

The Constitutional Framework

The Political System of the United Kingdom

Intro

Basics

Historical Context
Sources and Principles

Constitutional Reform & Change

Pre-1997 Development
Labour's Reform Agenda

Conclusion



Current Events

- ▶ (Not that Baby) “British mothers twice as likely to die in childbirth as Polish women” (Guardian)
- ▶ “Ed Stone” & other campaign events; utter confusion ahead of election
- ▶ ...

Revision:

1. British system shaped by a long tradition
2. Political control over a somewhat old fashioned bureaucracy, alternation
3. Expansion of the welfare state → “deformed modern state”
4. Thatcherism a radical break with tradition

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- ▶ UK: a major European country without a *codified* constitution
- ▶ But it has a constitution!

Pre-1922 Constitutional Developments

- ▶ Bitter conflict in the past (civil war etc.)
- ▶ Slow evolution of institutions
- ▶ Parliamentary sovereignty & limited, constitutional monarchy
1688
- ▶ Long 19th century (liberalism & representative democracy)
 - ▶ Cabinet responsibility to the House of Commons 1830s
 - ▶ Supremacy of the House of Commons 1911
 - ▶ Universal voting rights → 1928
- ▶ Dominance of the status quo after WW I (flexible, stable and in both major parties' interest)
- ▶ Referenda & Proportional Representation? – renewed interest / dead after 1922 (Ireland)

Sources of the Uncodified Constitution

1. Statute law (parliament, e. g. Act of Union *or any other act*)
2. Case law (judges' *interpretation* of statutes)
3. EU law (framework or directly applicable)
4. Common law (traditional rights and liberties, under pressure since 19th century)
5. Conventions
6. Authoritative comments on the constitution

Conventions: Status

- ▶ Cannot be enforced
- ▶ Different degrees of firmness
- ▶ Openly or silently ignored if politicians can get away with it
- ▶ → change over time
- ▶ Can they constitute a constitution?

Responsible Government and Conventions

1. Ministerial responsibility
 - 1.1 Ministers answerable and
 - 1.2 Ministers accountable to parliament (for departmental policy, conduct & blunders)
 2. Collective responsibility
 - 2.1 Vote of no confidence/major issue (budget, Queen's speech)
→ cabinet resigns
 - 2.2 Ministers must support cabinet decisions in public or resign
- ▶ Conventions seriously weakened by post-war developments
 - ▶ Impact of the Fixed Parliaments Act?

The Monarchy and Conventions

- ▶ Ceremonial role; “reigning, not ruling”, political impartiality
- ▶ Queen must be informed and consulted & gives advice but decisions taken by politicians
 - ▶ Royal prerogative: residual powers, *de facto exercised by PM*
 - ▶ Appoints elected leader of majority party as PM, ministers following “advice” by PM
 - ▶ Is expected to give assent to every bill supported by majority in both houses
- ▶ But 2013: Queen & Prince of Wales appear to have “vetoed” 39 bills before they reached Parliament (“Queens/Prince’s Consent”)

Parliamentary Sovereignty

- ▶ Acts of parliament unconstrained by higher laws or authorities
 - ▶ Crystallised during 19th century (vs. courts and common law)
 - ▶ Strictly speaking, not compatible with liberal democracy
- ▶ Self-restraint and political checks
- ▶ Human Rights Act (1998) and EU

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 - ▶ Supremacy of EU law
 - ▶ HRA: Binds all public bodies & courts to ECHR, but does not affect Parliament
 - ▶ Courts can strike down secondary legislation and open fast-track for amendments . . .
 - ▶ But cannot declare primary legislation void

(The Lack of) Constitutional Change pre-1997

- ▶ Problems/Issues
 - ▶ Ongoing political debate during 1980/90s
 - ▶ New Nationalism in Scotland
 - ▶ Weakening of conventions
 - ▶ Rulings of the European Court of Human Rights
 - ▶ Implications of EU membership
- ▶ Ignored by Conservative governments
- ▶ Reform commitment of Labour (John Smith)

Labour and Reform

- ▶ Headline commitments in 1997 (source: Norton 2007)
 1. Lords reform (end hereditary principle)
 2. Reform party funding/sleaze
 3. Devolution (Scotland and Wales), elected mayors
 4. More independent but accountable local government
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- ▶ Blair inherited reform agenda from Smith
 - ▶ Frantic and somewhat incoherent activities during 1st term (97-01)
 - ▶ Shift to bread and butter issues, attempts to clean up and pursue some new activities during 2nd term (01-05)
- ▶ Brown more enthusiastic but not much activity during 3rd term (05-10)

Labour's achievements: Devolution and Local Government

- ▶ Devolution for Wales and Scotland by 1999, directly elected mayor + assembly for Greater London by 2000
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- ▶ Local government
 - ▶ Directly elected mayors and division of power introduced by a minority of large (> 85,000) cities
 - ▶ Plans for regional government failed – lack of interest

Labour's achievements: Party Funding

- ▶ New legal measures
- ▶ But both parties involved in all sorts of donation scandals
- ▶ “Cash for honours”

Labour's achievements: Electoral Reform and Participation

- ▶ Jenkins commission (1988): AV+
- ▶ PR-like systems for Wales, Scotland, (Greater) London
- ▶ No attempts for reform of Westminster elections
- ▶ Referenda frequently used, but no legal framework – implication for the constitution?
- ▶ Lord Chancellor (member of executive, parliament and judiciary) abolished, then re-instituted (2007)
 - ▶ Office of Lord Chancellor renamed (Secretary of State for Justice)
 - ▶ More clear cut separation of powers (Lord Chief Justice, Lord Speaker, Secretary of State for Justice)

Labour's achievements: Human Rights and Lords Reform

- ▶ Human Rights Act in force 2000 – consequences?
- ▶ Freedom of Information Act (2005) – consequences?
- ▶ Law Lords → “supreme court” (2009)
- ▶ House of Lords
 - ▶ Hereditary peers reduced to 92 in 1999 (10%)
 - ▶ Confusion within Labour, about 7 reform options
 - ▶ Appointed vs. elected members → no change

Constitutional Reform and the Coalition

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- ▶ 2011 Referendum on Alternative Vote for Westminster elections → 2/3: No
- ▶ Five-year fixed-term parliaments
 - ▶ PM can no longer request early election
 - ▶ HoC passes motion of no confidence, and no new government within 14 days
 - ▶ Two-thirds majority for early elections

Conclusion

- ▶ Dramatic changes since 1970s
- ▶ Partial reform, little coherence
- ▶ Blair, Cameron not really interested, Brown, Clegg enthusiastic but incapable
- ▶ Unintended (unforeseen?) consequences

Class questions

- ▶ Is Lord Hailsham's critique still pertinent to the British political system at the beginning of the 21st century?
- ▶ How might the problems which Lord Hailsham mentions in his lecture be resolved?
- ▶ Bonus: Does Britain possess a liberal-democratic constitution?