



**'This book could scarcely be
more timely or more needed'**

JOHN HUMPHRYS

THE RAPE OF THE CONSTITUTION?

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*Introduction:
Bagehot Revisited*

In his collection of essays, *The English Constitution*, Walter Bagehot painted a vivid picture of the gap between real and symbolic power. In his view, 'efficient' power (in 1867) was in the hands of a small secretive parliamentary committee (the Cabinet). By way of contrast the monarchy, the House of Lords and even, at times, the House of Commons contributed to the 'dignified' part of our constitution but was in reality little more than window-dressing.¹ In the introduction to his 1963 edition, Richard Crossman showed how power had moved away from the Cabinet to the Prime Minister and the party managers. Bagehot described Victorian England as a 'disguised republic'.²

The orthodox (Whig) view of the Constitution is based on the principle of the separation of powers (executive, legislative and judicial) and the steady progress from power in the hands of one person – the 'executive magistrate' to a more distributed and democratic system, replete with 'checks and balances' on executive power. Bagehot pointed out that this was

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- [1] However, despite his journalistic cynicism, Bagehot acknowledged that the British Constitution was the basis for a sound system of parliamentary government which allowed for effective rule by the majority party and yet embodied a variety of checks and controls on the executive. Parliament is ultimately responsible (although only indirectly), for the appointment (and dissolution) of the Cabinet, as it 'elects' the Prime Minister. When a new House of Commons is returned, or when there is a ministerial crisis, Parliament exercises real sovereign power.
- [2] One hundred years later Lord Hailsham thought that our political system had evolved into an 'elective dictatorship'.

largely baloney even in the mid-nineteenth century – the high point of classical parliamentary government:

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers.

In Bagehot's view this 'fusion' of powers, in conjunction with the aforementioned parliamentary constraints, produced an informal but effective constitutional system. But, owing to its reliance on delicate matters like custom and precedent, he was concerned as to how it would survive the extension of the franchise introduced by Disraeli in 1867. The authors in this book describe how constitutional balances have in fact been progressively eroded during the twentieth century,³ which poses the question whether this process is best described as serial rape or consensual intercourse. Are the constitutional innovations of the present Government a sufficient exception to the rule of gradual evolution to constitute rape, or does this description entail a 'considerable degree of terminological inexactitude'? (Vernon Bogdanor, private correspondence.)

In the Introduction to his 1963 edition Crossman argued that since Disraeli's extension of the franchise in 1867 there has been a remorseless trend towards the centralization of power in the hands of the Prime Minister. Arguably the PM now has fewer checks on his powers than Charles I ever had.

To flesh out this argument we need to go back to Bagehot's distinction between the 'dignified' and 'efficient' parts of government. Bagehot argued that the formal separation of powers within the two trinities – on the one hand the Executive-Legislative-Judicial divide and on the other the Crown-Lords-Commons – was simply a discourse we construct in order to conceal the true location of power. In this, and many other respects, his analysis was remarkably close to his contemporary, Karl Marx. The two men only differed in their views on the philosophy of history.⁴ It was quite clear to Bagehot that real power rested in the Cabinet, that one body that has no formal constitutional role at all (J.S. Mill scarcely

[3] See especially **Dalyell**; **Johnson**; and **Weatherill**. References in bold throughout are to authors in this book.

[4] Marx operated within the tradition of Hegelian dialectical philosophy, whereas Bagehot had a journalist's disdain for all such flim-flam.

mentions the Cabinet in his competing analysis). The Cabinet was an eighteenth-century innovation, although its distant origin was the informal circle of advisers to the medieval kings. As Parliament progressively annexed the powers of the Crown – making a mockery of the separation of the executive and the legislature – the Cabinet continued to be the focus of effective power. The only change was in who picked its members.

Bagehot was perfectly happy with this arrangement for a number of reasons. First of all, as editor of *The Economist*, he subscribed fully to the view that government should be in the hands of the educated middle classes. It seemed quite natural to him that the country should be run by a ‘Board of Directors’ along similar lines to the banking or business community. Secondly, at that time party disciplines were very loose, so the power of parliaments to vote in the replacement of cabinets was still very real. Governments were frequently defeated in parliamentary divisions by their fellow party members, and this was seen as part of the normal day-to-day business of parliamentary government. Thirdly, like most conservative Liberals of the time, he believed in ‘government by conversation’. As it was almost impossible for a club of some 500 members to have a meaningful conversation he felt this was best left in the hands of the smaller group of the Cabinet.

Twentieth-Century Developments

Bagehot was apprehensive about Disraeli’s extension of the franchise in the Second Reform Act of 1867 to include much of the male urban working class, although he realized it would take a generation before the true impact could be assessed. He had no problem in principle with a broader franchise, but argued that to give the vote to people without the education and wisdom to exercise it properly was unwise. Like most of his peers, he was opposed to party politicians making opportunistic concessions to democracy that would, in his view, substitute government by ignorance and brute numbers for government by discussion. In the eighteenth century, the Commons was effectively run from the Lords through the power of patronage. The First Reform Act of 1832 largely put a stop to that but, with a limited franchise, corruption was still

widespread. Although Disraeli's Reform Act ended this form of patronage, it just meant that other methods had to be used. The growth in power of the political parties, which used to be little more than clubs for like-minded MPs, is a direct consequence of 1867. Although it was not possible to buy votes directly, all governments since the time have continued to woo the electorate through promises of state benefits to come. Arguably, corruption has just moved on to a larger political arena.

The role of the political party continued to grow until it became a centralized extra-parliamentary machine, constantly seeking to impose its discipline and its doctrine on the MP and the party-worker alike. The net result of this is that the House of Commons ceased to be the 'electoral college' for the Prime Minister and the Cabinet, and ended up as merely a forum of debate between well-disciplined political armies, of late staged more for the benefit of the television cameras than for the advancement of sound government.

Although the first example of the modern mass party was Joseph Chamberlain's Birmingham caucus, the recently created Labour movement, lacking the traditions and resources of the established parties, had to build a disciplined party machine for its own survival (and the Conservatives followed suit). By the middle of the twentieth century, the two great party oligarchies had appropriated most of the sovereign powers that Bagehot ascribed to the House of Commons.

The politics of the last decade of the twentieth century have sharply accentuated this trend – Mr Hague's muscle-flexing towards errant Peers and Shadow Cabinet members is a direct reaction to the perceived 'weakness' of his predecessor. Although the autonomy of the individual MP and his relationship with his constituents used to be important bulwarks of our democracy, this failed to impress the electorate in 1997. Mr Blair was elected for his perceived emphasis on strong leadership and party discipline, whereas Mr Major was rejected for trying to see both sides of an argument.

Crossman argues that the other cause of the drift towards centralization of power has been the two World Wars. In the paradigm case of the separation of powers, as established by the US Constitution, the main focus of activity of the President, and the areas where his powers are relatively un-

checked, is in the declaration and prosecution of war, and the defence of the security and trading arrangements of the nation. This again was based on the English experience, where the prosecution of war was the prerogative of the executive (the Crown). But when the executive evolved into a committee of parliament (the Cabinet), this became our Achilles' heel in times of war. Both World Wars led to (temporary) increases in power of the Prime Minister, but, as tends to be the case, executives are loath to abandon their newly-won powers on the cessation of hostilities. The war-time centralization of power was not reduced by Mr Attlee, and decisions which in the 1930s might well have been taken by the whole Cabinet, were transferred to the Cabinet secretariat, committee or the Prime Minister himself.

The other major historical trend since the time of Bagehot is the matching of the reduction in the power of Parliament and the Cabinet by the enormous growth in state bureaucracy, both at local and national level. As Bagehot predicted, the professional civil service has largely taken over the common-sense business decisions that would normally be the prerogative of the inexpert minister in his department, or of collective Cabinet decision. The conflict between Sir Humphrey and Paul Eddington's hapless Minister for Administrative Affairs in *Yes Minister* is an amusing portrayal of the declining role of ministers in the conduct of departmental affairs – even though this trend was partly reversed after 1979. No doubt this has made public administration far more efficient, but there is always a price to pay. Since 1919 the civil service has been unified under the Secretary of the Treasury, and the regulation requiring the consent of the Premier to senior appointments has given a further boost to Prime Ministerial power. This means that loyalty, rather than independence of thought, has become the supreme virtue in both the political party and the civil service.

Arguably even at the time of Bagehot the Prime Minister's powers were, at least in theory, little short of presidential. He could select and dismiss his Cabinet at will, he could announce Cabinet decisions without taking a vote, and had control, through the Chief Whip, over patronage. But in practice things were rather different. Political parties used to have much of the character of aristocratic clubs, containing, in part,

people without whom a leader simply could not govern. After 1945 this characteristic has more or less vanished – parties have become bands of standardized professionals who, having chosen a leader, are then obliged to fall in line behind him/her.

As a consequence the power of the Prime Minister has increased steadily, through the centralization of the party and state bureaucracy under his control. However Cabinet ministers are still collectively responsible for decisions that are not of their own making, as Douglas Hogg and Angela Browning discovered at the time of the BSE crisis. As this collective responsibility now extends down to the level of the PPS, it means that an ever-increasing proportion of the parliamentary party is held hostage to the Prime Minister's decisions.

All these developments have led to the situation where the Cabinet has now followed the Commons, the Lords and the Crown from the 'efficient' to the 'dignified' part of the constitution. **Tony Benn** goes further (p. 60):

Today it would be more accurate to describe the House of Commons as the dignified part of the constitution, which is there to 'excite and preserve the reverence of the population' while the powers of the Crown, controlled by the Prime Minister, are the efficient part 'by which [government], in fact, works and rules'.

Power is now effectively in the hands of the Prime Minister and the permanent civil service. Although the outward display of Cabinet government is still maintained, there are times when it is revealed as a clear fiction – for example the decision to test Britain's first atomic bomb was not even discussed in full Cabinet.

Crossman notes that the centralization of power in the state has been paralleled by a similar process in finance, business and industry. During the 1980s the abolition of exchange controls and the development of global trading systems meant that real power moved to multinational corporations and global capital markets. As the regular daily flows of speculative capital are in excess of the GNP of many small countries there is an understandable sense that our own economy is beyond our national control, as there is often no direct rela-

tionship between the value of a currency and underlying economic fundamentals. George Soros has acknowledged that the assault on the pound that bounced us out of the ERM in 1992 was partly motivated by his personal resentment over the treatment he received on his arrival as a penniless immigrant in Britain. Arguably, attempts by a small country to regulate capital flows would be just as futile as attempting to control the Internet,⁵ but politicians of all colours are reluctant to admit their impotence in the face of global capital, so the debate never really seems to get off the ground.

More worrying still is the centralization of ownership and control of the mass media. Unlike the case in the United States, most British TV and radio channels are effectively national;⁶ most of the daily papers are published in London and many are owned by the same publishing groups. Rupert Murdoch is widely believed to have been the kingmaker behind the last two election victories – the support of the *Sun* is perhaps the most valuable electoral asset – but it would be naive to think that there was no price attached.

Perhaps on account of all this happening during a period in which there was a steady rise in the standard of living, the general drift towards centralization (on both sides of the Atlantic) has been accepted with a shrug of the shoulders by a generally apathetic electorate. President Clinton's personal self-help mantra ('it's the economy, stupid') won him a second term and also helped him survive impeachment. Similarly the relaxed attitude towards allegations of sleaze in Mr Blair's Government is in sharp contrast to his predecessor's experience. The crucial difference is, of course, the 'feel-good factor' that is largely the product of a stable and buoyant economy.

Although opinion polls still show that most people are opposed to EMU and the abolition of the pound, they also show a majority believing that we are powerless to resist the

[5] This is probably the strongest argument in favour of European integration, leading **Roy Jenkins** to argue (in parallel with the UKIP), that Britain needs to be either wholly out or else wholly in. 'In Europe but not run by it' is a nice soundbite but in practice means little, as the EU is clearly much more than a free-trade zone. However **Peter Shore** and **Norman Tebbit** comment on the duplicity of past governments who sold the Common Market to the British people on the assurance that it was precisely that.

[6] Notwithstanding a small amount of regional programming.

inevitable drift towards deeper European integration. If it is the case that decisions will increasingly be made in Brussels, then a lack of interest in the finer points of our constitutional arrangements is understandable.

Crossman was clearly troubled by the developments that he witnessed after the war, but ends on a note of cautious optimism:

In theory – but also in practice – the British people retains the power not merely to choose between two Prime Ministers, and two parties, but to throw off its deferential attitude and reshape the political system, making the parties instruments of popular control, and even insisting that the House of Commons should once again provide the popular check on the executive. It is my hope and belief that this will happen.

I cannot see how a commentator writing 35 years after Crossman could hold out much hope for such an outcome. As **Peter Osborne** demonstrates, the penetration of the Government Information and Communication Service by Labour Party special advisers has led to much resentment and the prospect of a further undermining of the political independence of the permanent civil service. As for Crossman's hope that we might finally shrug off our deferential heritage, all that has happened is that the new ikons of youth, image and charisma have replaced our traditional deference to birth, status and the great institutions of state.

The 1997 intake of young career MPs, with their lack of experience outside politics or the public sector, pagers to keep them on-message and lists of planted questions for PM's question time can hardly be relied on to 'provide a popular check on the executive'. The great tradition of parliamentary oratory is all but dead, leaving the role of the MP as little more than lobby fodder. The drift towards PR and the closed party list can only enhance the dictatorial powers of the Prime Minister and his party managers. The incorporation of the European Convention on Human Rights (see **Johnson**) and the constant stream of regulations from Brussels have serious implications for the independence of both our judiciary and legislature. The appalling quality of public debate and the blatant partial-

ity of large sections of the media⁷ means that the fourth estate now appears to have joined the other three (Crown, Lords and Commons) on the benches of the 'dignified' part of our Constitution.

Perhaps 'media bias' is nothing more than the natural sympathy for a centre-left agenda that one would expect from the humanities and social-science graduates of the 1970s. But another viewpoint is that it reflects the power of government patronage. As we enter the free-for-all era of digital broadcasting the BBC is naturally concerned to preserve its standing (and licence fee), so managers and editors are wary about offending a government with strong links to the Murdoch empire. But more worrying is the tendency of government press officers to exclude hostile media from their unofficial briefings. The present Government has a policy of leaking policy statements first, with parliamentary announcements playing a very secondary role. The attack on Iraq in January 1999 was announced to the press on the steps of 10 Downing Street, rather than to Parliament, and it would appear that the editor of the *Sun* was gifted with this scoop several hours before anyone got round to telling the Leader of the Opposition. There is a genuine fear amongst editors that, if they overstep the mark, the Prime Minister's Press Secretary will make sure that any government-orchestrated scoops will go to their competitors. Given the intense competition amongst the national dailies, any newspaper that consistently misses the important stories will rapidly lose readers. We are now said to live in the 'information age' and the value of government patronage over access to information is enormous. There is a good case for this uniquely modern form of patronage to be subject to the same scrutiny as other forms of government influence. Once again, the public and media focus on more 'dignified' forms of patronage—in particular the honours system—has helped to conceal the modern 'efficient' form (the ownership and distribution of information).

According to Bagehot's analysis, the 'dignified' part of the constitution—the pomp and pageantry that is a reminder of our feudal past—plays an important, but anti-democratic, role. He reached this conclusion largely on account of his own

[7] Peter Osborne, 'The Silence of the Sheep', *The Spectator*, 15 January 2000.

modification of utilitarian and rationalist psychology. Bagehot's insight was that although *rational* behaviour is motivated largely by self-interest, nevertheless human beings are, for the most part, creatures of *habit, circumstance and tradition*. 'It is the dull, traditional habit of mankind that guides most men's actions.'

This being the case, the role of the 'dignified' part of our constitution is to satisfy our habitual attitudes and traditional loyalties, and to provide a smokescreen for the 'efficient' part of government.⁸ Bagehot was convinced that most Englishmen believed that they were still governed by the Queen. I am reminded of a plumber friend who went to service a central heating installation, only to find that the room thermostat was not connected to the boiler. Nonplussed, he questioned the householder, who replied that it was 'just for the missus' and pointed out where the real (hidden) thermostat was located.

The American Experience

Mr Blair is not best known for his love of history. Indeed the current debate largely ignores the historical dimension, so it might be helpful to compare and contrast our own Constitution, which is by and large the product of happenstance, with that of the United States. The latter was the product of design – specifically the special constitutional assembly that met in Philadelphia in 1787.

The US Constitution represents a compromise between a number of different factions, so to understand the guiding principles of the Founders we are better off examining secondary documents. The debate over the ratification of the Constitution (by the state assemblies) largely took place in newspaper columns. Both sides of the argument (the federalists and the anti-federalists) were anxious to prove their solid republican provenance and assumed appropriate *noms de plume* like 'Brutus' and 'Publius'. However, despite the deference to classical republican theory and rhetoric, the federalist argument was firmly grounded in modern political *experience*;

[8] It should not escape our notice that much of what passes for the ancient ceremonies of state was deliberately manufactured at the beginning of the twentieth century by officials at Buckingham Palace, largely in response to the altered political landscape that followed Disraeli's Reform Act.

in the words of John Dickinson, one of the framers of the Constitution, 'experience must be our only guide; reason may mislead us'.⁹

Although the newly-independent Americans had just emerged from a bitter struggle with their old colonial masters, they nevertheless had enormous regard for the British constitutional model—the American Revolution was 'not against the English constitution, but on behalf of it'. The formal analysis of the division of power between the three estates (the king, the nobility and the commoners) was felt to accurately reflect society at the time—the challenge to the Founders was how to adapt this to an egalitarian, republican model.¹⁰ Similarly the principled separation of executive, legislative and judicial function was an important part of the British Constitution and essential for the preservation of civil liberty.¹¹ Thus elected members of Congress were prohibited from serving as government ministers, and the President only had the right to return legislation to Congress for reconsideration.

But to James Madison, one of the trio whose arguments appeared in various New York newspapers under the pen-name 'Publius', freedom depended on more than the formal separation of powers. Madison's main concern was the pres-

[9] Iain Hampsher-Monk, *A History of Modern Political Thought* (Blackwell, 1992).

[10] It was also felt that the mixed constitution was an important defence against moral decay and the preservation of civic *virtù*. Scholars still disagree as to whether classical republican ideas like this or the modern notion of the pluralistic balance of power were the prime influences on the thoughts of the Founders. However, notwithstanding this controversy, it is fair to conclude that the Founders were well aware that large-scale republics could not rely on consensus or the inculcation of human goodness by civic or religious means. The only answer was to design a set of political institutions that ensured public virtue, notwithstanding private 'interest'. In this sense the US Constitution was very much a product of the Scottish Enlightenment. See **Berent & Sutherland**.

[11] Of course Bagehot argued nearly 100 years later that this was largely mythology. Although normally referred to as the 'separation of power', it is more accurate to refer to the division of each analytically-distinct power and the distribution of its parts amongst two or more departments. In both the English and the American case there is considerable overlap of powers between the formal estates, both in theory and in practice. Discussions of 'legislative', 'executive' and 'judicial' powers refer more to the abstract analysis (James Madison's 'parchment barriers') than individual units of government. What is important is that power should never be wholly concentrated in one pair of hands or in one group of people. (Hampsher-Monk, *op. cit.*)

ervation of the rights of individuals and minorities (and the protection of private property). The anti-federalists argued for a system of small-scale representative democracy, whereas Madison and his colleagues were concerned about the danger of popular demagogues and their factions (usually the poorest members of society). This led to the call for large, broadly-based electoral areas and all that implied for the emergence of a natural aristocracy of merit. Madison also made much of the necessity for balancing the power of the different departments of government through the exercise of veto: 'Wherever the real power in a Commonwealth lies, there is the danger of oppression.' Although the Founders had just emerged from a war against a single executive and an unrepresentative parliament, they were still aware that the greatest threat to private rights was the unchecked power of the majority: in a republic one must 'not only guard against the oppression of the rulers; but...guard one part of the society against the injustices of the other part'. Authorities like Locke and Montesquieu were cited in support of this – uncontrolled legislatures could be just as tyrannical as absolute monarchs. Madison argued that democracy was only suitable for small cohesive communities, and America effectively ended up with an elective republican aristocracy, albeit one of wealth and reputation, rather than birth. This was because, like Montesquieu, Madison realized that political freedom depended on moderate government – direct or populist democracy would be anything but.¹²

The US Constitution has not been without its critics, but looking back on the arguments of the Founders the clear division of responsibilities has held up reasonably well over the last two centuries. This has been largely because the need for pluralism, checks and balances was explicitly recognized and incorporated into the Constitution at every level.

By contrast, the English Constitution is not so much the result of design (notwithstanding the events of 1688/9) but of the progressive erosion of feudal power. It is unwritten, and is a cocktail of historical events, parliamentary laws and judicial

[12] Although the US centre of gravity has moved more recently in the direction of direct democracy, the increased reliance on referenda is almost entirely at the state level rather than at that of the federal government. Of course Madison would also have been unable to foresee the rise of focus-group politics and the influence of the mass media.

decisions. The problem is that the three estates (Crown, Lords and Commons) are now only of interest to the heritage industry and cannot in any meaningful way be said to represent a system of balances or checks on the exercise of power. As we saw in the first section, Bagehot described how the progressive erosion of these feudal estates has ended up with pretty well all of the balancing influences moving over to the 'dignified' part of the constitution. This is an inevitable consequence of the movement from feudalism to modernity but, such is the force of the myth of the separation of power, the erosion has happened without most of us even noticing.

The problem of the American Founders was how to develop a system of government that did not depend on the checks and balances provided *naturally* by the three estates of Old England. The result was the elaborate system of *formal* checks that makes up the US Constitution. As the natural checks and balances of the English system have now all disappeared, a Royal Commission on the Constitution would find itself faced with exactly the same set of problems that the Americans grappled with over 200 years ago. If anything is crying out for the holistic approach of 'joined-up government', it has to be constitutional reform. Yet Labour's approach so far – in particular in the areas of devolution and Lords' reform – has been piecemeal and opportunistic.¹³

It is no doubt the case that the bulkheads separating the executive, the legislature and the judiciary have always leaked. No one could sensibly claim that judicial decisions were ever taken in a political vacuum. But recent decades have seen an increase in the use of the process of judicial review – the rulings of Home Secretaries have frequently been overturned by the judiciary. Added to that, the split decision of the Law Lords in the Pinochet case was largely along ideological lines, as was freely admitted when Lord Hoffman was rebuked for failing to reveal his close links with Amnesty International. The incorporation of the European Convention on Human Rights into British law now requires our judges to make decisions that should rightly be in the hands of elected politicians. There is nothing democratic about the appointment or dismissal of our judges, and they are only accountable

[13] See Carrington; Dalyell; Johnson; and Peele.

to themselves (and their peers). It is ironic that the power of one unelected group in our Upper House is growing at the same time that the Government has effectively dismantled the far more modest powers of other members of that chamber.

But the biggest problem is the relationship of the executive to the legislature. British observers of the US polity tend to be put off by the built-in tendency to gridlock. How could anyone design a system that can set off a Democratic President against a Republican Congress? But the system seems to work, more or less, and one of the benign consequences is a built-in moderation – given the powers of Congress to refuse to bank-roll the government, and the powers of the executive to veto or return legislation, anything that eventually makes it on to the statute book has to be broadly acceptable.

In practice the British system is entirely different – the ministers of the Crown sit in the Commons and are appointees of the majority parliamentary party. The majority party in Parliament and the executive are effectively one and the same – a clear travesty of the principle of the constitutional separation of powers. Given the power of the party whips, and the impotence of the Upper House, this means that the leader of the majority party has a five-year electoral mandate for dictatorship.

Reform of the House of Lords

If anything, the only part of our constitutional arrangements that was working more or less as intended was the unreformed House of Lords. As the hereditaries (who made up the vast majority of the Lords) did not owe their position to the patronage or support of anyone among the living, they were in an ideal position to exercise the independence of judgment that our informal constitutional arrangements depend on.¹⁴ Although they were in the most part Conservative, the whip did not lie very heavily on them and on occasion they showed

[14] As the Earl of Onslow charmingly put it: the Lords work[ed] so well just because the hereditaries 'don't give a bugger'. This wasn't a reference to their Lordships' views on parity in the age of consent for sexual relations. He meant that the hereditaries were free from all pressures to toe the line and were only answerable to their consciences. Coupled with an inbred sense of duty and public service this made for the ideal scrutinizing chamber, in stark contrast to the party-political posturing of the Commons (see **Lucas**).

a surprising degree of independence of judgment. Most of them were acutely aware of their own illegitimacy (democratic, that is), that the hereditary principle was almost impossible to justify to the modern mind-set and that they were only there because no one had been able to come up with a better system. In the past this led to a general acceptance of the Salisbury Convention, whereby legislation for manifesto commitments is let through intact, but the hereditaries—at least before they acceded to the Weatherill amendment—felt that they had an additional role in the protection of the Constitution from attack by the government of the day.

But, however well the House did its job, it was undermined by its own composition, leading **Peter Carrington** to realize as early as the 1950s that reform was necessary. Although the powers of the House were very limited, it was considered that the Lords had no right to challenge the ‘will of the people’ as manifested in the elected House of Commons. Although a sensible compromise was agreed by all three parties in 1968, this was torpedoed by the ‘curious alliance’ of Michael Foot and Enoch Powell.

Michael Rush commends the Wakeham Report as focused, skilfully constructed, and politically realistic. By contrast **Conrad Russell** argues that this was a prime opportunity to redress Hailsham’s problem of the ‘elective dictatorship’ at the heart of the British Constitution. Although there is a case for a degree of nomination to preserve the independence of cross-benchers, nevertheless Russell claims that ‘election is the only language that the Commons understands’. The unchecked power of the Commons is in danger or corrupting absolutely. We are at a crossroads: constitutional government is in danger of turning into ‘something else’.

Interestingly, the Conservative Party Mackay Report also called for an elected second chamber, a view developed here by **Andrew Tyrie**.

Local Government

Local government since the Second World War has been a story of remorseless centralization, according to **Simon Jenkins**. In parallel with the nationalization of hospitals, prisons and welfare provision in the 1940s, the freedom of local

councils to raise and spend local taxes has been curbed. Although this began in the '70s under Tony Crosland, Margaret Thatcher launched a wholesale assault on local democracy in the mid-1980s.

The context for all this was the degeneration of local democracy into party cabalism. 'Loony left' councillors imposed huge rate rises, safe in the knowledge that most of their electors were protected by social security, leading to the capping of local rates in 1984.

Lady Thatcher recalled in her memoirs that the Community Charge was intended to revitalize local democracy by sowing a few nettles in the grass. Councils would have to raise the money they needed for the level of services that they chose to provide, and answer for that choice in a local ballot.

Just as the American colonists raised the cry 'no taxation without representation' as they threw King George's tea into Boston Bay, Thatcher attempted to bring home the revolution with the poll tax. But in the process she effectively reversed the slogan to 'no representation without taxation', allowing opponents to claim that the poll tax was an attack on fundamental democratic rights.¹⁵

Several other factors conspired to frustrate the attempt to revitalize democratic accountability. In order to be acceptable to the poor, the tax had to be set at a low rate,¹⁶ meaning that central government continued to provide the majority of funding. The final nail in the coffin was the Treasury insistence that the tax should continue to be capped.

As is so often the case, the centralization of local government has had unforeseen ramifications. Councillors were left

[15] It should be noted, in passing, that the very people who took to the streets to protest against the poll tax now seem to have accepted some of the principles that lay behind the tax, but recast in the Newspeak of the 'relationship between rights and responsibilities'. Thatcherism had little time for such 'Third Way' abstractions.

[16] Nevertheless the poll tax was pilloried as a regressive 'tax on the poor', leading to the rallying cry 'can't pay, won't pay'. Arguably the National Lottery is, in practice, an even more regressive form of taxation, as the average weekly spend of £5.37 (by the one-third of households who play the game twice a week) is concentrated among the lower socio-economic bands. It would appear that people have no difficulty stumping up the 'bread' if there is a hint of future circuses but, given the infinitesimally-small chance of winning the jackpot, perhaps after all the Lottery is just a tax on the gullible.

with the responsibility to administer local services but were stripped of the power to set levels of taxation. Electors were quick to spot the power vacuum so interest in local politics hit an all-time low. Most people are unable to name their own council representative and local newspapers pay little attention to Town Hall debates, preferring to fill their pages with 'human interest' stories.

Whereas people used to take their housing and other domestic problems to their local councillor, nowadays MPs' surgeries and postbags are occupied with matters that should really be dealt with at the local level. **Bernard Weatherill** notes that there are currently 40,000 letters coming into the Palace of Westminster every day, causing MPs to stay in their offices devoting their time to matters that don't really concern them. The role of an MP is, in Gladstone's words, to 'hold the Government to account', and if MPs are not in the Chamber this means that the Government could 'get away with murder'. As Weatherill's essay is entitled 'The Law of Unexpected Consequences', he obviously takes a charitable view of the reasons behind this development, but those of a more cynical disposition might conclude that governments would in general prefer *not* to be held to account.

Devolution

One of the first acts of the New Labour Government was to address their manifesto commitment over devolution (Scotland, Wales and the London mayoralty). This is often cited as evidence that Mr Blair's reputation as a 'control freak' is exaggerated. Simon Jenkins gives New Labour great credit for these developments, describing them as 'setting out to reverse the centralist tendency of government since the Second World War' and 'the most radical for over a century'.

However, as **Dalyell**, **Johnson** and **Peele** are quick to point out, the commitment to devolution was mostly a question of 'unfinished business' and scant attention has been paid to the constitutional implications for the United Kingdom as a whole. **Diana Woodhouse** argues the need for a Constitutional Court to deal with disputes over the devolved powers and a radical reappraisal of the role of the Lord Chancellor.

Moreover we are only just beginning to see the effects of devolution on the English. For centuries, as the dominant nation in the Union, the sense of English national identity has been deliberately suppressed – subsumed under the concept of Britishness, now seen by an increasing number of historians as a manufactured construct. The end of empire and the diversion of overseas trade from the Commonwealth to the European Union have all served to damage the notion of Britishness, but the final nail in the coffin has been the establishment of devolved assemblies for Scotland, Wales and Northern Ireland. This has led to an outpouring of books and television and radio programmes all debating the imminent demise of the Union and the resulting identity crisis of the English.¹⁷

Just as Scottish nationalism achieved a great fillip as a result of the imposition of Thatcher's hated poll tax, a similar sense of injustice is fuelling the emergence of English nationalism. Why should the Scots have their own Parliament and continue to be massively over-represented at Westminster and in the Cabinet? Why is regional aid weighted to favour the Scots over other equally-disadvantaged English regions? This has led William Hague to argue for 'English days' at Westminster when only English MPs are allowed to vote on English issues, but there is a growing minority calling for an English Parliament and the conversion of the United Kingdom into a federal state, partly as a preemptive defence against creeping Euro-federalism.

What is to be Done?

There is a danger that reviewers and readers might regard this book as little more than the rantings of a collection of modern-day Jeremiahs and Cassandras, lamenting the passing of the golden age of 'government by conversation'. So, given some

[17] Vernon Bogdanor, *Devolution in the United Kingdom*; Jonathan Bradbury, *British Regionalism and Devolution*; David Cannadine, *Britain in Decline?*; Linda Colly, *Britons: Forging the Nation, 1707-1837*; Norman Davies, *The Isles*; Simon Heffer, *Nor Shall my Sword*; Peter Hitchens, *The Abolition of Britain*; Andrew Marr, *The Day Britain Died*; Tom Nairn, *After Britain*; Jeremy Paxman, *The English*; John Redwood, *The Death of Britain?*; Michael Wood, *In Search of England*.

measure of agreement on the nature of the problem, we now need to move on and ask the question ‘what is to be done?’

One possible course is the path of reaction—a perfectly proper approach unless you happen to be a hardline Whig and claim that history is as irreversible as the thermodynamic ‘arrow of time’. Tam Dalyell¹⁸ locates the Indian summer of representative democracy as the early 1960s, so why not just attempt to consciously recreate the conditions that prevailed at the time?

Dalyell pinpoints several factors leading to the end of ‘government by conversation’. Some of these are simple and straightforward—for example, before the construction of expensive office buildings most MPs had to make do with a locker. This meant that the main locus of ‘government by conversation’ was the Smoking Room of the House of Commons. It would be a comparatively simple matter to flog off the offices and kick out the secretaries and ‘research assistants’. If this means that MPs are less able to service the burgeoning needs of their constituents then so much the better as, according to **Simon Jenkins** and **Bernard Weatherill**, this is a usurpation of the role of local councillors. If MPs are to spend their time in the Chamber holding the government to account then they can do a much better job if they are not in their offices, waiting for the division bell to ring.

The other urgent reform needed, argues **Peter Hitchens** (in tune with both **Tony Benn** and **Jonathan Freedland**), is the curb of the royal prerogative, handed on from monarch to government after the 1688 revolution. Much of this power could be given to a strengthened and more independent House of Commons in which, most importantly, the power of the party whips had been curbed. Unfortunately the chances of a government choosing to cede these historic powers voluntarily is on a par with a turkey voting for Christmas.¹⁹

[18] Tam Dalyell, ‘On the Decline of Intelligent Government’, in Ivo Mosley, ed., *Dumbing Down: Culture, Politics and the Mass Media* (Imprint Academic, 2000).

[19] However these things do happen from time to time: the establishment of a full range of departmental select committees by the Thatcher Government in 1979 provided a very real boost to the power of MPs to hold the government to account (see **Johnson**). **Bernard Weatherill** suggests a number of ways in which such reforms could be extended.

Douglas Hurd has argued that in addition to the power of the select committee, departmental question time and meetings of backbench MPs place a

But of course the problem runs deeper than that, and is part of a much broader shift in society. The last few decades have witnessed the rise of the professional politician – young MPs with little or no experience of outside life are becoming the norm. The death of Alan Clark appeared to mark the end of the era of the MP of independent means who cared little for party discipline or public approval, and the Nolan and Neill committees have made it far harder for MPs to combine politics with extra-parliamentary commercial interests. Even if the power of patronage and party whips were curtailed, it is hard to imagine a return to the golden age of the independent-minded private Member. As Burke put it, ‘There can be no independence of mind without independence of means.’

Most of the reforms that would be required would be deeply unpopular with MPs, besides which the evidence for elites reforming themselves is patchy. Traditional representative democracy and ‘government by conversation’ also require a culture of deference based on the notion that the political elite knows best and should be left to get on with its business without the constant intrusion of media scrutiny. **Bernard Weatherill** describes how when he was Conservative Deputy Chief Whip and then Speaker his primary concern was to maintain the dignity of the institution of Parliament. This entailed the House looking after its own disciplinary matters, and errant members were usually advised to retire on grounds of ill-health. According to Weatherill, the independent watchdog culture has been nothing less than disastrous.

The decline in respect for our parliamentary institutions is also the result of an increasingly intrusive press. **Peter Osborne** recounts how the attitude of the ‘lobby correspondent’ to the government used to be almost as deferential as it was towards royalty. But all that changed in the 1960s when political journalists were first courted by Harold Wilson. However

very real constraint on the power of government ministers. According to Hurd, the fashionable Whig view that the British system of ‘fused’ government supports a secretive and tyrannical executive is an exaggeration. The way to address the failings of the British parliamentary system is to build on the strengths of our fused system, with a smaller House of Commons and a reduction in the number of career politicians (Douglas Hurd, ‘The Whig Illusion’, *Prospect*, February 1997.) Unfortunately the tide would seem to be flowing in the opposite direction.

once the media started to flex their own muscles the tail soon began to wag the dog. The growth of the broadcast media, coupled with the televising of Parliament meant the end of government by conversation. Even if **Peter Shore's** suggestion is taken up that ministers should be compelled by force of law to make announcements first to the House of Commons, we now live in an age of instant communications and this in itself calls for revisions to our model of government.

All this has coincided with a widespread cynicism among the general public towards all the great public institutions – the church, the monarchy, parliament, the professions and authority in general. Is it possible that such a process could be reversed?

Historical precedents are few and far between. In some ways there are parallels between our present times and the cynicism that was endemic at the beginning of the nineteenth century. Historians like Gertrude Himmelfarb²⁰ have charted the transition from the decadence of the Georgian and Regency period to the revitalization of our great national institutions in the reign of Queen Victoria.

However, as Himmelfarb is quick to point out, the civic revival was largely a reflection of underlying religious trends. Following the rise of Methodism in the eighteenth century, and the ensuing religious revival associated with Evangelicalism and, later on, the Oxford Movement, there was a notable shift in both personal and civic morality, leading the Victorians to take genuine pride in the great institutions of the nation. However there is no reason to think that another such religious revival is likely, notwithstanding the Prime Minister's attempts to emulate Moses at the 1999 Labour Party Conference (see **Diboll**). Although some Conservatives might hanker for an *imposed* return to traditional values in morality, education and civics there are equal opposing forces on the libertarian Right.

Peter Hitchens focuses on the monarchy as the key genuinely popular obstacle to what he calls the 'government's creeping putsch'. And there are historical precedents: Charles I saw himself, rightly or wrongly, as the defender of both the rule of

[20] Gertrude Himmelfarb, *Marriage and Morals Among the Victorians* (I.B. Tauris, 1989).

law and government by consent; it took a republican regime to impose a military dictatorship. So strongly was the monarchy perceived as the best insurance for liberty and the rule of law that these powers were formally retained in 1689. More recently the retention of the monarchy in Italy, albeit as something of an empty husk, ultimately led to Mussolini's downfall, since in 1943, after 22 years of fascist rule, a group of disaffected fascists and opposition politicians were able to rally around the King against Mussolini. In an interesting example of the monarch providing a focus for the forces of liberty, it was Victor Emmanuel who personally signed Mussolini's arrest warrant.²¹

The Prince of Wales has shown a robust independence from the government of the day, as evidenced by his snubbing of the Chinese delegation and the 'monstrous blancmange' at Greenwich, his opposition to GM foods and continuing support for country sports. Such a monarch could well become the focus of dissent against an authoritarian government, using nothing other than the very real legal powers retained in 1689.

[21] Hitchens also suggests another parallel between *Il Duce* and the current occupant of No. 10 Downing Street. In his view Mr Blair is only the front man, an 'attractive figurehead', selected for his telegenic and thespian powers by the cabal which took over the Labour Party in the 1980s. Whilst this smacks of conspiracy theory it remains the case that this was one of the factors that led to the Party rallying behind Blair rather than Gordon Brown after the death of John Smith, and Mr Blair's ability to adapt his image, views (and accent) to suit his audience is well known.

In his authoritative biography of Mussolini, Denis Mack-Smith remarks that 'Mussolini [should be seen] as an actor or dissimulator, an exhibitionist who changed his role to suit the occasion' (D. Mack-Smith, *Mussolini*, Weidenfeld, 1981, pp. 111-12)

Lada Rafanelli, Mussolini's one-time mistress noticed:

...that at some times he seemed to her like a burlesque actor; he appeared to lack a well-defined inner personality – he told her he did not understand his real self...He had the disconcerting habit of changing his mind in the course of a single conversation in order to agree with what she said; other people in later years confirmed that he always tended to agree with the person to whom he had last spoken...and he confessed that he felt much more at home on a public rostrum than in a private conversation. (*ibid.*, p. 21)

Bringing Home the Revolution

What might be the radical-progressive solution to the decline of parliamentary government? As the American Constitution was based on the 'English experience', **Jonathan Freedland** argues that it is time that we repaid the compliment and 'brought home the revolution'. He is quick to acknowledge the problems with American democracy – the legislative gridlock, the 'bland, blow-dried candidates', the excessive power of lobbyists and pressure groups, the grease of 'pork-barrel' politicians and election campaigns sold to the highest bidder (or to the candidate with the most charisma). On the other hand, one might argue that anything is better than living under an 'elective dictatorship' and continuing to suffer the dramatic swings that have characterized British politics throughout the twentieth century.

To many people American culture – McDonald's and 100-channel TV networks with nothing worth watching – is tacky and vulgar, and the less we have to do with it the better. 'We're becoming just like America' is a standard British lament on a par with 'going to the dogs'. In Freedland's own words, 'America is the land of Bible-quoting fundamentalists, lamé-suited game-show hosts and gun-toting maniacs.' Why on earth would we want to emulate the United States?

The trouble is we already import American culture 'by the crate-load' every day of the week. Cultural 'globalization' is in reality a synonym for American cultural imperialism, and the popularity of Microsoft, Starbucks and McDonald's is only a reflection of consumers' free choice. We have the worst of both worlds – we import American junk culture in wholesale quantities but we do not benefit from the political freedoms and sense of control over our own destiny that Americans enjoy.

Freedland acknowledges that his ten-point programme will attract and repel both progressives and conservatives in equal measure. The main problem for the Left is accepting that their 'century-long flirtation with Marxism' was a false seduction. Freedland offers the interesting observation that socialism (in practice, if not in theory) and paternalism ('one-nation' conservatism) are two sides of the same coin – a permanent elite tending to the needs of a permanent proletariat. Both attitudes have their origin in a quasi-feudal view of society, with a

rigidly-stratified class structure. The welfare state handing down benefits to its citizens is just the twentieth-century equivalent of *noblesse oblige*.

By contrast the Americans never had a feudal society to dismantle or a mainstream socialist tradition to flirt with. The US Constitution from the start was based on the principle of equality of opportunity, hence the fact that the slogan 'hand-ups not hand-downs' has been imported to this country from the US. Whilst the Thatcher era marked the effective end of paternalistic 'one-nation' conservatism, the Left has yet fully to come to terms with the abandonment of socialism – as we have seen from the difficulties the Blair Government has experienced over welfare reform.

The other problem for the Left with the American system is that public opinion is consistently more right-wing than most political elites. Time and again opinion polls have shown a majority in favour of the return of the death penalty, the reintroduction of corporal punishment, and the loosening of our ties with (or even withdrawal from) the European Union. Similarly it would appear that public opinion is solidly behind the retention of Clause 28, banning the promotion of homosexuality by local education authorities. All these things are anathema to radicals, and lead to a cautious approach to democracy, American style.

The main problem, though, with progressives is the deeply-entrenched notion that the state should be the main, or possibly the only, source of welfare provision. We have spent a century equating the state with compassion; any retreat from public provision is immediately condemned as a betrayal of government's sacred obligation to protect the weak. In America the voluntary and charitable sectors are considerably stronger, but to British radicals words like 'charity' evoke images of the workhouse.

However, the architects of the welfare state are beginning to have second thoughts. Michael Young, the author of the 1945 Labour manifesto, has recalled that the Labour Party – by disposition more Methodist than Marxist – has a long tradition of voluntary association and self-help. Young suggests a return to the reciprocal ethic in housing, health and education. Local government, says Young, should be – as in America – more

truly local, with smaller councils reflecting a sense of communal identity (*Guardian*, 19 March 1997).²²

An interesting parallel can be drawn between Young's proposals and an early-'90s discussion document prompted by the Adam Smith Institute in which John Patten urged the replacement of the 'Nanny State' with a network of local quasi-voluntary associations. The suggestion was that much of the responsibility for policing could be handed over to local groups developed out of neighbourhood-watch associations, and that the WRVS would provide a better basis for community care than social services departments.

From the analysis above it would appear that conservatives have more to gain from the adoption of American-style politics. The main difficulty for the Right, however, is the two R-words in the title of Freedland's book.²³

The conservative abhorrence of revolutionary change goes back at least as far as Burke's *Reflections*, but if you ask most Conservatives what was their proudest post-war achievement it would more than likely be the restructuring of the economy during the 1980s. But there was nothing *remotely* 'conservative' about the economic policy of the period, it was a classic example of free-market liberalism. In Lady Thatcher's view a state that appropriated and redistributed nearly 40% of the national wealth was socialist and needed to be taken apart. Given both her philosophical individualism and the stability of our democratic institutions, the only tool left in her handbag was the 'invisible hand' of the market. Thatcherism was nothing less than the first of Freedland's R-words (revolution) applied to the economy. Although this was painful at the time, it is now accepted by most people that the economy is in vastly better shape than before. Freedland argues that we need to apply the same Thatcherite principles to political life.

Which brings us on to the second R-word – republicanism. The Conservative Party has always been a staunch defender of monarchy and the hereditary principle. But the acceptance by

[22] Gordon Brown's 2000 Budget announcement of additional tax breaks for charities and encouragement for 'civic patriotism', 'active citizenship' and nineteenth-century views of individual, family and civic obligations is an encouraging sign of a change in Government policy for the voluntary sector.

[23] Jonathan Freedland, *Bring Home the Revolution: The Case for a British Republic* (Fourth Estate, 1998).

the party of the Weatherill amendment and the effective abolition of the rights of Hereditary Peers marks a true turning point in the history of the party. There are many who say the fight should have been taken to the bitter end, or even that the Queen should have intervened in the defence of our Constitution. No other democracy would accept such a fundamental constitutional change on the strength of a party mandate that was supported by just 44% of the electorate, most of whom knew little and cared less about the reform of the House of Lords. But that is now history and Conservatives have to re-adjust to the new political landscape.

The important thing to remember is that all the historic powers of the Crown have been appropriated by the Prime Minister.²⁴ As **Tony Benn** explains in his essay, the Crown is the source of all political power in Britain and a nostalgic clinging to the institution of monarchy is the ultimate source of our 'elective dictatorship'. The monarchy is the main symbol of the fact that power in Britain is top-down, dispensed by the Crown-in-Parliament (the Prime Minister) to the *hoi polloi*, in the same manner that the Queen dispenses pennies to her grateful subjects on Maundy Thursday.

The Conservative Party has a long association with royalism. The Tories tended to support the king, who was the main bulwark against radicalism. But now that the powers of the Crown have been appropriated by political parties with very different agendas, the Conservative preference for strong government is an anachronism. Clement Attlee's nationalization agenda was on the strength of a 48% mandate. Large as that may be, it's hard to imagine such a radical programme succeeding in the US given the built-in gridlock of an innately conservative political system. Of course the converse is also true: Margaret Thatcher's programme of privatization would have been equally gridlocked under the US system. But there would have been no need for it in the first instance. Gordon Brown may have removed the causes of 'boom and bust' by allowing the Bank of England to set interest-rate policy, but

[24] Indeed, judging by the millennium-eve shenanigans at Greenwich it would appear that the Queen's presence at major national occasions is now only grudgingly accepted by her Government. Her Majesty's role that evening was confined to opening the gate to allow the children through to pull down the drapes, and holding hands with the Prime Minister.

the rest of the British Constitution is just as vulnerable to the violent political swings that have beset our history throughout the twentieth century.

A Liberal Realignment?

One of the factors that encouraged me to publish this book was an experience at the conference 'Britain in Europe', organized by the Institute for Constitutional Affairs (22 March 1999). I was amazed to see the very same people who rose to give a standing ovation to Norman Tebbit give the same treatment to Tony Benn. Of course you could argue that the debate over the European Union is the exception that proves the rule, but I would like to argue that incidents like this are a sign of a deeper shift in political alignments.

Although the terms 'left' and 'right' go back to the French Revolution, in the twentieth century they have more often been seen as markers on the socialism–capitalism axis. Hence since the end of the Cold War they appear to have lost much of their meaning. After the fall of the Berlin Wall it has been argued that we have reached the 'end of politics' and are all now (supposedly) committed to the principles of liberal democracy, free trade and market capitalism. This has left figures on the old Left with something of an identity crisis, searching around for somewhere to hang their hat.

However there is another continuum of political alignments—the axis of liberty–statism. Many radical thinkers of the old Left have been quick to divest themselves of the socialist fascination with the state and have returned to their historical territory—the defence of liberty, and here they share a common agenda with right-wing libertarians. **Mick Hume's** editorials in *LM* (a magazine previously known as *Living Marxism*) sit very comfortably alongside leading articles from the *Daily Telegraph*. The Prime Minister's contempt for what he refers to as 'Libertarian Nonsense' led Hume to consider renaming his magazine *LN*.

If there is anything that unites the disparate writers in this book, conservatives and progressives alike, it is a love of freedom and democracy and a mistrust of the aspirations of the state. But surely the governments of the 'Third Way' share the same commitment? After all Tony Blair was elected on the

back of the abolition of Clause Four and a rejection of socialist interventionism – at least as far as the economy is concerned.

A cursory examination of New Labour policies show that statism is still the driving force. The slogan ‘standards not structures’, as applied to our schools, means a dramatic increase in the role of prescribed curricula, inspection and other such Whitehall-led approaches. Although the National Curriculum and OFSTED were both Conservative innovations – introduced in response to concerns over abysmal school standards – Tories felt more at home with the other policy strand – parental choice and the liberation of schools from the tyranny of the LEAs. Many Tories are privately committed to a free-market voucher scheme in education but lack the political will to put this into practice.

The first act of the incoming Labour Government was to end opting-out and the assisted places scheme. The curriculum for the literacy and numeracy hours gives teachers detailed minute-by-minute pedagogical instructions. Chris Woodhead has suggested that OFSTED should now take on the inspection of child-minders in private homes, and the new scheme for teaching citizenship in schools could well blur the line between education and indoctrination.

Similarly Labour’s first action in the NHS was to abolish the internal market.²⁵ Doctors and hospital consultants are to be subjected to a regime of inspection, and healthcare policy is now decided by the National Institute for Clinical Excellence (NICE). Many Labour politicians view the family doctor as an unacceptable relic of a bourgeois tradition, and would prefer to bring GPs under increasing state regulation, under the pretence of ironing out inequalities or clamping down on poor clinical practice (no doubt the public enquiry announced in the wake of the Harold Shipman trial will provide the opportunity). The NHS is in a permanent state of crisis – mortality rates for cancer and heart-disease are five times worse than in the US and there is no evidence that New Labour’s top-down approach will do anything other than deepen the problems – indeed the first action of NICE was to refuse to licence the flu

[25] Although according to Labour Peer Robert Winston they haven’t even got that right.

drug Relenza for use in the NHS, thus precipitating a crisis in emergency care during the 1999–2000 flu ‘epidemic’.

Although the Labour Government no longer wishes the state to own and manage industry, **Michael Spicer** claims that this is not really a conversion to the free market. Investment decisions, environmental policy and the fixing of levels of profit are still made by state-appointed regulators. Coupled with the ever-increasing burden of employment legislation emanating from Brussels and Westminster, commercial-sector policy is still run along European Bonapartist lines, coupled with a rhetorical commitment to the American model of free-enterprise. Government ministers have even been known to interfere with the management of football teams.²⁶

The burden of taxation and national insurance has increased remorselessly under governments of all persuasion. Any economy in which the state taxes and redistributes nearly 40% of GDP is, arguably, a *de facto* ‘socialist’ state, irrespective of the ownership of the means of production. Entrepreneurs and managers may still like to consider that they run their own businesses, but in the end it is the state that is making many of the important decisions.

Conservatives and radicals alike need to do some serious thinking as to how they are going to give substance to the rhetorical injunction to ‘roll back the frontiers of the State’. In his essay ‘On Being Conservative’ Michael Oakeshott dismissed the ‘essentialist’ view of conservatism.²⁷ Conservatism has nothing to do with a belief in natural law, a providential view of history, an ‘organic’ theory of human society or the primordial propensity of human beings to sin. Neither is there any necessary connection between conservatism and royalism or Anglicanism. According to Oakeshott conservatives believe, with Hobbes and Hume, that human beings are naturally passionate and proactive creatures who, left to their own devices, will engage freely in all manner of enterprises, according to their varying dispositions. The task of government is that of the umpire in a cricket match, or the very *limited* one of ensur-

[26] Glenn Hoddle’s fate as England manager was sealed by Mr Blair on the TV chat-show *This Morning with Richard and Judy*, and David Blunkett has demanded the sacking of the manager of Sheffield Wednesday.

[27] Michael Oakeshott, ‘On Being Conservative’ in *Rationalism in Politics and Other Essays* (Indianapolis: Liberty Fund, 1991).

ing that people don't collide excessively with each other while going about their chosen business. Such a minimalist approach to government works best during times of social stability, thereby ruling out most of the twentieth century.²⁸

But what does it mean to be of a conservative disposition at a time when the status quo is that the state already runs so much of our lives? And why should conservatives wish to defend the institutions of a neo-establishment which has moved such a long way to the left of the man on the Clapham omnibus?

At the end of his essay Jonathan Freedland argues that conservatives and liberals should bury the hatchet and concentrate on the next phase of the Thatcher revolution—namely the extension of liberalism from the marketplace to the political arena.²⁹ The problem with the word 'liberalism' is that it has taken on so much baggage as to have become totally meaningless. Jack Straw recently castigated the 'woolly liberals' who were opposing his jury-trial reforms, yet we have just described 1980s conservatism as 'liberal'.

Liberalism, as Freedland points out, in its original eighteenth-century form was a movement of freedom and liberation against the state. In the nineteenth century this meant a rebellion against monarchical privilege, against the hereditary principle and against restrictions on free trade.

At the close of the nineteenth century the Liberal Party was torn apart over the Home Rule issue and then eclipsed by the rise of socialism (Freedland's 'false seduction'). The mantle of individualism then fell on the Conservatives, who sought to defend freedom by their usual method of bolstering up the traditional institutions against the onslaught of socialism. But this was no more successful than King Canute's earlier efforts, and it required an altogether more powerful medicine. If Thatcherism was liberalism applied to the economy then Con-

[28] Oakeshott would have disagreed with the widespread description of the twentieth century as the 'conservative century'. His theory of human psychology, despite its dated prose style, is in keeping with findings at the cutting edge of cognitive science—with research on autopoietic and self-organizing cybernetic systems confirming his view that order is a natural emergent property of social systems. By contrast the Third-Way emphasis on external control and regulation is beginning to look rather dated.

[29] I hope that Freedland and his colleagues will appreciate the irony of the claim that the spirit of Thatcher is alive and well in the offices of the *Guardian*.

servatives and Liberals need to reunite and extend the liberal agenda to the sphere of politics.³⁰ **Simon Hughes** and **Duncan Brack**, however, locate British Liberals within the 'social liberal' tradition and argue that right-wing admirers of the liberal inheritance often fail to recognize this.

Of course Tony Blair has himself sought to put on the mantle of Gladstone and nineteenth-century Liberalism. No doubt he would argue that his Kosovo adventure was in the great Liberal human-rights tradition, as opposed to the Conservative impulse towards the defence of national interests and a more cautious approach to internationalism.³¹ And he would go on to argue that the repeal of Clause Four and the acceptance of market capitalism marks the end of the Labour Party experiment with socialism.

However the words 'freedom' and 'liberty' rarely come up in Mr Blair's speeches. Notwithstanding the programme of devolution, Mr Blair has shown a marked reluctance to allow people to choose their own leaders: the imposition of Alun Michael and Frank Dobson on the Welsh and London Labour Parties respectively would indicate that Mr Blair's commitment to genuine self-rule is largely rhetorical. **Gillian Peele** discusses the difficulty of reconciling new structures with old political attitudes.

Mike Diboll and **Anthony O'Hear** argue that the low priority that the Blairites give to freedom and liberty has potentially sinister overtones. Both authors draw parallels between Mr Blair's oratory and the early speeches of Sir Oswald Mosley (at the time he broke away from Labour to set up the New Party). It is a mistake to see fascism as a right-wing movement as it is more accurately described as an extremism

[30] One can only speculate as to why Lady Thatcher never grasped the need to extend her liberalism to our political institutions. Was this a question of the unfinished revolution, or was it a case of an intuitive conservatism with respect to the practices and methods of politics in Britain? However the latter did not prevent her undermining local authorities or other institutions (such as universities) that prevented the realization of her economic and social objectives. The latter point could also be applied to the present administration, except that in this case it is harder to say what the objectives are.

[31] See **Jeremy Black**, who points out that so-called 'ethical' interventionism is often ineffective (as in Kosovo) and usually has unanticipated geopolitical consequences. Cynics also question whether the moral stance taken up is genuine or just an attempt to placate public opinion in a televisual age.

of the centre, with its emphasis on consensus government and a 'common national purpose'. **Berent and Sutherland** point out that the rhetoric of consensus has been associated with centrist totalitarian regimes since the time of Plato, leading to the following exhortation from **Diboll**:

A battle needs be fought for the conservation of meaningful democracy in British politics. The right and the left should, for the present, put aside their differences, just as the Western democracies once made common cause with the USSR against the Axis during the Second World War. The forces of radicalism on the right and on the left must be deployed against the incremental totalitarianism of the extremists of the authoritarian centre: tomorrow must not belong to the Blairites.

Some readers no doubt will feel that this is all a bit over the top and would agree with Bernard Crick's acerbic comment: 'Incremental totalitarianism indeed. Such partisan exaggeration defames the memory of the dead' (private correspondence). In February 1999 Max Beloff published an article in the *Times*, which presented a 'Third Way-Third Reich' opinion, prompting the *Guardian's* Hugo Young to attack a 'once great newspaper publishing the thoughts of a once-great thinker'.

Clearly there will be no consensus over such controversial claims. However if this book has a take-home message, it is that our informal, unwritten constitution – so heavily dependent on intangibles like custom and precedent – is potentially vulnerable to usurpation by an unchecked executive with an agenda of their own. It is hard to think of another example of a modern democracy where fundamental constitutional arrangements can be altered on the strength of a simple parliamentary majority, and it is this structural defect that needs to be addressed as a matter of urgency.

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