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## A Summary of Recent Constitutional Reform in the United Kingdom

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# A summary of recent constitutional reform in the United Kingdom

LESLEY DINGLE\* AND BRADLEY MILLER\*\*

## Contents

- Present constitution: the status quo
- Background to post-1997 proposals for constitutional change
- Changes influenced by domestic policy post-1997
  - Reform of the House of Commons
  - Reform of the House of Lords
  - Judicial Reform
  - Devolution
    - Scottish Parliament*
    - Welsh Assembly*
    - Northern Ireland Assembly*
    - Devolution to English Regions*
  - Other areas of reform
    - Monarchy and the royal prerogative*
    - Civil Service*
    - Electoral Law*
      - Proportional Representation (PR)
      - Referenda
      - Electoral procedures
    - Freedom of Information legislation*
- Changes influenced by European Legislation
  - General European Union legislation
  - Human Rights
  - European Union Constitution
- Conclusions

## Present Constitution: the status quo

The United Kingdom of Great Britain and Northern Ireland consists of four countries: England, Northern Ireland, Scotland and Wales.<sup>1</sup>

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<sup>1</sup> As defined by the 1969 Royal Commission on the Constitution 1969-1973 Report, Cmnd 5460, October 1973.

Legislative competence for the UK resides in the Westminster Parliament, but there are three legal systems (England and Wales, Northern Ireland, and Scotland) with separate courts and legal professions. These legal systems have a unified final court of appeal in the House of Lords.<sup>2</sup> The Isle of Man, and the two Channel Islands (Guernsey and Jersey) are not part of the UK, but possessions of the crown. Although their citizens are subject to the British Nationality Act 1981, the islands have their own legal systems.<sup>3</sup> They are represented by the UK government for the purposes of international relations, but are not formal members of the European Union.<sup>4</sup>

The United Kingdom is a constitutional monarchy with a bicameral parliament composed of the Houses of Commons and Lords. Formally, executive power is vested in the Crown in the person of the Sovereign, but in reality, central government is carried out in the name of the Crown by ministers of state.<sup>5</sup> The powers of the Sovereign and the Crown derive either from Acts of Parliament or are prerogative (i.e., recognised in common law). There is no formal separation of the powers of the legislature and executive and while legislative authority is vested in the Sovereign in Parliament, ministers responsible for implementing new acts are also involved in the process of legislation. Similarly, in the House of Lords, the Lords who sit as judges in the Appellate Committee can also take part in the legislative business of the upper house.<sup>6</sup>

It is often suggested informally that the United Kingdom does not have a written constitution. This is not strictly true; rather, what it does not have is a single document setting out the legal framework and functions of the organs of government and the rules by which it should operate. Such documents are a declaration of a country's supreme law and have overriding legal force to empower a constitutional court to declare acts of the legislature illegal if they conflict with the rights embodied in such a formal constitution. In this, the UK currently differs from many other countries, such as the United States, Ireland, Germany, France and South Africa.

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<sup>2</sup> Except for Scottish criminal cases.

<sup>3</sup> Final court of appeal for these is the Privy Council.

<sup>4</sup> They are exempt from much of the Treaty of Rome, although provisions relating to the free movement of industrial and agricultural goods apply, as does adherence to the European Convention on Human Rights.

<sup>5</sup> A.W. Bradley & K.D. Ewing, *Constitutional and Administrative Law* (2003): 233.

<sup>6</sup> *Ibid.*, 79, 88.

The constitution of the United Kingdom, in contrast, is a “whole system of government...(with a)...collection of rules which establish and regulate or govern the government.”<sup>7</sup> The system is based on a combination of “Acts of Parliament and judicial decisions...political practice...and detailed procedures established by various organs of government for carrying out their own tasks.”<sup>8</sup> Examples of the latter are “the law and custom of Parliament” and the “rules issued by the Prime Minister to regulate the conduct of ministers.”<sup>9</sup> In effect, Parliament has the right to modify the constitution of the United Kingdom on the basis of simple majorities in the two Houses of Parliament.<sup>10</sup>

The constitutional status quo in the UK has resulted in a very flexible system in which governance depends on political and democratic principles rather than a rigid mechanism relying on legal rules and safeguards. This can be construed as both a strength and a weakness, but for reform it has several important consequences. For example, there are no special procedures for proceeding with new constitutional arrangements, and all such acts must pass through the Westminster Parliament in the normal legislative manner. In addition, no truly federal arrangement can be established within the United Kingdom while the Westminster Parliament remains supreme: it currently retains the right to revoke power recently devolved to Northern Ireland, Scotland and Wales.

There are numerous items of legislation from mediaeval to modern times that have shaped the constitution, and a few can be singled out as particularly significant.<sup>11</sup>

- **Magna Carta.** Granted by John in 1215, with the current version approved by the English Parliament granted by Edward I (1297). It established that punishment should be by

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<sup>7</sup> K. C. Wheare, *Modern Constitutions* (1966): 1.

<sup>8</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 4.

<sup>9</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 5. For examples: Civil Service Code, Ministerial Code - A Code of Conduct and Guidance on Procedures for Ministers, Departmental Evidence and Response to Select Committees, Government Accounting.

<sup>10</sup> See: C. Turpin, *British Government and the Constitution: Text, Cases and Materials*, (2002): 10; D. Oliver, *Constitutional Reform in the UK*, (2003): 5.

<sup>11</sup> See examples listed under “Constitutional Law” in *Halsbury’s Statutes of England and Wales* (2001).

judgment of one's peers or the law of the land, and that justice cannot be denied to an individual.<sup>12</sup>

- **Petition of Rights**. Enacted by the English Parliament in 1628. It outlawed without Parliament's consent taxation, arbitrary imprisonment, use of martial law in peacetime and billeting soldiers on private persons.<sup>13</sup>
- **Habeas Corpus Act 1679**. Habeas corpus is a remedy against unlawful detention, and this Act placed heavy penalties on the evasion of the writ by transfer of persons outside the jurisdiction of English courts.
- **Bill of Rights and Claim of Rights**. Enacted by the English and Scottish parliaments in 1689 at the time of the restoration of the monarchy. Laid the foundations for the modern constitution in a series of articles. Many of its provisions are still in force.
- **Act of Settlement 1700**. Dealt with succession to the throne and complemented the provisions in the Bill of Rights. It established, *inter alia*, that judges should not hold office at the pleasure of the Crown.
- **Treaty of Union 1707**. Act formalising the union of England and Wales with Scotland.
- **Union with Ireland Act 1800**. Act formalising the union of England and Wales and Scotland with Ireland.
- **Reform Act 1832**. Enacted large-scale changes to the franchise, resulting in a more equitable distribution of seats, and a shift of political power away from the landowning classes. This Act disposed of the infamous "Rotten Boroughs."
- **Parliament Act 1911 and 1949**. Acts including fixing the duration of Parliament, and defining the relations between the houses of Lords and Commons.
- **Crown Proceedings Act 1947**. Government departments and ministers became liable to be sued for wrongful acts, establishing a doctrine of government according to law. The Sovereign has personal immunity.
- **European Communities Act 1972**. Gave effect within the UK to those provisions within EC law which, according to various treaties, have direct effect within member states.

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<sup>12</sup> J. C. Holt, *Magna Carta*, (1992).

<sup>13</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 14.

According to the European Court of Justice (ECJ), this means that Community law prevails over any inconsistent provisions of the national law of member states.<sup>14</sup> In effect, if Parliament legislates in breach of Community law, the courts within the UK must not apply the conflicting domestic law.

- **British Nationality Act 1981.** Defined nine categories of citizenship and five ways of acquiring British citizenship.
- **Public Order Act 1986.** Introduced statutory powers allowing the police to severely limit public processions and assemblies.

Also, since 1973, when the then Labour government held a referendum on confirming membership of the European Economic Community, a practice has developed of holding referenda on important constitutional matters.

Judicial decisions also provide rules of law which can have constitutional significance; the doctrine of precedent dictates that such decisions are binding on lower courts. This judge-made law can emanate from two sources: common law and interpretation of statutes. Common law decisions have been authoritative in a variety of areas, such as prerogatives of the Crown, remedies against illegal acts of officials and public authorities, the writ of habeas corpus, and the obligation to give a hearing. Such decisions can be overturned by Parliament, however, and even House of Lords' decisions are vulnerable to the European Court of Justice (ECJ) on matters of European Union (EU) law, and the European Court of Human Rights (ECHR) in relation to the European Convention on Human Rights.

While the courts cannot rule on the legality of Acts of Parliament, they can interpret statutes where the meaning is disputed, and they are to divine objectively the intention of Parliament. It is presumed that the legislature will not intentionally remove common law rights by implication, so that fundamental rights cannot be overridden except by express wording.<sup>15</sup> However, since joining the European Union, British courts must follow the ECJ's lead in interpreting legislation flowing from EC directives. Consequently, if any statute enacted by Parliament after January 1, 1973 is in question, the courts are obliged to interpret it so as to reconcile it with any relevant EU law in force in the UK.

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<sup>14</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 68.

<sup>15</sup> *Ibid.*, 18.

As for Parliament itself, in contrast to states with written constitutions, its length of term is not entrenched, and under the rules of parliamentary sovereignty it can decide its own duration, sometimes under controversial circumstances.<sup>16</sup> The current life of a parliament was set at a maximum of five years in the Parliament Act 1911, although during the last two world wars this was temporarily extended. Currently there are no published plans to alter the status quo or to circumscribe the government's ability to decide (through the sovereign's prerogative) to foreshorten a term and call a general election, but from time to time private members' bills have been introduced (unsuccessfully) to legislate on the issue.<sup>17</sup>

In this summary we outline steps that have been implemented to reform the constitutional system of the UK since New Labour came to power in 1997. It must be remembered, however, that this has been a subject of debate for over a century and that several important alterations have already been undertaken. These changes consist of mainly matters relating to the makeup and powers of the House of Lords.

A fundamental change was introduced in the Parliament Acts of 1911 and 1949. In these Acts, the formal legislative powers of the House of Lords were curtailed, effectively moving the center of gravity of power in Parliament to the House of Commons and allowing the governing party to impose its will on Parliament. As a result, the role of the upper chamber was limited simply to an ability to revise legislation through the imposition of amendments and to delay the implementation of contentious legislation.<sup>18</sup>

Important changes had also been affected to the membership of the House of Lords. Historically, this had been restricted to hereditary peers and 26 bishops and archbishops of the Church of England.<sup>19</sup> It was modified by the Appellate Jurisdiction Act 1876, which allowed for the appointment of Lords of Appeal in Ordinary to sit in the upper House, the so-called Law

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<sup>16</sup> For example, during the 1715 Scottish uprising. It has fluctuated from three years - Meeting of Parliament Act 1694 (Triennial Act) to seven years - Septennial Act 1715: see Bradley & Ewing, *Constitutional and Administrative Law*, 55 & 180 for further details.

<sup>17</sup> For example, see Turpin, *British Government and the Constitution*, 206.

<sup>18</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 196.

<sup>19</sup> *Ibid.*, 174. In the Ecclesiastical Commissioners Act 1847, appointments to new diocesan bishoprics were disallowed from sitting in the House of Lords.

Lords, whose titles are not hereditary.<sup>20</sup> The Life Peerages Act 1958, allowed for the appointment of peers to sit in the Lords for the duration of their lives, although these titles are not hereditary.<sup>21</sup> The latter Act weakened the hereditary principle, and at a stroke, strengthened the ability of the government of the day to increase its power in the upper chamber. A further change was made in the Peerage Act 1963 to allow a hereditary peer to disclaim the title for life so that the holder could sit in the House of Commons.<sup>22</sup>

### **Background to post-1997 proposals for constitutional change**

Although the Labour party has long had a predisposition towards constitutional reform – both the Crown Proceedings Act 1947 and Parliament Act 1949 were products of this policy – the current major constitutional changes and proposals have their seeds in party policy documents.<sup>23</sup> Immediately upon assuming office in 1997, the New Labour government established various review committees and initiated proposals covering a wide range of constitutional matters, in addition to reconsidering policies formulated for the election campaign.<sup>24</sup> These included:

- electoral reform and, in particular, the voting system for Westminster elections (Jenkins Commission 1998);
- funding of political parties (Neill Committee 1998);
- electoral law and administration (Howarth Committee 1998);
- modernization of the House of Commons (Select Committee 1997-98);
- reform of the House of Lords (Special Report, 2002);
- introduction of a Bill of Rights (Consultation Paper 1996);

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<sup>20</sup> Originally (1876) there were two Lords of Appeal in Ordinary. By 1994 this number had risen to 12. Under the Administration of Justice Act 1968 the Sovereign may increase the number further by a Statutory Instrument approved by both houses of Parliament. The Lords of Appeal in Ordinary join Lords of Appeal who are already in the upper house by virtue of their hereditary peerages.

<sup>21</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 173.

<sup>22</sup> *Ibid.*, 176. The Act followed the unsuccessful action by Viscount Stansgate in *Re Parliamentary Election for Bristol South East* [1964] 2 QB 257. This legislation has been superseded by the House of Lords Act 1999.

<sup>23</sup> Labour Party Final Report, 1989; Labour Party Policy Commission (1993).

<sup>24</sup> See the following for a discussion by academic writers on the implications of early New Labour policies: R. Blackburn & R. Plant, *Constitutional Reform: The Labour Government's Constitutional Reform Agenda*, (1999)

- introduction of a Freedom of Information Act (Joint Committee, Labour-Liberal Democrat parties, 1997);
- consideration of English regional government (Labour Party, 1996);
- creation of a Ministry of Justice (Labour Party, 1995), and
- devolution to Scotland and Wales.<sup>25</sup>

Plans were also announced for a revitalization of the government's policy-making capacity and capabilities.<sup>26</sup> Many of these "bold and ambitious" initiatives resulted in a surge of important constitutional legislation early in Labour's first parliamentary session included:

- Scotland Act 1998,
- Government of Wales Act 1998,
- Northern Ireland Act 1998,
- Human Rights Act 1998,
- Regional Development Agencies Act 1998,
- European Parliamentary Election Act 1999,
- Bank of England Act 1998,
- Registration of Political Parties Act 1998,
- Greater London Authority Referendum Act 1998, and
- White Papers dealing with freedom of information (Cm 3818, 1997) and reform of local government (Cm 4310, 1999).<sup>27</sup>

All this activity was overseen by the Constitutional Reform Policy Committee of the Cabinet under the chairmanship of the Prime Minister, and more recently by the Lord Chancellor. It gave the impression that a systematic policy of reform was underway, that has been described as "a new constitutional settlement" and "the most ambitious and far reaching changes in the British constitution undertaken ...this century."<sup>28</sup> Some academic commentators, however, have viewed it as lacking a master plan, with administrators merely adopting responses to political pressures on an ad hoc and incremental basis. The result has been a policy that can be criticized as both incoherent and incomplete.<sup>29</sup> Nevertheless, it has been undertaken in "the evolutionary and pragmatic tradition of the British constitution...."<sup>30</sup>

<sup>25</sup> White Paper on Wales, Cm 3718 (1997); White Paper on Scotland Cm 3658 (1997).

<sup>26</sup> White Paper Cm 4310 (1999).

<sup>27</sup> Turpin, *British Government*, 654.

<sup>28</sup> R. Hazel, *Constitutional Futures: A History of the Next Ten Years*, (1999): 3.

<sup>29</sup> For example, Oliver, *Constitutional Reform*, 3.

<sup>30</sup> Turpin, *British Government*, 654.

### Changes influenced by domestic policy post-1997

“[W]e have embarked on a major programme of constitutional change realigning the most fundamental relationships between the state and the individual in ways that command the consent of the people affected.”<sup>31</sup> This was the concluding remark in the Lord Chancellor’s statement of government policy at the end of 1998 and set the tone for New Labour’s programme of constitutional reform. Since 1997, a good summary of the course of these events, including legislation, White Papers, and important political announcements and speeches, have been posted on the website of the Lord Chancellor’s Office, renamed in 2003, The Department for Constitutional Affairs.<sup>32</sup> An up-to-date review of the major changes wrought so far lists fifteen major legislative events, any one of which would have constituted a “radical change.”<sup>33</sup>

### Reform to the House of Commons

None of the major constitutional reforms have affected directly the House of Commons, but there have been numerous attempts to “modernise” it. These have been made under the auspices of the Modernization Committee. Five main areas have been targeted:

1. removal of some archaic practices and out of date rules (Select Committee, HC 600, 1998);
2. creating easier public access to Parliament, and creating a Commons website for Parliamentary committees;
3. reorganization of working hours;
4. easing legislative programmes by allowing carry-over of bills;
5. improvement of parliamentary scrutiny of legislation.<sup>34</sup>

Items (1)-(4) have been addressed successfully, but little or no progress has been made in the last category, though the reform process is ongoing.

### Reform to the House of Lords

Radical reform to the upper House has long been mooted, and early in the last century the Parliament Act 1911 stated that it was Parliament’s intention to create an upper chamber not based on hereditary qualifications.

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<sup>31</sup> <http://www.dca.gov.uk/speeches/1998/lc-const.htm>.

<sup>32</sup> <http://www.dca.gov.uk/index.htm>.

<sup>33</sup> Bogdanor, V. “Our New Constitution.” *Law Quarterly Review* 120 (2004): 242-262.

<sup>34</sup> Oliver, *Constitutional Reform*, 174.

The 1911 Act also effectively removed the veto power from the House of Lords, substantially diminishing its power vis-à-vis the House of Commons.<sup>35</sup>

Reform was slow until 1997, but since then, New Labour has made a sustained if not wholly effectual effort to bring about meaningful change. There are several useful sources that provided summaries of reform since 1997.<sup>36</sup> Further useful information can be found under the House of Lords Constitution Committee. This Committee enquires into “wider constitutional issues” and scrutinizes public bills for matters of constitutional significance. Its progress is summarised in Select Committee on the Constitution (2002).

Following publication of numerous discussion papers and heated debate on the House of Lords Bill 34 1998-99, Parliament passed the House of Lords Act 1999.<sup>37</sup> Although the original intention of the government in the Bill had been to remove all hereditary peers, a compromise had to be reached between the Labour and Conservative parties to allow a proportion of the peers, along with the deputy speakers, the Earl Marshal and the Lord Great Chamberlain to remain. The rationale for this was that the government had at that stage no firm policy for determining the composition of the chamber after the passage of the Bill. As a result, the House of Lords Act 1999 left the number and composition of members currently as follows: 575 life peers, twenty-six bishops, twenty-eight law lords (active and retired), and ninety-two hereditaries (total: 721).<sup>38</sup> Altogether, the Act had removed 600 hereditary peers.

Once the House of Lords Act 1999 had been passed, the government was faced with the dilemma of how best to reconstitute the future upper chamber, now shorn of all but 92 of the original hereditary peers. To do this, it established a Royal Commission under the chairmanship of Lord Wakeham, which made 132 recommendations. Although many of these dealt with relatively minor changes to the Lords’s legislative and scrutinizing functions, one of importance was the removal of its power to veto statutory instruments. Its main recommendations were to the composition of the upper house, where

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<sup>35</sup> See a summary at <http://www.dca.gov.uk/constitution/holref/holsdocs.htm>.

<sup>36</sup> See, e.g., Research Papers (99/7, 1999; 00/60, 2000; 01/77, 2001), and since 2002 (03/85, 2003) at [http://www.parliament.uk/parliamentary\\_publications\\_and\\_archives/research\\_papers.cfm](http://www.parliament.uk/parliamentary_publications_and_archives/research_papers.cfm).

<sup>37</sup> See details of the debate in, for example, White Paper (Cm 4183, 1999), and Research Paper (98/95, 1999).

<sup>38</sup> See Oliver, *Constitutional Reform*, 189.

there would be 550 members. The Law Lords would be retained, along with 31 members of religious faiths, and there were to be between 65 and 195 elected members. It was proposed that the remaining members would be appointed by a politically independent Appointments Committee.<sup>39</sup>

The government accepted many of these recommendations, but rejected others.<sup>40</sup> It favoured a larger house of up to 600 members, of whom 332 would be political appointees, and, critically, it proposed that appointment of the latter be left to the political parties. In addition to appointed members, the government's plan foresaw 120 independent members nominated by the Appointments Commission, a further 120 directly elected members, 16 bishops, and at least 12 law lords. It also favoured the removal of the remaining 92 hereditary peers. The government also accepted the Royal Commission's proposal for the establishment of an Appointments Commission, and this was set up in 2000.

This plan generated so much criticism from many quarters, including the government's own back benchers, that in 2002 it was forced to set up a Joint Committee on House of Lords Reform to consider the composition and powers of the House of Lords, its role, and authority. After the committee had reported, the government responded and the whole matter was referred finally to the Constitutional Affairs Committee.<sup>41</sup> The result of these complex deliberations was the publication in February 2004 of the Constitutional Reform Bill 2004, to which a House of Lords Select Committee responded in July 2004.<sup>42</sup> However, no resolution was reached before the General Election in May 2005, and the future of the House of Lords still remains to be resolved, notwithstanding the fact that piecemeal reform has already begun. As will be discussed in the next section, in its current form, the Constitutional Reform Bill also contains proposals for major changes to the judicial system.<sup>43</sup>

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<sup>39</sup> See full details in Royal Commission (Cm 4534, 2000), and a summary in Research Paper 2000 (00/60).

<sup>40</sup> See full details of this response in White Paper (2001, Cm 5291), and a summary in Research Paper 2002, 02/02).

<sup>41</sup> See details of the government's response in a Special Report (2003).

<sup>42</sup> Constitutional Reform Bill Committee, HL 125, 2004.

<sup>43</sup> Including the abolition of the office of Lord Chancellor, the Creation of a Supreme Court, and reform of the judicial appointments process.

## Judicial reform

Pressure has been building for a clear cut separation of powers between the judiciary on the one hand and the legislature and executive on the other. It comes from two sources: domestic politics and European Human Rights law. Because judges are appointed by the Lord Chancellor, a member of the Cabinet and effectively the Minister of Justice, they cannot be politically independent.<sup>44</sup> Similarly, because the Lord Chancellor and Lords of Appeal in Ordinary who together constitute the Appellate Committee of the House of Lords – the Law Lords – also sit in the House of Lords, which is part of the legislature, their decisions cannot be seen to be politically impartial. Based on the same logic, recent rulings in the European Court of Human Rights imply that decisions of the Appellate Committee of the House of Lords are incompatible with Article 6 of the European Convention on Human Rights<sup>45</sup>, which deals with access to independent and impartial tribunals.

Devolution has further heightened the issue of separation of powers, with cases relating to devolution legislation being referred to the Judicial Committee of the Privy Council, where the Lords of Appeal in Ordinary also sit. Following the report of the Constitutional Affairs Committee, the Government announced its next steps in the radical reform of the House of Lords, and other matters relating to the judiciary.<sup>46</sup> These included: abolishment of the office of Lord Chancellor, the creation of a new, independent Supreme Court for the UK, and the creation of a new Judicial Appointments Commission. The last-named would be responsible for selecting candidates for appointment as judges in England and Wales.

Apropos the post of Lord Chancellor, provision 53 states that “The office of Lord Chancellor will be not be abolished until all the relevant provisions of the Constitutional Reform Bill have been brought into effect and cannot be abolished until alternative arrangements for carrying out his functions are in place.”<sup>47</sup> With this announcement the Lord Chancellor also became the Secretary for State for Constitutional Affairs (and the Lord Chancellor’s Department became the Department for Constitutional Affairs.

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<sup>44</sup> Oliver, *Constitutional Reform*, 330.

<sup>45</sup> See Oliver, *Constitutional Reform*, 331, and R. Masterman, “A Supreme Court for the United Kingdom: two steps forward, but one step back on judicial independence,” *Public Law* (2004): 48-58, for discussion of some cases.

<sup>46</sup> See Research Paper 03/85 (2003).

<sup>47</sup> See Department for Constitutional Affairs (2004).

After June 2003 three Consultation Papers set out in detail the proposals for:

1. the creation of a Supreme Court (including the fate of the Appellate Committee of the House of Lords (i.e. the Law Lords) and the Judicial Committee of the Privy Council);
2. creation of the Judicial Appointments Commission (i.e. a new mechanism for the appointment of judges);
3. abolition of the post of Lord Chancellor.<sup>48</sup>

Publication of the Constitutional Reform Bill in which these proposals were included provoked strong comment from across the political and professional spectrum, including a widely reported speech by Lord Woolf.<sup>49</sup> These matters were considered by the House of Lords Select Committee on the Constitutional Reform Bill, which reported on July 2, 2004.<sup>50</sup> Although agreement was reached on 44 other issues, no resolution was reached on two of the three major items (1 & 3) listed above. Further, a subsequent vote in the House of Lords on item (3) resulted in a defeat for the government, and until the matter can be re-considered by the Commons, the abolition of the post of Lord Chancellor has been deferred. The Select Committee did agree to the establishment of a Judicial Appointments Commission (item 2). Given the parliamentary timetable, it seems unlikely that the status of the Constitutional Reform Bill will be resolved until late 2005 at the earliest.

## **Devolution**

Of the four countries comprising the United Kingdom, only Northern Ireland experienced devolved government between 1800 and 1997 pursuant to the Union with Ireland Act.<sup>51</sup> Since 1998, however, each country has had its own arrangement, and although they wield authority delegated from the Parliament at Westminster, they all differ in form and power. Constitutionally, the result of this is that Members of the Westminster Parliament have now lost, effectively, their right to play any part in legislation for the domestic affairs of Scotland and Northern Ireland, and their right to

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<sup>48</sup> See Consultation Papers CP 10/03, 11/03 and 13/03 for details.

[http://www.parliament.uk/what\\_s\\_on/what\\_s\\_on4.cfm#Consult](http://www.parliament.uk/what_s_on/what_s_on4.cfm#Consult).

<sup>49</sup> <http://www.dca.gov.uk/judicial/speeches/lcj030304.htm>.

<sup>50</sup> Constitutional Reform Bill Committee HL 125, (2004).

<sup>51</sup> From 1921 to 1972, under the Government of Ireland Act 1920, s. 75. Between 1972 and 1978 there was Direct Rule from Whitehall.

draw up secondary legislation for the domestic affairs of Wales. They retain these rights only for England, in addition to which, members sitting for constituencies in Scotland, Wales and Northern Ireland have been deprived of most of their constituency duties.<sup>52</sup> The process of devolution followed by New Labour has transformed the Parliament in Westminster into a quasi-federal institution: a Parliament for England, a federal Parliament for Northern Ireland and Scotland, and a Parliament for primary legislation for Wales.<sup>53</sup>

Early attempts at devolution began with the Royal Commission on the Constitution 1973 under the chairmanship of Lord Kilbrandon. Its recommendations were not unanimous.<sup>54</sup> The Labour government then in power resolved to establish elected assemblies in Scotland and Wales, proposals for which were set out in a White Paper (1974).<sup>55</sup> This resulted in legislation for devolution in 1978, but negative returns in referenda held in the two countries caused the Acts to be repealed.<sup>56</sup>

New Labour committed itself to devolution prior to the 1997 election and upon assuming office, introduced White Papers in 1997 setting out proposals for Scotland and Wales.<sup>57</sup> These were submitted to referenda in the two countries following the Referendum (Scotland and Wales) Act 1997, which resulted in positive returns in both.<sup>58</sup> Bills based on the 1997 White Papers were introduced, and these culminated in the Scotland Act 1998 and Government of Wales Act 1998. The Northern Ireland Act 1998 also devolved power to an elected assembly in this country and brought Direct Rule from Westminster to an end. These pieces of legislation are backed up by various formal agreements between the UK government and the administrators of the devolved institutions that set out the principles by which they will conduct their business. Although these are not legally binding, they establish the spirit and letter to be observed by all parties.<sup>59</sup> The most

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<sup>52</sup> V. Bogdanor, "Our New Constitution." *Law Quarterly Review*, (2004): 257.

<sup>53</sup> *Ibid.*, 257.

<sup>54</sup> See *Memorandum of Dissent* attached to the Kilbrandon report, Cmnd 5460-I.

<sup>55</sup> White Paper, *Democracy and Devolution: Proposals for Scotland and Wales*, Cmnd. 5732 (1974).

<sup>56</sup> Wales Act 1978, and Scotland Act 1978.

<sup>57</sup> White Paper, *Scotland's Parliament*, Cm 3658 (1997), and White Paper, *A Voice for Wales: The Government's Proposals for a Welsh Assembly*, Cm 3718 (1997).

<sup>58</sup> Scotland: 74.3% (44.9% of total electorate), Wales: 50.3% (25.1% of total electorate). Figures from Turpin, *British Government*, 264.

<sup>59</sup> *Ibid.*, 265.

important of these is the Memorandum of Understanding (2001) which established a Joint Ministerial Committee that acts as a consultative forum for Ministers of the United Kingdom Government, Scottish and Northern Ireland Ministers, and Welsh Secretaries. There are also a series of Concordats between opposite government departments, which, while not being legally binding, may prove actionable in proceedings for judicial review.<sup>60</sup>

Issues relating to devolution of power to Scotland and Wales are to be resolved ultimately by the Judicial Committee of the Privy Council. None of these bodies can make legislation that is incompatible with EU law.

### ***Scottish Parliament***

The Scotland Act 1998 devolves primary legislative powers, but does not violate fundamentals of the Act of Union passed in 1706 by the English and in 1707 by the Scottish parliaments. It created a unicameral parliament with ministers and civil servants who are servants of the Crown. It currently has 129 members, some elected by proportional representation, for a four year term. Fifteen areas of legislation are not within the competency of the Scottish Parliament and are “Reserved Matters” for Westminster (Schedule 5 of the Act).<sup>61</sup> Notwithstanding the devolved powers, Westminster retains the power to legislate for Scotland, and in law may override decisions taken in Edinburgh on devolved matters.<sup>62</sup>

Scottish devolution has created a new constitutional anomaly: 59 Scottish Members of Parliament currently still sit in the House of Commons, down from 72 in the 2001-05 parliament, and are able to vote on legislation that affects only England. This anomaly is referred to as the West Lothian Question.<sup>63</sup>

### ***Welsh Assembly***

The Government of Wales Act 1998 led to the creation of the National Assembly for Wales. This is a unicameral body with 60 members who are elected for four years, partly by proportional representation. The body exercises its power on behalf of the Crown, but its legislative

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<sup>60</sup> *Ibid.*, 265.

<sup>61</sup> See Turpin, *British Government*, 276; see also Bradley & Ewing, *Constitutional and Administrative Law*, 43.

<sup>62</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 45.

<sup>63</sup> See Standard Note SN/PC/2586, 2003.

competence extends only to subordinate matters: it lacks a general power to make laws for Wales and exercises only a secondary role in legislation. Its function covers eighteen fields which have been transferred to it from Westminster and which were handled formerly by the Welsh Office (Schedule 2 of the Wales Act 1998).<sup>64</sup> The Secretary for State for Wales represents the country's interests at Cabinet level, while he/she is allowed to attend, but not vote in, Assembly proceedings.

### *Northern Ireland Assembly*

The Union with Ireland Act 1800 created the United Kingdom, which survived until legislation in 1922 with the passing of the Irish Free State Act, Irish Free State Constitution Act, and Irish Free State Act. Together, this legislation created the independent Irish Free State within the Commonwealth. Six counties remained within the United Kingdom by the Government of Ireland Act 1920 to create Northern Ireland. Subsequently, the Ireland Act 1949 and the Northern Ireland Act 1998 confirmed that the country will remain part of the United Kingdom until a majority of the population of Northern Ireland vote in a referendum to re-unite with Ireland.

Devolved government was transferred to Northern Ireland by the Government of Ireland Act 1920, which created a bicameral parliament that endured until 1972, when political violence forced Direct Rule to be imposed from Westminster. This persisted, except for short breaks – in 1974 and again from 1982-86 – until 1998 when the Northern Ireland Act 1998 gave legal effect to a 1985 Inter-governmental Agreement and the 1998 Anglo-Irish Good Friday Agreement.<sup>65</sup> In these agreements, the UK government came to an understanding with the Irish government and republican para-military groups under the terms of the Northern Ireland (Entry into Negotiations, etc.) Act 1996 for various forms of “power sharing.” The latter process resulted in referenda being held simultaneously in Northern Ireland and the Irish Republic on the terms of the 1998 Belfast Agreement, which was accepted in both countries. The 1985 Inter-governmental Agreement was replaced by a new Agreement in 1999.<sup>66</sup> The Northern Ireland Act 1998 also authorised the establishment of the following bodies: North/South Ministerial Council,

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<sup>64</sup> See Turpin, *British Government*, 285.

<sup>65</sup> For the former, see Great Britain Ireland, *Agreement Between the Government of the United Kingdom...and the ...Republic of Ireland Nov. 1985 (with joint communiqué)*, Cmnd 9657 Republic of Ireland (1985) 1, (1985).

<sup>66</sup> Treaty Series, 2000. For the discussion, see Turpin, *British Government*, 295.

British-Irish Council, Human Rights Commission and an Equality Commission.

The Northern Ireland Assembly has 108 members who are elected for four years by proportional representation. It has powers of primary legislation in matters not excepted or reserved from devolution by Westminster.<sup>67</sup> Membership of the Assembly is strictly regulated into “Nationalist” and “Unionist” categories so as to enforce the Belfast Agreement, whereby passing important decisions has to constitute “cross-community support”, which is achieved by a complicated formula.<sup>68</sup> Because of continued violations of the Belfast Agreement, the Assembly is currently suspended and Direct Rule again prevails.

### ***Devolution to English Regions***

Devolution has created asymmetry in the constitutional framework of the UK, with England, which has 84 percent of the population, having no formal representative body. The government responded to this situation by issuing a White Paper (2002), in which it proposed to hold referenda to gauge support for the creation of Regional Assemblies in each of eight “regions” created by the Regional Development Agencies Act 1998.<sup>69</sup> Currently, under the auspices of the Department of Trade & Industry, these Regional Development Agencies are only non-departmental public bodies.<sup>70</sup>

Three regions were originally selected to hold referenda on the possibility of devolution of some administrative powers to regional bodies: North-West, North-East and Yorkshire & Humberside, but bureaucratic problems resulted in this being reduced to one, the North-East Region. The referendum was held in November 2004 and resulted in a rejection of a regional assembly for the North-East Region by 78% of the voters in an all-postal ballot. The Government immediately shelved the proposed referenda in the other regions, and the issue of further devolution in England is now in abeyance.

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<sup>67</sup> Excepted matters are given in s4 and Sch 2 and reserved matters given in s 4 and Sch 3 of the Northern Ireland Act 1998.

<sup>68</sup> See Turpin, *British Government*, 297; see also Bradley & Ewing, *Constitutional and Administrative Law*, 46 for details.

<sup>69</sup> The regions are: North-West, North-East, Yorkshire & Humberside, West-Midlands, East-Midlands, East of England, South-East, South-West.

<sup>70</sup> See Turpin, *British Government*, 267.

The eight regions created in England do not include the metropolitan area of Greater London, which has its own arrangements for devolved governance. The government in Westminster initiated this devolutionary process by issuing a White Paper which proposed an elected Mayor and London Assembly.<sup>71</sup> These were approved by a referendum of London's citizens in 1998 authorised by the Greater London Authority Act 1998, and put into effect via the Greater London Authority Act 1999. This created a new form of city government in the UK, with the election in 2000 of a Mayor and twenty-five assembly members sitting for four-year terms. Voting was by a form of proportional representation. The new body has powers to promote economic, social and environmental development, and has various subsidiary bodies under its jurisdiction: London Development Agency, Transport for London, Metropolitan Police Authority, and the London Fire and Emergency Planning Authority. Ultimately, under the Local Government Act 2000, other metropolitan areas in England may be given the option to have elected mayors.

### **Other areas of reform**

#### ***Monarchy and the royal prerogative***

Central government is carried out in the name of the Crown, which is the governmental aspect of the monarch's power. The Crown has a legal corporate personality (distinguishable from the monarch), and is separate from the Ministers and civil servants who act in its name. This legal persona is rooted in common law. Many of the government's powers are based on the royal prerogatives that also derive from common law, while some special prerogatives are reserved for the monarch.<sup>72</sup> Theoretically, the latter can be exercised by the monarch, but conventionally they are used on the advice of his/her Ministers. There are three constitutionally important powers in this category:

1. to dissolve Parliament and precipitate a general election;
2. choosing the Prime Minister in the case of there being no clear-cut candidate;
3. assenting to legislation (i.e. withholding assent creates a veto on government Bills, last used in 1707).

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<sup>71</sup> Cm 3897 (1998).

<sup>72</sup> Oliver, *Constitutional Reform*, 204; Bradley & Ewing, *Constitutional and Administrative Law*, 233.

Currently, reform of these personal prerogatives does not form part of government policy, but the possibility of introducing fixed term parliaments would nullify the monarch's power to dissolve Parliament and call general elections.<sup>73</sup>

An extension of the royal prerogative to Parliament allows the government to undertake a wide variety of actions in the name of the Crown, particularly in the areas of national security, granting of royal charters, public and political appointments, the honours system, and accountability of Ministers. Regulation of these powers is political rather than formal or statutory.<sup>74</sup> Reform has proceeded piecemeal through case law and amendments to the Ministerial Code (2001).<sup>75</sup>

### *Civil Service*

It is important constitutionally that civil servants enjoy tenure of office without regard to changes in the political complexion of the government in power. Currently, professional standards in the civil service are regulated by the Civil Service Management Code that requires of them honest and impartial advice.<sup>76</sup> The Code is constantly updated, but for several years there have been moves to put the civil service on a statutory basis to ensure more effective parliamentary scrutiny.

In 2000, the Parliamentary Committee on Standards in Public Life produced a lengthy report dealing with revision of standards that should apply to Members of Parliament, Ministers, Civil Servants, Special Advisors and Quangos.<sup>77</sup> One of the problems highlighted was the increasing importance in public life of politically appointed special advisors and their role *vis-à-vis* civil servants, who are politically neutral. The report recommended that along

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<sup>73</sup> See Blackburn & Plant, *Constitutional Reform: The Labour Government's Constitutional Reforms Agenda*, for a pro-reform discussion.

<sup>74</sup> Oliver, *Constitutional Reform*, 205.

<sup>75</sup> For examples in Oliver: *Council of Civil Service Unions v. Minister for the Civil Service* ([1985] AC 374, introduced judicial review of government decisions into exercises of royal prerogative; *M. v. Home Office* ([1994] 1 AC 377), found the Home Secretary in contempt of court.

<sup>76</sup>

[http://www.civilservice.gov.uk/management\\_information/management/management\\_code/index.asp](http://www.civilservice.gov.uk/management_information/management/management_code/index.asp).

<sup>77</sup> Committee on Standards in Public Life, *Sixth Report: Reinforcing Standards*, Cm 4557, (2000).

with rules tightening up training, introduction of codes for validating performances, maintenance of political impartiality and the embedding in statute of core values for civil servants, a separate code of conduct was needed for special advisors.<sup>78</sup>

The government's response was generally favourable, and on the contentious issue of special advisors it agreed to limit numbers and to provide a separate code of practice.<sup>79</sup> Eventually, the Civil Service (No. 2) Bill [HL] was introduced which drastically cut the spending and management power of special advisors, while also limiting their numbers. Significantly, it proposed enshrining in statute for the first time the political neutrality of civil servants. It also allowed for full publication of the civil service codes, the setting up of a mechanism to oversee and monitor recruitment, and employment of individuals born outside the UK.<sup>80</sup> However, because the bill did not pass through the Lords before the May 2005 General Election, the long-promised statutes to regulate the civil service have yet to materialise.

### ***Electoral Law***

#### *Proportional Representation (PR)*

On election to office, New Labour appointed the Independent Commission on the Voting System under the chairmanship of Lord Jenkins (Jenkins Commission, 1998). The commission recommended the introduction of PR, but so far, no proposals for a change in the voting system for the Westminster Parliament have been made.<sup>81</sup> However, provisions were made in the Scotland Act 1998, Government of Wales Act 1998, Northern Ireland Act 1998, and the Greater London Authority Act 1999 for the introduction of various forms of PR to be made for elections to the devolved parliaments and assemblies.<sup>82</sup>

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<sup>78</sup> *Ibid.*

<sup>79</sup> *The Government's Response to Sixth Report of the Committee on Standards in Public Life, Reinforcing Standards*, Cm 4817 (2000).

<sup>80</sup> A Draft Civil Service Bill, Cm 6373 (2004).

<sup>81</sup> This is a first past the post system with each parliamentary constituency returning a single candidate.

<sup>82</sup> Scotland and Wales have a mixed Westminster and additional member PR system, Northern Ireland has a single transferable vote PR system, and London a 3 vote regime, one of which is used in an additional member PR system.

The European Parliamentary Elections Act 1999 introduced a closed party list PR system for the 1999 election of members to the European Parliament which sits in Strasbourg and Brussels. It is also proposed to use this system for the election of the 120 elected members to the reconstituted House of Lords.<sup>83</sup>

### *Referenda*

There has been increasing use of national referenda to advise governments on important issues in recent years, and in 1996 the Independent Commission on the Conduct of Referendums proposed a Referendums Act (Electoral Reform Society, 1996).<sup>84</sup> So far, this has not been initiated, although future referenda have been promised by the Government on acceptance of the proposed EU Constitution, and the UK's entry into the Eurozone. There is statutory provision for referenda in the Government of Wales Act 1998 and for polls or referenda for specific instances in local government, but no general regulations on the subject.

### *Electoral procedures*

In 1997 the terms of reference of the Committee on Standards in Public Life were extended to investigate party funding.<sup>85</sup> Its report led to the passing of the Political Parties, Elections and Referendums Act 2000 which, *inter alia*, regulates the registration of political parties and public funding for campaign groups, including spending limits on referendum campaigns. This Act has imposed a strict regime on the funding for parties, including banning donations from non-EU sources. It also legislated for the establishment and supervisory role of the Electoral Commission, which is a politically independent body accountable directly to Parliament and is now responsible for regulating elections in the UK and for parliamentary and local government boundary reviews.<sup>86</sup>

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<sup>83</sup> White Paper, *The House of Lords: Completing the Reform*, Cmd 5291 (2001): paragraphs 48-53.

<sup>84</sup> For examples: 1975 on EC membership, 1978 and 1998 on devolution. See also Oliver, *Constitutional Reform*, 155. See also Standard Note, *Thresholds in Referendums*, SN/PC/2809 (2004).

<sup>85</sup> Committee on Standards in Public Life, Cm 4057, 1998.

<sup>86</sup> For details, see Oliver, *Constitutional Reform*, 149.

### ***Freedom of Information legislation***

Prior to 1997, government practice in relation to access to official information rested upon a Code of Practice on Access to Government Information that was introduced in 1994 and revised in 1997. This arose from proposals made in a White Paper (Cm 2290, 1993) produced by the previous administration. Immediately on assuming office in 1997, New Labour published its own White Paper (Cm 3818, 1997), setting out new proposals for a statutory right to access official information. This was hailed as a very progressive statement of intent, and included the establishment of an Information Commissioner.<sup>87</sup> There was a long delay while the government considered the matter, and a series of reports was issued: House of Commons Select Committee (1999); House of Lords Committee (1999); and finally a Report to the Home Secretary (1999) on openness in the public sector.

The final outcome was that the public's right of access was greatly watered down in the resulting Freedom of Information Act 2000, which contains a less strict code for moderating refusal to disclose data and permits broad exceptions.<sup>88</sup> The delay in implementation and regression in degree of access to information suggests that there is little sign of genuine desire for openness in government.<sup>89</sup> Despite these changes, the post of Information Commissioner has been maintained. *Inter alia*, it is his/her responsibility to promote good practice by public authorities, but orders for disclosure by the Commissioner can still be overridden by a Minister. The Freedom of Information Act 2000 finally came into force at the beginning of 2005.

### **Changes influenced by European legislation**

#### **General European Union legislation**

The European Economic Community (EEC) was established by the Treaty of Rome 1957, and the United Kingdom became a member by signing the Treaty of Accession 1973. This was facilitated by the European Communities Act 1972. Constitutionally, signing the Treaty created a novel problem in that legislation was needed that would accept "...in advance as

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<sup>87</sup> See Oliver, *Constitutional Reform*, 164.

<sup>88</sup> For example, for "prejudice to the public interest."

<sup>89</sup> Oliver, *Constitutional Reform*, 168.

part of the law of the United Kingdom...provision to be made in the future by instruments issued by the Community institutions....<sup>90</sup>

The various European treaties to which the United Kingdom has acceded, have major constitutional significance because, "...the terms of the European treaties as interpreted by the European Court of Justice require members to subordinate their sovereignty and that of their Parliaments to the Community institutions, and to give direct effect and primacy to European law."<sup>91</sup> An example of this can be seen in the method for taking important decisions. In the EEC, this was originally based on unanimity, but a major change to its regulations was altered, in many areas, to the majority rule. The change was accepted by the UK when Parliament passed the Single European Act 1986, although the changes were later overtaken by the Maastricht Treaty 1992, which ushered in the European Union.

The European Court of Justice (ECJ) sits in Luxembourg and has the responsibility of ensuring that "...in the interpretation and application of [the] Treaty the law is observed".<sup>92</sup> Its judgments have ensured that the loss of sovereignty by member states includes their constitutional laws, and this applies not only to the states, but also to their nationals.<sup>93</sup> EC law supremacy was confirmed in the UK courts through five cases (1989-2000) known collectively as the *Factortame* series.<sup>94</sup> The final judgment resulted in an Act of the Westminster Parliament, the Merchant Shipping Act 1988, being "dis-applied."

The European Parliament, was established as an "Assembly," which was confirmed in its present form by the Single European Act 1986. Member states of the EU elect Members of the European Parliament (MEPs) for five-

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<sup>90</sup> White Paper, *Legal and Constitutional Implications of the United Kingdom Membership of the European Communities*, Cmnd 3301 (1967). See also Bradley & Ewing, *Constitutional and Administrative Law*, 135.

<sup>91</sup> Oliver, *Constitutional Reform*, 63.

<sup>92</sup> EC Treaty, art 220.

<sup>93</sup> See for example ECJ landmark rulings in *Van Gend en Loos v. Nederlandse Tarief Commissie* ([1963] CMLR105, 129) (cited in Oliver, *Constitutional Reform*, 63; Bradley & Ewing, *Constitutional and Administrative Law*, 128); and *Costa v ENEL* (C6/64) [1964] ECR 1141 (cited in Bradley & Ewing, *Constitutional and Administrative Law*, 128).

<sup>94</sup> Initial case *R v Transport Secretary, ex p Factortame Ltd (No 1)* [1989] 2 CMLR 353 (CA). For a discussion of these cases, see Bradley & Ewing, *Constitutional and Administrative Law*, 141.

year terms. The UK originally had 87 MEPs, but this was reduced to 72 in the 2004-2009 session. They are elected by proportional representation on a closed party list system, which was ushered in by the European Parliamentary Elections Act 1999. The European Parliament does not have independent legislative competence and it cannot initiate proposals for legislation by the Council of the European Union. “The Council is the main decision-making body of the European Union...[its] acts ...can take the form of regulations, directives, decisions, common actions or common positions, recommendations or opinions. The Council can also adopt conclusions, declarations or resolutions. When the Council acts as a legislator, in principle it is the European Commission that makes proposals. These are examined within the Council, which can modify them before adopting them.”<sup>95</sup> The Council is obliged to “consult” Parliament on its acts, and if Parliament accedes then the process is passed as a “co-decision,” but should disagreement arise, the Council can dispense with Parliament’s opinion.<sup>96</sup>

The European Scrutiny Committee of the House of Commons (ESC) “assesses the legal and/or political importance of each EU document, decides which EU documents are debated, monitors the activities of UK Ministers in the Council, and keeps legal, procedural and institutional developments in the EU under review.”<sup>97</sup> A Commons resolution in November 1998 stated that no Minister can agree to any proposal for EC legislation until the matter has been scrutinised by the ESC.<sup>98</sup>

### Human Rights

The Maastricht Treaty committed member states of the European Union to respect fundamental rights as enshrined in the European Convention on Human Rights 1950 (ECHR). This document was drawn up by the Council of Europe, comprising 45 states, most of which are not members of the EC/EU. The UK ratified the treaty in 1951, and in 1966 began allowing individuals the right to petition. However, because international treaties cannot give rights that are enforceable in domestic courts unless they have been incorporated into law by statute, interpretations of the European Court of Human Rights of the ECHR were not enforceable by UK courts until the passing of the Human Rights Act 1998.<sup>99</sup> This act is a “...constitutional

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<sup>95</sup> [http://www.unadr.org/cila2005/guias/CEU\\_CILA2005.doc](http://www.unadr.org/cila2005/guias/CEU_CILA2005.doc).

<sup>96</sup> Oliver, *Constitutional Reform*, 64, & Turpin, *British Government*, 341.

<sup>97</sup> [http://www.parliament.uk/parliamentary\\_committees/european\\_scrutiny.cfm](http://www.parliament.uk/parliamentary_committees/european_scrutiny.cfm).

<sup>98</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 138.

<sup>99</sup> See Oliver, *Constitutional Reform*, 112.

instrument introducing into domestic law the relevant articles of the Convention...”<sup>100</sup> Thus, while rights are theoretically enforceable only against public authorities, there are implications for the common law and for litigation between private parties.<sup>101</sup> There is provision within the Convention for derogation on certain matters, and the UK used these powers in respect of detention provision for terrorism legislation.

The Nice Treaty 2000 proclaimed the Charter of Fundamental Rights of the European Union but it was not incorporated formally. Consequently, it is not binding on member states, but the ECJ can be expected to have regard to the Charter in applying and developing Community law.<sup>102</sup>

### European Union Constitution

There are three major constitutional issues facing the UK in the medium term with respect to EU legislation:

1. the pressure for closer political union;
2. the “democratic deficit” of the legislative process that is operated by unelected and hence unaccountable members of the EU structure;
3. the constitutional base upon which the whole “enterprise” is constructed.<sup>103</sup>

The final text of the Constitution was agreed at the Heads of Government Summit held in Brussels on 18th June 2004, and was signed by all national leaders of the EU in Rome on October 29, 2004.<sup>104</sup> It was endorsed by the European Parliament on January 12, 2005, but individual member states still need to ratify it. Eleven states announced their intention of holding a referendum on the issue: Belgium, Czech Republic, Denmark, France, Ireland, Luxembourg, Netherlands, Poland, Portugal, Spain and United Kingdom. To date, Spain has done so positively, while France and the Netherlands have done so negatively. The remaining fourteen states plan to ratify it via their national parliaments; and the first to do so was Lithuania on November 11, 2004.

Currently, the matter of adoption of the European Constitution by the UK is a controversial issue that bears on all three issues listed above. The Prime Minister announced in April 2004 that a referendum would be held in

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<sup>100</sup> Lord Woolf, CJ in *R v Offen* [2001] 1 WLR 253.

<sup>101</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 420.

<sup>102</sup> Turpin, *British Government*, 365.

<sup>103</sup> Bradley & Ewing, *Constitutional and Administrative Law*, 144.

<sup>104</sup> The full text is at: <http://european-convention.eu.int/bienvenue.asp?lang=EN>.

the UK before ratification, but no date for this has yet been announced, though it is widely expected to be in 2006. Depending on whether it is accepted by the Westminster Parliament, this document has profound constitutional implications for the UK.

### **Conclusions**

The constitution of the United Kingdom is not vested in a single document. Rather it is a composite of statutes, legal decisions, customs and parliamentary rules. This results in a flexible system that depends ultimately on the sovereignty and supremacy of the Westminster Parliament. Constitutional reform is therefore the natural outcome of long-term evolution of political and democratic principles, and is an ongoing process. Since 1997, however, New Labour governments have made the acceleration of reform a political goal. We have summarised the main areas where this has occurred.

Parliament itself has been the subject of much scrutiny. While small changes have been made to modernize the House of Commons, radical actions have been taken in the House of Lords, where the number of hereditary peers has been reduced from nearly 700 to 92. Further plans to remove hereditary peers altogether and to replace them with nominated or elected members have stalled, and the government has not yet come forward with proposals for appointing members to the upper house.

In tandem with the reforms to the House of Lords, plans to create a Judicial Appointments Commission, a Supreme Court, and to abolish the post of Lord Chancellor also await resolution. The last two issues have proved so controversial that the government has had to back away from its draft legislation.

Minor revisions have also affected electoral laws, regulating campaign funding and the activities of political parties. More significantly, the passing of freedom of information legislation may soon bring about changes to aspects of the machinery government and a new focus on bureaucratic transparency.

Meanwhile, the establishment of a Scottish Parliament and legislative assemblies for Wales and Northern Ireland have created a quasi-federal arrangement for the United Kingdom, though continuing violations of earlier agreements have necessitated the suspension of the Northern Ireland Assembly and a return to direct rule from Westminster. Plans to devolve

some powers to regions within England have been thwarted in the only referendum yet held on the topic, but an elected mayor and assembly have been installed in the metropolitan area of London.

Finally, the matter of national sovereignty within the European Union has become a politically divisive issue in the United Kingdom. The incorporation into national law of the European Convention on Human Rights, in addition to diverse items of European Union legislation, has curtailed parliament's traditional sovereignty. Jurisdiction in these areas has passed to the European Court of Human Rights and the European Court of Justice. The adoption of the European Constitution by the twenty-five national governments of the European Union would accelerate this trend, although at present the issue awaits a referendum in both the UK, and several other member states.

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