government in England. To consider the scale of change within this domain we need to scroll back to 1997 and the beginning of the New Labour era.

Developing a regional level of government combined several of the stated ambitions of the Blair government: it would strengthen democracy by opening the political process for input from below, while also enhancing the coordinating capacity of central government. Moreover, a regional structure for England also was seen as an appropriate response to the creation of a Scottish Parliament and a Welsh Assembly, without treating the English colossus as a whole.

The historical backdrop was a patchwork of different territorial denominations used by public administration. Amazingly for a modern state of its size, Britain had no uniform regional structures. Civil servants, whether dealing with energy supply, infrastructure or food security would now have a range of different and unofficial regional entities to relate to. John Major’s government made the first step to unify the patchwork in creating the Government Offices for the Regions in 1994, establishing nine English regions (plus Scotland, Wales and Northern Ireland) and co-locating the regional outposts of various government agencies. These regions would also be the entities for EU funding of regional development.

Labour’s approach represented expansion from this structure. A first initiative was the creation of Regional Development Agencies, accountable to central government but composed of representatives from local government, business and the voluntary sector. Their primary task would be to support regional development by strategic planning and by allocating public funding. A second step was the launch of Regional Assemblies, which would advise the Regional Development Agencies. Initially composed of local councillors, the Assemblies were intended to draw upon direct election once the process had matured.

While the ambition of elected Assemblies was quietly put to rest following a resounding rejection in a referendum in the North East region, other developments accelerated once Gordon Brown’s succeeded Tony Blair in 2007. Strengthening the regional level in England was a tangible part of Brown’s programme for government. An immediate consequence was the appointment of regional ministers for each of England’s nine regions, developing on a form of territorial representation which was already well-known from the existence of Scottish and Welsh secretaries.

The new regional ministers had few defined tasks and no precedence to lean upon. Two ministries – the Department for Business, Innovation and Skills and the Department for Communities and Local Government – shared responsibility for them, and the position was typically combined with another job in government. Their relationship to the regional institutions was not well defined: ministers were supposed to represent the region in central government but also to advise and coordinate work at the regional level on behalf of London. However, despite the vagueness of the job description, regional ministers themselves found the work to be rather rewarding. The pragmatic adaptation was that of an informal regional leader, coordinating planning in the region while also operating as its watchdog in central government. Regional ministers provided a channel from regions to London, and in the strangely centralised system of the Westminster model it was a voice that worked quite well.

Nevertheless, Labour was the only party that had warmed to the regional project. What has unfolded since the change of government is an instructive example of the swing of the pendulum that a majority model of government permits. The Regional Development Agencies have been abolished, to be replaced by a form of local enterprise partnerships. More unexpectedly, the Government Offices which were the Conservatives’ own creation, have also been scrapped. Here, the replacement is a re-emergence of the patchwork approach where different parts of central government define their regional jurisdictions. Finally, regional ministers have also been abolished.

The demolition of regional institutions was part of a broader wiping out of government agencies in the autumn of 2010. Conservative criticism of the Regional Development Agencies stated that they were costly to run and yielded little in return for the criticism of the Regional Development Agencies, accountable to central government but composed of representatives from local government, business and the voluntary sector. Their primary task would be to support regional development by strategic planning and by allocating public funding. A second step was the launch of Regional Assemblies, which would advise the Regional Development Agencies. Initially composed of local councillors, the Assemblies were intended to draw upon direct election once the process had matured.

While the ambition of elected Assemblies was quietly put to rest following a resounding rejection in a referendum in the North East region, other developments accelerated once Gordon Brown’s succeeded Tony Blair in 2007. Strengthening the regional level in England was a tangible part of Brown’s programme for government. An immediate consequence was the appointment of regional ministers for each of England’s nine regions, developing on a form of territorial representation which was already well-known from the existence of Scottish and Welsh secretaries.

The new regional ministers had few defined tasks and no precedence to lean upon. Two ministries – the Department for Business, Innovation and Skills and the Department for Communities and Local Government – shared responsibility for them, and the position was typically combined with another job in government. Their relationship to the regional institutions was not well defined: ministers were supposed to represent the region in central government but also to advise and coordinate work at the regional level on behalf of London. However, despite the vagueness of the job description, regional ministers themselves found the work to be rather rewarding. The pragmatic adaptation was that of an informal regional leader, coordinating planning in the region while also operating as its watchdog in central government. Regional ministers provided a channel from regions to London, and in the strangely centralised system of the Westminster model it was a voice that worked quite well.

Nevertheless, Labour was the only party that had warmed to the regional project. What has unfolded since the change of government is an instructive example of the swing of the pendulum that a majority model of government permits. The Regional Development Agencies have been abolished, to be replaced by a form of local enterprise partnerships. More unexpectedly, the Government Offices which were the Conservatives’ own creation, have also been scrapped. Here, the replacement is a re-emergence of the patchwork approach where different parts of central government define their regional jurisdictions. Finally, regional ministers have also been abolished.

The demolition of regional institutions was part of a broader wiping out of government agencies in the autumn of 2010. Conservative criticism of the Regional Development Agencies stated that they were costly to run and yielded little in return for the investment; Liberal Democrats could add that they were not conducive to democracy from below, since accountability and funding continued to run from the centre.

Yet in debating what should come instead, the government is faced with some difficult priorities. Coordination and planning for the regions will have to reappear in some way or another and will not necessarily be more rational or less resourceful than before. Relevant areas include industrial policy, energy, infrastructure, health and education. Moreover, not only the administrative argument but also that of democracy suggests some form of regional government. In few countries is a regional level considered a luxury. In a country accounting for a 51 million population, its absence is exceptional.

The capacity for policy change, to return to the outset of this article, has obvious strengths in providing government with supreme legislative power to implement its plan. Yet, the logic could easily make destruction of the predecessors’ favoured projects an ambition in its own right. Is the fate of regional governance in England a case in point?
House of Lords reform: nearly right, but easily improved

By Patrick Dunleavy

On 17 May 2011, the government published a white paper and draft Bill on reforming the House of Lords, containing proposals for a reformed House of 300 members. 80 percent of the Lords would be elected under the new system, the transition to which would be phased in over three electoral cycles beginning in 2015.

The government’s draft Bill on reform of the House of Lords shows tremendous progress in coming up with a tremendous progress the House of Lords shows. The government’s draft Bill on reforming the House of Lords, containing proposals for a reformed House of 300 members. 80 percent of the Lords would be elected under the new system, the transition to which would be phased in over three electoral cycles beginning in 2015.

The essence of the government proposal is to elect the vast bulk of the reformed chamber in large constituencies, using the regional seats already employed for electing the UK’s members of the European Parliament. One of the options still for debate between the coalition parties is whether the new Senate should be 100% elected, or only 80% elected members, with the remaining fifth appointed by a non-partisan commission. The proposals for electoral arrangements strongly resemble the detailed schema for electing the Lords that Helen Margetts and I set out for Lord Wakeham’s dreadful Royal Commission on Reform of the House of Lords alongside Professor Helen Margetts.

The draft Bill proposes to create a strongly static balance of parties in the new house by proposing that members are only elected a third at a time, which in turn means that to get proportional elections a large Senate of 300 plus members is needed. (Given the size of the smallest UK regions, you cannot elected much less than 100 members at a time and still represent a fair balance of votes in each region). Each member would be elected once only and would never be able to stand for re-election, that is, a single term limit. The government’s intention here is clearly to try and create an upper house where elected legislators are yet not tied in loyalty to their political parties. More independent-minded legislators are seen as being the ones we need for a Senate that is still essentially intended to serve as a revising and scrutinizing chamber. Yet, single-terms of office are a highly unusual requirement, found in very few other legislatures across the world. The main case is the Mexican legislature, where single term limits are widely blamed for corrosive corruption, because a legislator who cannot be re-elected has nothing to lose from being corrupt. Now the British political elite are always quick to suggest that nothing like this can possibly happen here, not with “people like us” around. But the expenses scandals around MPs and peers in the last two years strongly indicates the contrary – that is you place people in temptation’s way, a goodly proportion of them will follow Oscar Wilde and succumb. So the government’s single-term proposal is a constitutional risk of the first order, one that the UK should not take.

The government proposes that elections will take place on the same day as general elections, because that will maximize the numbers of people who will vote in the new Senate elections, a strong democratic rationale. However, the top three parties (Conservatives, Labour and Liberal Democrats) also know that the general election context is the most favourable for them. In particular, it tends to strongly suppress votes for the UK’s smaller fourth, fifth and so on parties – whose votes would clearly be higher if Senate election took place on a fixed four year term, like those for the Scottish Parliament, Welsh Assembly and Greater London Authority. Electing on general election days means that the government’s draft bill cannot specify exactly how long a member of the new Senate will sit for. If a general election takes place inside of two years, then they do not trigger an election of the next wave of senators due to be replaced. But once a Parliament has gone beyond two years, that counts for this purpose. And of course each Parliament can only last a maximum of five years. So depending on how things work out, an unlucky senator could sit for as little as six years, while a lucky one (who lasts through three five-year Parliaments) could be there for a decade and a half.

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Current House of Lords</th>
<th>Government draft bill for reformed House</th>
<th>Change still needed for a fully democratic Senate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of members</td>
<td>789 – many of whom never show up to debates</td>
<td>300 plus</td>
<td>180 to 220</td>
</tr>
<tr>
<td>How do members get there?</td>
<td>All appointed (plus remnants of hereditary peers)</td>
<td>Either: 80% elected and 20% appointed by non-political commission Or: 100% elected</td>
<td>100% elected</td>
</tr>
<tr>
<td>Years in legislature?</td>
<td>Until death</td>
<td>Three general election periods, (i.e. from 6 to 15 years)</td>
<td>Two general election periods, (i.e. from 4 to 10 years)</td>
</tr>
<tr>
<td>How many times can you stand for office?</td>
<td>See above – you only exit when you die</td>
<td>Once only – you can never be re-elected</td>
<td>Twice – you can be re-elected once</td>
</tr>
<tr>
<td>When are new members added?</td>
<td>Whenever the government needs to win votes</td>
<td>One third of members are elected at a time</td>
<td>Half of members are elected at a time</td>
</tr>
<tr>
<td>System of election used?</td>
<td>None</td>
<td>Either: List proportional representation system Or: Single Transferable Vote (STV)</td>
<td>Simple to use, List PR voting system</td>
</tr>
<tr>
<td>Who do members represent?</td>
<td>Themselves</td>
<td>Government standard regions in England, and the nations of Scotland, Wales and Northern Ireland, that is multi-member constituencies of between 1.5 and 8 million people, as for MEPs at present</td>
<td></td>
</tr>
<tr>
<td>When will elections take place?</td>
<td>Never</td>
<td>On the same days as general elections</td>
<td></td>
</tr>
</tbody>
</table>

Patrick Dunleavy is Professor at the Department of Government, London School of Economics. He has published across a wide range of topics related to British politics, particularly on governance and political institutions. In 1990 he advised the Royal Commission on Reform of the House of Lords alongside Professor Helen Margetts.
House of Lords reform: nearly right, but easily improved (cont.)

By Patrick Dunleavy

This would be a hugely long term during which senators never have to return and face the voters who chose them, and are not removable in any way through popular action. (In fact, if a tranche of senators got really lucky and interspersed five year Parliaments with a couple of near-two-year short Parliaments at the right times, they could stay in the upper chamber for almost 19 years).

Put such huge periods in office with the draft Bill’s single term limit for senators and we run the risk of creating a dynamite cocktail of provisions. In (re)writing a constitution we absolutely must plan for all contingencies, not just those deemed likely. So we need to allow for rogue legislators, and groups of sophisticated rogue legislators, as much as for well-behaved ones – and for extraordinary situations as well as routine times. The new Senate would have proper rules of conduct for the first time, and senators would be removable if misconduct is clear and proven. But the organization of ongoing corrupt practices is easy to do inside strong rules – as the UK has repeatedly proved with the effective purchase of honour, including seats in the House of Lords. We should not risk constituting a whole upper house where every member knows that they will never have to face the voters again, and they could last in power for a decade and a half, with only a modicum of guile and skill.

Improving the government’s proposals

If the remaining problems with the current draft Bill are obvious, they are also easily solved. The key thing is to reduce the size of the Senate to its smallest feasible scale, which is around 180 to 220 members – which minimizes both the total number of elected politicians at Westminster and the costs of an elected upper house. The chamber can also be very safely elected a half at a time (not in thirds), because the government has accepted the need for proportional representation elections. And under any realistic scenario, in today’s multi-party politics two PR elections in the UK are never likely to result in an upper house with a clear overall majority for any one party.

Even if we assume (as we should) that the top three parties (or four parties in Scotland, Wales and Northern Ireland) will do well in Senate elections held on the same day as general elections, under PR a party can only achieve absolute majority if it is doing incredibly well – and it would have to do that twice in a row. Inherently, a PR-elected upper chamber is likely to be permanently “hung”, creating the optimal conditions for it to operate its revising chamber role effectively. Governments will need to have rational argument and evidence on their side to carry through their legislation, but the Commons will retain the ability to enforce a majority party’s view – especially if five year Parliaments become the norm as the Coalition expects.

Election members in halves also means that the term of office for senators would fall between four years (if they held office in two short-Parliaments only) and ten years (if they held office for two full-term Parliaments). This reduction also opens up the chance to get rid of the highly objectionable single term limit, and to opt for the term limit widely seen as optimal in US politics and in academic analyses also – namely two terms. That means that senators would have the chance to be re-elected once, but they could not go on and on, as MPs do, and so would not be professional career politicians and nothing else.

In terms of the electoral system to be used the government’s draft Bill suggests that the single transferable vote (STV) could be used in the large regional constituencies and technically this is (just) feasible. However, the White Paper is clear that the government also considered and could live with a system of open list PR elections – which allows voters to scan a list of candidates offered by each party in the large regional constituencies and to vote individually for the candidate they most prefer, using a single X vote. Here voters can rearrange the order in which candidates get elected from each party’s list. (This is unlike the UK’s European Parliament elections, which uses a ‘closed list’ PR system where the order of candidates is set by the political parties alone). Each party then wins seats off their reordered list of candidates in proportion to their share of the vote.

An open list PR system means that voters are ultimately in control. Parties have strong incentives to select their most popular candidates to head their list – this is always the best strategy for any party trying to maximise its votes in a PR election. Open list PR provides a strong protection against parties trying to pack their lists with “hacks” or “has-been” politicians, and instead to seek popular and credible candidates. It also creates a strong basis for individual senators to seek re-election on their own, distinctive record of voting independently for the public interest.

So there are three highly compelling reasons for the Liberal Democrats to back off, and not to insist on reform going down the STV route – opting instead for the government Bill’s alternative option of open List PR. The first is that this is far simpler for voters to operate and to count, and a version of List PR already works well for the UK’s European Parliament elections. The second reason is that if Senate elections are held on the same day as general elections, having two X vote elections would be strongly preferable for voters – while mixing up numerical voting with STV and X voting would be highly confusing.

The Scottish parliament elections of 2008 coincided with new STV local elections for Scottish local governments, and created unprecedented problems that should never have been allowed to happen. Finally, of course, voters have just strongly rejected numerical preference voting for AV in the May 2011 referendum, so that the Liberal Democrats would be well advised not to try again with STV.

The only other change needed is for Nick Clegg and the Liberal Democrats to kick their courage in their hands and to insist at their party conference in September that only a 100 per cent elected Senate will be democratically credible and acceptable for public opinion. An 80 per elected upper house would undermine the whole point of elections by creating a completely unaccountable and irreversible subset of legislators, again opening the way for the taint of corruption and social exclusion that has so disfigured the Lords over many decades. The Liberal Democrats should concede on open list PR elections and not STV, but demand in return that the new Senate is a wholly elected chamber.

This article has previously been published in the report “The end of the peer show? Responses to the draft bill on Lords reform” (2011) by the think tank CentreForum. For more information see www.centreforum.org/A shorter version is also available at the LSE’s widely visited blog at http://blogs.lse.ac.uk/politicsandpolicy/
Reforming the Crown-in-Parliament

By Atle L. Wold

Centre of authority. Constitutional reform was brought firmly and – it would seem – irrevocably onto the political agenda by the New Labour government which took office in 1997, and has been much debated since. Reform of the British political system has, however, also been hotly debated in the past, and demands for changes go further back in time than many realise. The year 1760 came in many ways to form the starting point for political reform movements in Britain, and it did so for a particular reason.

The British political system is officially known as “Crown-in-Parliament”, and it can be argued that the fundamental features of this system were established over the course of the first half of the eighteenth century. By the time of George III’s accession to the throne in 1760, the general perception was that Britain enjoyed a “mixed and balanced constitution” unlike that of any other country, and contemporaries referred to this as “King-in-Parliament”. The British constitution was mixed because it combined all the three known “simple” forms of government, monarchy, aristocracy and democracy in the shape of the King, the House of Lords and the House of Commons; and it was balanced because all three were necessary and indispensable parts of the same sovereign legislature, and held each other in check.

This was vital to avoid the dangers of an arbitrary government, or a breakdown of the social order, it was believed: An unrestricted monarchy could become tyrannical, an all-powerful aristocracy could develop into a self-serving oligarchy and, worst of all, a democratic form of government spelled the way to mob-rule and anarchy.

Great unease therefore took hold of the political elite in the 1760s, when it became increasingly clear that the new young king George III seemed intent on reinforcing the position of the crown. In George’s view, the crown had been unduly weakened during the reigns of his two predecessors of the Hanoverian line, George I and George II, both of whom (and unlike George III himself) spoke little or no English, had limited knowledge and understanding of British affairs and, in the case of George I, were often absent in their native Hanover.* Now was the time to put things right again.

The political elite, however, thought differently and, in particular the English elite, were alarmed by the choice of a Scotsman – the Earl of Bute – as the king’s first minister. What better sign could there be of a king with authoritarian tendencies and scant regard for dearly-held English liberties, than the choice of a Scot to head the government? No-one took the (mis) conception that George III was a tyrant-to-be further than the American colonists, who based much of their argument for independence on the idea that the king was a despot in disguise, but also in Britain, concern about the influence of the crown and the court lingered and eventually led the MP John Dunning to put forward his famous motion in 1780: “the influence of the crown has increased, is increasing and ought to be diminished”. The carefully constructed balance of the constitution was under threat.

The accession of George III thus gave rise to a whole new discussion about the British Constitution, what it was, what it ought to be, whether it had become “corrupted” and, if so, by whom, and whether reforms were needed to restore its purity. Increasingly, the focus shifted from the king to representation in the House of Commons, and most of the reform movements which developed in the latter half of the eighteenth century were concerned with this. But despite impressive petition campaigns and strenuous efforts in general – particularly in the turbulent 1790s - no attempts to achieve reform were successful until finally, a measure of electoral reform was carried through in the shape of the Great Reform Act of 1832.

This breakthrough initiated over a century of reforms which would eventually turn the British Constitution into a modern democracy. The “balance” of the mixed and balanced constitution had clearly been disrupted in favour of the House of Commons but – perhaps because of the piecemeal fashion in which it was done - the anarchy predicted by eighteenth century thinkers never materialised.

* The Hanoverian succession
The House of Hanover came onto the British throne in 1714 when Queen Anne Stuart died without leaving an heir (despite giving birth to 14 children and suffering four miscarriages). Many candidates had a better claim to the throne than the somewhat unlikely choice of George of Hanover, but all those claimants who were ahead of George in the line were Catholics, and they were prevented from acceding through the Act of Settlement of 1701. George was thus offered the throne on the basis of his Protestant religion.

It was during the reigns of George I and George II that a crafty politician by the name of Robert Walpole took use of the situation to carve out a strong position for himself as first minister and head of the Treasury. Walpole made sure to negotiate the support of both Houses of Parliament for his policies, as well as the king’s court, thereby providing the basis for another two central features of the British constitution – the office of prime minister, and the parliamentary system of government. The official title of the British prime minister is still the First Lord of the Treasury.

By the First Lord of the Treasury.
The politics of disguise: the new Palace of Westminster

By Christine Riding

During the night of 10 and 11 May 1941, areas of the Palace of Westminster were set on fire by German incendiary bombs. In deciding which parts to save from destruction, the London fire brigade concentrated its efforts on the medieval Westminster Hall, with the result that the Victorian Commons debating chamber, first used in 1850, was reduced to smouldering rubble. Why, during a period of national crisis, would an old hall with no specific or regular parliamentary function, take precedence over the working heart of the British parliament?

Answering this question goes a long way to understanding the architectural politics of the Palace of Westminster, one of the most instantly recognisable buildings in the world: why it was designed to exude continuity, permanence and recognisable buildings in the world: why it was "made to be".

But what sort of image or identity did it project? Much of the perceived success of the palace, then and now, is how well it "fits in" to the Westminster area, in particular, its relationship in scale and architectural style to Westminster Abbey, itself predominantly medieval. Indeed, the parliamentary committee that was set up in 1835 to oversee the design competition for the new building, elected not only to instruct competitors to submit designs in the Gothic style and to incorporate Westminster Hall (an eleventh-century royal structure, remodelled by Richard II in the 1390s) into the plans, but guided them towards perpendicular Gothic. This was a late form of Gothic associated in England with the Tudor dynasty (1485-1603) and the style of the Lady Chapel built by the first Tudor monarch, Henry VII, at the east end of Westminster Abbey, that is the closest part of the abbey to the palace site.

The architect Charles Barry, who won the design competition, transposed many of the details and motifs from the chapel to the new parliament building, including the Tudor rose and the portcullis, the latter originally a royal badge but soon to be the symbol of Parliament at Westminster. The transference of old to new, from monarch to Parliament, thus was seamless. The history of the Gothic Revival in Britain, of which the Palace of Westminster is a preeminent example, is complex and nuanced. Importantly, in the years following the French Revolutionary and Napoleonic Wars, Gothic was perceived as the national style (in contrast to the neo-classical style associated with France) and, reassuringly in moments of national crisis, the style of political, social and cultural continuity, not only at Westminster but across the whole country. The new Palace of Westminster thus anchored the British into a highly partial, national narrative, one that was ancient, Christian (as underlined by the great medieval cathedrals) and royal. After all, it was referred to as the Palace of Westminster, despite the fact that monarchs had ceased to reside there for centuries.

Thus on the outside and inside of the new building, statues of monarchs (and bishops) were positioned in the niches carved into the facades, with Queen Victoria, who came to the throne in 1837, presiding in sculptural form over the door to the sovereigns entrance and in the Prince's Chamber, and throughout the building with carved "VR" monograms. And interestingly, within the palace, the most ornate areas of the palace were those designated as royal (situated within the House of Lords side of the building), with the House of Lords in close second, and the House of Commons very much in third place. While this pretty fairly represented the predominance of the monarch as Head of State and the aristocracy when the Gothic style first came into being, it only loosely described the state of political affairs in the 1830s, let alone 1941, or indeed 2011. Does the symbolism of the building still matter? Do people read buildings in this way?

In The English Constitution (1867), the political journalist Walter Bagehot argued that, as day-to-day power was in the hands of the elected - and hence transitional - House of Commons, that hereditary monarchy, with its ancient origins, associations and traditions, represented the antithesis of change and thus "acts as a disguise", enabling "our real rulers to change without hopeless people knowing it". I think the same is true of the Palace of Westminster, and always has been.

Christine Riding is Senior Curator of Arts at the National Maritime Museum and formerly Curator of Eighteenth and Nineteenth Century Art at Tate in London. She was a co-editor of The Houses of Parliament: History, Art, Architecture (Merrell, 2002) and has written several educational texts on the Palace of Westminster.

Exploring contemporary challenges in the UK and the US
Joint ASANOR-BPS conference 2011

Friday 28 - Sunday 30 October 2011
Rica Park Hotel, Drammen

Hosted by British Politics Society, Norway og American Studies Association of Norway

Invited participants include teachers, students and academics, but the conference welcomes anyone who shares a passion for politics and culture in the Anglo-American context. We can offer first-class lectures and great opportunities for discussing topics of shared interest.

The programme will begin Friday evening with dinner and a keynote lecture by Professor Bernt Hagtvet (University of Oslo) on "The past and future of the liberal left in the UK and the US". The conference will continue with paper presentations and discussions through the morning and afternoon on Saturday and finish by lunchtime on Sunday. A special session on Saturday will be devoted to a panel debate on challenges in teaching about British and American Civilisation in a rapidly changing world.

The fee for participating the full weekend will be 2190 NOK. This includes a room for 2 nights; dinner on Friday evening; breakfast, lunch and banquet on Saturday; breakfast and lunch on Sunday. A shorter stay from Saturday to Sunday costs 1050 NOK, which includes a room for 1 night; lunch and banquet on Saturday; breakfast and lunch on Sunday. The third alternative, participation on the seminar without overnight stay costs 770 NOK (coffee and lunch both days included).

For detailed information on the conference programme, please consult www.britishpoliticssociety.no

Please register by sending an email by 10 September to oivind.bratberg@stv.uio.no. Your email should state your name, institution and whether you will be a guest at the hotel for 2 nights, 1 night or only be present for the conference sessions.

Membership 2011

Would you like to become a member of the British Politics Society, Norway? Membership is open to everyone and includes:

- Subscription to four editions of British Politics Review
- Access to any event organised by the society
- The right to vote at our annual general meetings

Your membership comes into force as soon as the membership fee, NOK 100,- for one year, has been registered at our account 6094.05.6778.

For more information see our website at www.britishpoliticssociety.no

Forthcoming edition of British Politics Review

"The forgotten relationship?" is the title of a project conducted by the British Politics Society to investigate the various facets of the relationship between Britain and Norway. First addressed at a seminar in June, the relationship will also serve as the departure point for the autumn issue of British Politics Review.

The Review will look into a range of the different relations across the North Sea, in the political sphere as well as in cultural life. What have, for example, been the guiding principles of the foreign policy cooperation between the two countries? What policy fields have taken centre stage in latter years, following changes in the economy of both countries as well as their relationship to Europe as a whole?

In cultural life, the British-Norwegian relationship has been a source of inspiration to a range of artists and writers. On what basis? Far from offering exhaustive analyses of any of these topics, we will aim to give a taste of the multitude of inspiration and communication across the North Sea.

The autumn edition of British Politics Review is due to arrive in November 2011.