

II. Governance

A The legislative

Britain does not have a codified constitution presented in a single document. This does not quite mean it has no written constitution. Several documents of different types are considered as amounting to a constitution. They are statute law, common law, conventions, the royal prerogative, authoritative opinion and EU legislation.

Statute law is made up of acts of parliament. For example, the 1689 Bill of Rights established the sovereignty of parliament. Common law is based on judicial rulings. Written or unwritten conventions include for instance the choice of the leader of the majority party in the Commons as PM. The royal prerogative is a set of powers that still theoretically belong to the monarch but are exercised by the government (honours, appointments). The parliament has no say over them. Authoritative opinion refers to commentaries written by recognised authorities on constitutional matters (A.V. Dicey; Walter Bagehot a former editor of *The Economist*, author of *The English Constitution*, 1867). Furthermore, since 1973, EC/EU law has superseded British law in many areas.

The advantage of this type of constitution is its flexibility. Any change will only require a new law. There is no need to amend it. However, critics consider it as confused and claim it cannot be trusted to protect the country against abuse of power.

The constitution is based upon some principles, such as the rule of law, separation of powers and parliamentary sovereignty. It is however pointed out that the separation of the legislative, executive and judicial powers does not really exist. All government members must, for example, belong to parliament. The power of parliament is supposed to be absolute, it can change or repeal any act passed by a previous parliament and overturn common law. Parliamentary sovereignty is now limited by EU laws or even those of devolved assemblies. However, parliament could overturn the decisions that made EU membership or devolution possible. On the other hand it has been pointed out that parliamentary sovereignty is really executive sovereignty. A government is run by the leaders of the party that holds the majority in the Commons. Thus rebellion against the government is possible but not very easy for Members who care for their careers.

The parliament has two chambers, the House of Commons and the House of Lords. It is supposed to pass laws, vote for taxation, scrutinise the policy and the administration of the government and debate major issues. It is considered a fairly old institution. The first one was summoned by Edward I who needed funds to finance wars. It was a “model parliament”, with a high chamber and a low chamber that were to evolve into the Lords and the Commons. It grew in influence thanks to its hold over finances. By the early 17th century, the revenues of the king had become rather limited. The Commons, on the other hand, represented a wealthy class of gentry and merchants. In that century Stuart kings convinced of their “divine rights” clashed with a puritan parliament. This led to two revolutions. The first one ended with the execution of Charles I in 1649 and the setting up of a Commonwealth (republic). Monarchy was restored in 1660 but in 1688 England was ruled by James II, a catholic, who believed in his divine rights. He was forcefully replaced by his son-in-law and daughter, William and Mary. Due to this “Glorious Revolution”, rulers had to sign the 1689 Bill of Rights and agree to the supremacy of parliament over kings. The electorate gradually widened in the 19th and early 20th centuries. Modern political parties were born and the influence of the crown became vestigial although sovereignty is still held to be represented by the crown in parliament.

The House of Commons has nowadays much more importance than the House of Lords. It has 650 MPs. Most of them belong to major political parties. Debates tend to be confrontational and this is reflected in the lay-out of the chamber. There is no hemicycle, Members of Parliament sit on benches facing each others. The House is presided by the Speaker who must be neutral and has to resign from his/her party once chosen. To the Speaker's right, the majority party sits with the most important members of the government on the front benches. The less influential MPs occupy the backbenches and are called backbenchers. Opposite them sit the opposition parties. The largest becomes the official

opposition, its leader is officially recognised and paid a salary. Thus the Shadow Cabinet occupies the front benches to the left of the Speaker. M Ps work in their constituencies, on committees as well as in the debating chamber. The main committees are standing committees, where bills are debated and select committees, appointed for a particular task, such as investigating the work of a government department. The party balance in the committees reflects that in the Commons.

The two major tasks of the House are scrutinising government activity and legislating. The former can be done during Question Time or in committees. In spite of party loyalty, governments are considered as having more to fear from their backbenchers than from the opposition party. Law-making takes up a great deal of time. The burden has increased because of the number and above all the length of bills. Most bills are presented by the government. A white paper can be published, showing what the bill is going to be like. They are often announced in the Queen's Speech at the State Opening of Parliament in the autumn. However some controversial social issues (divorce, death penalty) can be presented by a private member. A bill is introduced during a first reading (in either house), it is then debated during a second reading, then it is closely studied and amended at the committee stage. It returns to the chamber for a third reading and a vote during which members go to the aye or no lobbies. Since they need to be physically present to vote, they are rounded up by Whips. After this, the bill goes to the Lords and once both Houses have voted, it still needs the Royal Assent to become an act.

The public standing of parliament has dropped since the 1990s because of conflict of interest issues. Many M Ps are consultants for firms, there has been a register of interests since 1975. In the 1990s some were accused of accepting money to table parliamentary questions (1994-5 cash for questions affair). A committee on Standards in Public Life chaired by Lord Nolan was set up. The 1995 Nolan Report led to the creation of a Parliamentary Commissioner on Standards and a new code of conduct in 1996. Yet a new scandal was uncovered by the Daily Telegraph in 2009. Over 100 M Ps of all parties made use of a lax expense regime to improve their salaries. Tax-payers were irritated when they found out the money had been used to buy dogfood or clean a moat. An Independent Parliamentary Standards Authority was set up. Misbehaving members can also be recalled.

The House of Lords can introduce some bills but its main role is to revise closely those sent by an overburdened House of Commons. Most amendments are technical and easily accepted by the Commons. The Upper House lost its right to veto bills in 1911. It has no say over financial ones. Its ability to delay others was reduced to two years in 1911, one in 1949. It can still veto a bill to prolong the life of a parliament over five years. As it tends to be less party-political it is better able to debate controversial issues. There are about 830 members (and mounting), they receive no salary but their expenses are paid.

Reforming a rather anachronistic chamber has proved difficult. A wholly or partly appointed house does not seem a very democratic proposal. However the idea of an elected senate worries the Commons. Once given an electoral mandate, it could become more assertive and prove a rival. Indeed some say that an effective check on the power of the executive is exactly what Britain needs. A 1999 reform created a "transitional house" and was considered as a first step. Prior to 1999, the chamber was composed of Lords Spiritual (i.e. 24 bishops and 2 archbishops of the Church of England), and of Lords Temporal. The latter could be hereditaries, life lords and law lords. With the 1958 Life Peerage Act, distinguished politicians, businessmen, lawyers, artists or scientists could be appointed for life. They are created by the Queen on the advice of the Prime Minister and vetted by a commission. Some questions have been raised about peerages being given as a reward for donations to political parties (cash for peerage). After 1999, only 92 hereditary peers were left (out of 100s). Until then the House had had a large Conservative majority. By 2005, there was a Labour majority due to nominations. However D. Cameron seems to be creating new lords very quickly. In July 2012, a new attempt at reform was rejected by the Commons. The bill had proposed a mostly elected chamber, with only 60 appointed members and some bishops.

Reforms concerning the separation of powers have been carried out. The House of Lords had both a

legislative and a judiciary role as a final court of appeal. With the Constitutional Reform Act in 2005 and its implementation in 2009, the law lords left the upper house and a Supreme Court of the United Kingdom was set up. Similarly, the Lord Chancellor who had executive, legislative and judiciary roles has been replaced by a Justice Secretary and a Lord Speaker.

Until the 19th century, parliament was not representative of the whole population. The franchise was gradually extended in the 19th century, first to the middle classes in 1832, then to about 60% of British men after the reforms of 1867 and 1884. It was at that point considered necessary to protect voters from intimidation with the Secret Ballot Act of 1872. All men over 21 gained the right to vote in 1918. Because of the part they had played during the war and due to a long-drawn political campaign by suffragists and suffragettes, women over 30 were granted the same right. Universal suffrage for all adults at 21 came in 1928, voting age was lowered to 18 in 1969. Constituencies were standardized. The 1949 Redistribution of Seats act eliminated remaining anomalies. The size and shape of constituencies is reviewed by Boundary Commissions. (A bill meant to reduce the number of constituencies to 600 was rejected by the Commons in 2012).

A parliament is not supposed to last more than five years. This meant that a PM would try and find the right time within this period to ask the Queen to dissolve parliament, thus ensuring the best results for his/her party at the general election. Mrs Thatcher had an election in 1983, after the Falklands war. The current government has changed this to fixed-term parliaments: if it does not lose a no-confidence vote it should stay for five years.

The electoral system for Westminster is the First-Past-The-Post one. There is one Member of parliament for each constituency. A voter chooses one candidate. The candidate with the greatest number of votes is elected. Advocates say it gives voters a clear choice of policy and there is a clear majority in parliament. Critics consider FPTP no longer reflects the choices of the electorate. The winning party's share of seats tends to be larger than its share of votes. It is particularly unfair to third parties that are evenly spread over the country. In 1983, Labour got 27.6% of the vote, the Liberal/SDP alliance 25.4%. Yet Labour got 209 seats and the Alliance only 23. (2005 : Labour 35.2% of the vote, 55% of the seats). Thus the Lib-Dems have long supported reform and proportional representation. A change to the Alternative Voting System was offered in a referendum in May 2011. Both the Conservatives and Labour campaigned against it and it was rejected.

Turn-out at elections tends to decrease. Voters seem more volatile and less influenced by social class in their choices. However, the wealthy south-east tends to prefer the Conservatives while most large cities opt for Labour. The current coalition is an exception since the electoral system is meant to secure safe majorities. In May 2010, the Tories got 307 seats (36.1% of the vote). They would have needed 17 more seats to gain an overall majority. Labour, with 258 MPs had a rather better result than expected. The Lib-Dems got 27 seats. It was less than they had hoped for, but their support had become necessary to form a government.

B. The executive.

It could be said parliament spent centuries to gain the upper hand over the executive, only to find it is again dependent on it. Already in the 19th century, Bagehot pointed out the difference between the "dignified" (the queen) and the "efficient" (the cabinet) parts of the executive. Elizabeth II's role is mainly representative. As head of state she is supposed to embody the unity of the nation and represent it abroad. She still plays a part in political life. She opens the parliamentary session in the autumn, reading the Queen's speech written by the government and outlining its policy. She can summon and dissolve parliament (when asked by the PM). She gives the Royal Assent to bills. She appoints the PM, choosing someone the Commons will approve of. Thus he/she is usually the leader of the party that has just won a general election. However, there can be some hesitation if there is no clear winner. She retains several prerogative powers, but they are exercised on behalf of the elected government; Thus she can grant honours (peerages, knighthoods etc). She appoints various officers of state in the

same manner. As Defender of the Faith, she plays a role in the Church of England and the Church of Scotland. She appoints C of E bishops and archbishops chosen by a church commission and the PM. As head of the armed forces, she is supposed to be able to declare war (or peace). She is in fact head of state of some Commonwealth countries (Canada, Australia). She meets the Prime Minister every week, giving him/her some neutral advice but she cannot criticise any decision taken by her government. The queen and her husband are paid from a civil list voted every year by parliament. She started paying taxes in 1993.

The pageantry linked to the monarchy has a political dimension. It is also a very good asset for British tourism, as could be seen in 2011 with the Royal Wedding and in 2012 with the Diamond Jubilee. The popularity of the monarchy has fluctuated. It has been considered too expensive and linked to old-fashioned social hierarchies. The royal family was particularly unpopular in the 1990s due to scandals and divorces. However the Princess of Wales kept popular support as could be seen with the grief shown by the public when she died. The image of the monarchy has improved after rebranding especially in the case of William/Kate. As happened with Queen Victoria, by the time Queen Elizabeth II reached her Golden (2002) and Diamond (2012) jubilees, she was again fairly popular. A Guardian/ICM poll in 2012 (*Guardian Weekly*, 01.06.12) found that 69% of respondents of all classes thought Britain would be worse off without the monarchy.

When W. Bagehot mentioned the "efficient" part of the executive, he thought mainly of the Cabinet. A British government has about 100 members but many are junior ministers. A Cabinet is made up of about 20-25 senior ministers, usually including those in charge of major departments, like the Chancellor of the Exchequer or the Foreign Secretary (junior ministers are ministers, senior ones are usually secretaries). They shape and oversee government policy. They are members of parliament, mainly of the Commons, chosen by the PM who leads the government. He/she is head of the executive (civil service, agencies, government) as well as leader of the majority party in the Commons. The official residence is 10 Downing Street. As we have seen a PM can use the queen's prerogative powers. Thus he/she has a great deal of influence both over the executive and the legislative. It is said that the sovereignty of Parliament, which had long ago turned into that of the Cabinet is now that of the PM. Cabinet decisions tend to be taken by the PM and his circle of personal advisers. However, this depends on circumstances and personality. M. Thatcher and T. Blair were considered as forceful leaders. J. Major was a consensus-builder in a very divided Cabinet. N. Clegg is now a very junior partner to D. Cameron. However, the current PM seems weaker than T. Blair who first lost a vote in the Commons in 2005 (PM since 1997). A Prime Minister who loses the support of his backbenchers risks being replaced as party leader and head of government. This happened to M. Thatcher and T. Blair might not have had to retire in 2007 if his unpopularity had not made him a liability for his party. The problem for D. Cameron (and N. Clegg) is that the backbenchers of both parties dislike having to make concessions to their partners in the coalition.