The British Constitution in 1998–99: The Continuing Revolution

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IN last year's constitutional survey for *Parliamentary Affairs* we described the range and ambition of the Labour government's constitutional reform programme, which saw eleven constitutional bills passed in the new government's first session. 1999 proved to be another historic year for constitutional change. The reform of the House of Lords, first promised in the preamble to the Parliament Act 1911, was finally embarked upon in the House of Lords Act 1999. The devolved assemblies in Scotland and Wales (first mooted as part of Home Rule all round in the time of Gladstone) were established, holding their first elections in May and taking up their powers in July 1999. The first elections were held in Great Britain using forms of proportional representation, in Scotland and Wales in May and in the European Parliament elections in June. And at Westminster the pace of constitutional change hardly slackened, with six constitutional bills coming before Parliament. The consequences of the previous year's reforms, particularly devolution and the Human Rights Act, began to make themselves felt in further changes at Westminster and in Whitehall.

Lords reform

One of the most significant developments during this year was the passage of the House of Lords Act 1999, which removed the automatic right of hereditary peers to sit in the upper house. After decades of inaction by reforming parties, partly due to anticipated difficulties in passing such a bill, this ending of some seven hundred years of tradition took place remarkably smoothly. The bill was not delayed and created virtually no disruption to the legislative programme as a whole.

The bill was published in December as 'stage one' of the promised reform programme. Its simplicity, alongside Labour's manifesto statement that removing the hereditary peers would be 'an initial, self-contained reform, not dependent on further reform in the future', led critics to claim that there would never be a stage two. The government's determination to conduct reform in a staged manner can be traced to the failed reform of 1968, which foundered over arguments about the long-term future of the House. Nevertheless, the government partly assuaged the critics by establishing a Royal Commission on Reform of the House of Lords to make recommendations for stage two. Its

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creation was announced concurrently with publication of the bill and a White Paper.[1]

Given the House of Lords' power to delay legislation for over a year, further measures were needed to ensure the smooth passage of the bill. In December it emerged that Viscount Cranborne, the Conservative leader in the Lords, along with the leader of the crossbench peers, Lord Weatherill, had been in secret meetings with the government to agree a deal whereby the hereditary peers might be persuaded to give their support. The proposed deal would retain 92 hereditary peers in the House until the second stage of reform was reached. Seats would be shared by the parties, roughly in proportion to their strengths amongst the hereditary peers. When the arrangement emerged, Viscount Cranborne was immediately sacked by William Hague for acting without his authority. However, the arrangement endured, being proposed as an amendment by Lord Weatherill and finally accepted by the Commons in the last week of the parliamentary session. This device provided a lifeline to the hereditary peers whilst giving the government a powerful lever to ensure that Conservative members of the upper house did not block the bill. When the upper house rejected controversial aspects of the government's Welfare Reform Bill, there was a threat that support for the amendment would be withdrawn. However, by careful manoeuvring both bills and the Weatherill amendment remained intact.

Three other significant amendments were made to the bill in the Lords. The first related to the independent appointments commission, promised in the White Paper, and would have made this commission a statutory body. It was overturned in the Commons and the establishment of the commission was delayed, but promised for New Year 2000. Another amendment would have preventing peers appointed since the last election voting to prolong the life of a parliament. This too was overturned in the Commons. The third amendment referred the bill to the Privileges Committee for enquiry, on the question whether peers could be lawfully removed from the House before the next general election. The enquiry however rejected the complaint.

The election of the 92 hereditary peers retained took place in October and November. Seventeen of the positions were to be taken by office holders, chosen on a cross-party basis. The existing Earl Marshal (Duke of Norfolk, Conservative) and Lord Great Chamberlain (Marquess of Cholmondeley, crossbench) were appointed automatically, with 15 other office holders (nine Conservatives, two Labour, two Liberal Democrats and two crossbenchers) elected by the whole house. The remaining 75 peers were elected by hereditaries in their own party groups, with 42 seats for the Conservatives, 28 for the crossbenchers, three for the Liberal Democrats and two for Labour.

A large number of life peers were also appointed during the year. These helped to level up the party balance in the chamber but also

included ten hereditary members, six of whom were former Leaders of the Lords and four of whom were hereditary peers of first creation. By December 1999 the government had created an unprecedented total of 181 life peers since entering office in May 1997, 88 of whom will take the Labour whip. This has considerably swollen the size of the transitional chamber, which by the end of the year comprised 525 life peers (179 Labour, 181 Conservative, 49 Liberal Democrat, 105 crossbench and seven others), plus 26 bishops, 27 current and ex-law lords and the 92 remaining hereditary members.

Whilst stage one reform was taking place, the Royal Commission was considering the options for stage two. The Commission's chairman was named in January as Lord Wakeham, a former Conservative Leader of the House of Commons and of the House of Lords, and it held its first meeting in March. The White Paper gave it until the end of the year to report and required it to have regard to four factors: the need to maintain the pre-eminence of the House of Commons; the presence of the new devolved institutions; the impact of the Human Rights Act; and developing relations with the EU.

The White Paper appeared to steer the Royal Commission towards a chamber of mixed composition, part appointed and part elected. However, the latter asserted its independence by stating an intention to hold hearings around the UK. A consultation paper was published and the public meetings primarily consisted of cross-examination of key witnesses who had submitted written evidence. All the parties made submissions in varying degrees of detail. The Labour Party's concentrated on principles, such as the need to ensure the house is representative of the population and distinct from the Commons. It stated the party's commitment to retaining an independent element in the house but did not propose anything specific. Notably, it did not discuss the respective merits of elected or appointed members, although it was widely interpreted as favouring a largely appointed house. The Conservative Party commended the report of the Mackay Commission, established by William Hague, which proposed two models for the chamber, both including a mixture of elected and appointed members. The Liberal Democrats produced a detailed blueprint for a wholly-elected chamber based on the nations and regions of the UK, with increased powers over constitutional change and new responsibilities relating to human rights, international treaties and public appointments. The Scottish National Party called for the abolition of the upper house (or failing that, a fully elected chamber), whilst Plaid Cymru favoured a chamber which linked to the devolved institutions.

Throughout the year opinion polls seemed to indicate growing support for an elected replacement for the Lords, although in general the level of public debate was low. An Early Day Motion proposed by the Conservative MP, Andrew Tyrie, calling for an elected chamber, received support of 80 Labour MPs, 35 Conservatives, 35 Liberal

Democrats and two Plaid Cymru members. However, a leak from the Royal Commission in October to the *Sunday Telegraph* suggested that a largely appointed chamber was due to be proposed. The suggestion that it might include as few as 100 elected members against 500 appointed ones was greeted by a primarily negative reaction. Proposals about functions and powers, which would include an extended role in constitutional and European matters and retention of a year's legislative delay, were less widely remarked upon. At time of writing, the final conclusions of the Royal Commission were still awaited.

The prospects for future reform of the upper house are difficult to predict. If the Wakeham Commission can present proposals around which broad consensus can be found, these may be implemented soon after the next election. However, the government's level of motivation will be affected by the performance of the transitional house and how this is received by the public. The Conservatives have already indicated their view that traditional conventions in the house no longer apply, following the removal of the hereditary peers. The transitional chamber may thus prove to be more assertive than its predecessor, although it will continue to suffer from some public stigma as the unelected house. By the time of the next election, the chamber will have been in operation for 18 months or more. Over this period, opinion may begin to crystallise on the need, or otherwise, to progress future reform.

Devolution and decentralisation

With the three big devolution Acts of 1998 setting the framework for the new institutions in Scotland, Wales and Northern Ireland, 1999 saw the birth of the new administrations. The birth of the new executive in Northern Ireland was painful and protracted but in Scotland and Wales remarkably smooth. In large part this was because of the government's huge majority at Westminster and its tight control of the Labour Party machinery in Scotland and Wales. In Wales this led to the imposition of the Blairite candidate as prospective leader of the new Assembly; in Scotland a team was parachuted in from party headquarters in London to take over a Labour campaign which seemed to be faltering. In the long run this can only prove electorally damaging to Labour if it is perceived as the puppet of London, and advantageous to the nationalist parties which now provide the main opposition in Scotland and Wales. Some of the tensions inherent in the government's approach to devolution will be examined at the end of the article.

Scotland[2]

The new Scottish Parliament was elected on 6 May 1999 and assumed its full powers under the Scotland Act 1998 on 1 July. Most of the responsibilities and functions formerly performed by the Secretary of State for Scotland were transferred to the Scottish Executive.

The new Parliament comprises 129 seats, with 73 constituencies and 56 regional top-up seats to provide proportionality. On a turnout of 58%, Labour won 53 of the constituency seats and three top-up seats: the new electoral system denied them a majority. The Scottish National Party won 35 seats, 28 of which were top-up seats, and forms the main opposition party. The Conservatives won 18—all top-up seats—and the Liberal Democrats 17. The proportion of women elected to the Parliament was unprecedentedly high, at 37%. A major reason for this was Labour's policy of 'twinning' to achieve gender equality. Out of Labour's 56 elected members 28 were women, although the SNP had a similar proportion, with 16 out of 35. Within a week of their election, the 129 Members of the Scottish Parliament (MSPs for short) were sworn in, elected Sir David Steel as their Presiding Officer with two deputies, and adopted Standing Orders recommended by an all-party Consultative Steering Group to enable them to begin the conduct of business. They are temporarily accommodated in the Assembly Hall of the Church of Scotland, pending construction of the new parliament building at Holyrood.

Donald Dewar was sworn in by the Queen as First Minister in Scotland on 17 May and the Queen returned to Edinburgh for the Official Opening of the Parliament on 1 July. After a week of negotiations, he formed a coalition government of nine Labour and two Liberal Democrat ministers, with 11 deputy ministers (including two more Liberal Democrats): the new Executive has 22 members in all. The coalition agreement between the parties was set out in a 20-page document entitled *Partnership Scotland*. The greatest stumbling block was student tuition fees, which the Liberal Democrats had pledged to scrap in their election manifesto (as had the Scottish National Party and the Conservatives) but which Labour is determined to maintain in order not to undermine the integrity of the UK's higher education funding system. The issue was referred to an inquiry due to report at the end of 1999. The other key issue is proportional representation for local government, which is less likely to cause disharmony because Labour wants to take action to curb the recurrent scandals in Labour-dominated local authorities.

The week of protracted negotiations over the coalition agreement led to criticism in the Scottish media, not yet used to the exigencies of coalition government. In the early months there was also some criticism of the Scottish Parliament. The necessary preliminary business of fixing hours of meetings, recess dates, MSPs' pay and allowances, as well as some wrangling over the plans for the new building, exposed members to the charge of being more concerned for themselves than for the job they were elected to do. They were also caught by the timing of a May election, July hand-over and a pledge to be 'family-friendly' by observing the Scottish school holidays in July and August, which earned them little credit in the eyes of the media.

Some of the Scottish public had not been prepared for the Parliament to elect an Executive (too much like Westminster and Whitehall). Its size attracted adverse comment—with 22 ministers compared with the six who ran the Scottish Office—but in part this reflects the realities of life as a devolved government compared with being a UK department. Thus the Executive includes a Finance Minister, the parliamentary business managers and two Law Officers, none of whom were previously part of the Scottish Office.

Despite the more complex ministerial arrangements, the Scottish Cabinet has not made far-reaching changes in the departmental structure. The former Scottish Office departments, or their constituent parts, are still recognisable, although there are a number of new labels (the Department of Justice, headed by the Liberal Democrat leader and Deputy First Minister Jim Wallace; Rural Affairs; Enterprise and Lifelong Learning). A sharper difference is presented by the proceedings of the Scottish Parliament, which is determined to break from the Westminster mould. Members address each other by name rather than by their constituency. It has established a range of powerful subject committees, combining the functions of Westminster's Select and Standing Committees and with power to initiate their own legislation. Other changes include Parliamentary Questions throughout the summer recess and no annuality for the legislative programme, so that bills can be carried over. The first legislative programme was announced in June 1999 as part of the coalition's programme of government—*Making it Work Together*—and included eight bills: three on aspects of land reform and one each on local government standards, incapable adults, transport, education and finance/audit.

Wales[3]

The Government of Wales Act 1998 is longer than its Scottish counterpart, with 159 sections and 18 schedules, but that reflects the complexities of executive rather than legislative devolution, symbolised in the names of the respective bodies. Scotland has a Parliament with law-making and (limited) tax-varying powers, while Wales has an Assembly with powers of secondary legislation only and is wholly dependent for its £7 billion budget on an annual block grant from London. The whole scheme in the Government of Wales Act is much more prescriptive of what the Assembly shall and shall not do. For example, it is required to establish Regional Committees, including one for North Wales, to overcome the divisions between North and South Wales, as well as a Partnership Council with local government, a scheme to promote the interests of the voluntary sector and to consult with business. The whole is much more tightly controlled and reflects Labour's long-standing ambivalence about devolution in Wales. It is also in its technical detail a lot harder to understand; the Transfer Order conferring executive powers on the Assembly runs to over 500 pages.

The first elections for the National Assembly for Wales took place on the same day as the Scottish elections, on 6 May 1999. They were somewhat overshadowed by the campaign for the post of prospective Labour leader in the Assembly, required after the resignation of the Secretary of State for Wales, Ron Davies. That campaign was narrowly won by the Blairite candidate and his successor as Secretary of State, Alun Michael MP. He was opposed by backbencher Rhodri Morgan MP. Rhodri Morgan won 64% of party members' votes, but only 47% of the total vote, because instead of adopting one-member-one-vote the Labour Party had constructed an electoral college with three groups: party members, affiliated trade unions, Welsh Labour MPs and Assembly candidates. This enabled Alun Michael to squeeze through by winning 64% of trade union votes and 58% of Welsh Labour MPs' and Assembly candidates' votes. He announced that he would quit the Cabinet in May (although in the event he did not resign until the end of July) and stand down from the Westminster Parliament at the next election in order to concentrate on Wales. All five Labour MPs who won seats in the Welsh Assembly followed suit.

The National Assembly for Wales is half the size of the Scottish Parliament, with 40 constituency members and 20 additional members drawn from regional lists to provide an element of proportionality. In the May elections, turnout was only 45%, reflecting the lesser degree of interest in devolution in Wales and Labour's own internal difficulties which led some of their supporters to stay at home. The result was that Labour just failed to win a majority with 28 seats. Plaid Cymru won 17, the Conservatives 9 and Liberal Democrats 6. Here, too, most of the 20 top-up places from the regional lists went to the Conservatives (8 seats) and the nationalists (8 seats). The proportion of women elected was high, at 37%. Labour's 'twinning' policy resulted in 15 out of 28 elected candidates being women. But neither the Scottish Parliament nor the Welsh Assembly has any elected members from the ethnic minorities.

Alun Michael, who won his seat as an additional member, decided to form a minority government rather than attempt a coalition. Labour quickly had to come to terms with what absence of a majority meant. With Plaid Cymru it had to trade the position of the veteran nationalist Lord Dafydd Elis Thomas as Presiding Officer in return for Alun Michael being elected unopposed as First Secretary. He appointed his rival, Rhodri Morgan, as Secretary for Economic Development. The Assembly's design and now its political balance have handed significant potential for influence to its six Subject Committees covering Economic Development, Health and Social Services, Agriculture, the Environment, Education Pre-16, and Education Post-16. In particular their chairpersons have emerged as potential power-brokers, with Labour providing only two, Plaid Cymru two and the Liberal Democrats and Conservatives one each.

Northern Ireland

To explain developments in 1999 we must briefly recapitulate on events in 1998. Devolution in Northern Ireland has followed a different sequence from Scotland and Wales. After endorsement of the Belfast Agreement of April 1998 in a referendum, Parliament rushed through the Northern Ireland (Elections) Act 1998, which laid the ground for the first elections for the Assembly in June that year. It has 108 members, elected in 18 six-member constituencies by STV. Its relatively large size (in proportion to population it is three times as big as the Scottish Parliament) reflects the cross-party talks which resulted in the Belfast Agreement and is intended to provide greater inclusivity. In the first elections this was almost but not completely achieved. The Ulster (Official) Unionist Party won 28 seats, Social Democratic and Labour Party 24, Democratic Unionist Party 20, Sinn Fein 18, Alliance 6, UK Unionist Party 5, Progressive Unionist Party 2, Women's Coalition 2, and independents (who subsequently formed the United Unionist Assembly Party) 3. In terms of the main political divide, 58 Assembly members registered as unionists and 42 as nationalists, while the 6 Alliance Party and 2 Women's Coalition registered as 'other'.

The main devolution legislation defining the powers of the Assembly, the Northern Ireland Act 1998 was enacted subsequently, but with equal haste, being introduced in the summer and receiving Royal Assent in November 1998, and provides for full legislative and executive authority in respect of the matters currently devolved administratively to the six Northern Ireland government departments. It will thus have powers much closer to the Scottish Parliament than the Welsh Assembly; and it will have the capacity, by local agreement and subject to Westminster approval, to expand its autonomy further.[4]

After this flurry of legislative activity, the devolution process stalled because of a refusal on the Unionist side to enter a power sharing executive until there was evidence that the IRA was serious about laying down its arms ('no guns, no government'). The Assembly had elected a shadow First and Deputy First Minister in 1998, after the elections. To take office the Act requires that they must secure the support of a triple majority: a majority in the Assembly and a majority of both Nationalist and Unionist members. David Trimble, the leader of the Ulster Unionist Party, was elected as shadow First Minister, and Seamus Mallon, the nominee of the (nationalist) Social Democratic and Labour Party, was elected his Deputy. But the Unionists could not bring themselves to take the further step of electing the full power sharing executive. Under the d'Hondt formula prescribed for electing an executive in proportion to the number of seats held by each party, it would include two ministers from Sinn Fein (the political wing of the IRA), four Ulster Unionists, four SDLP and two Democratic Unionists (Ian Paisley's party). For the

Unionists, it was always going to be difficult to sit down in government with Sinn Fein; without some steps towards disarmament it was politically impossible.

Throughout 1999 repeated efforts were made by the British and Irish governments to kick-start the process, but it moved forward painfully slowly. In September momentum was revived with the return of American Senator George Mitchell, who had brokered the Belfast Agreement eighteen months before. After eleven weeks of delicate negotiations, the impasse was broken. The IRA agreed to appoint an interlocutor to the commission supervising arms decommissioning under General de Chastelain, and David Trimble agreed to try to form the power sharing executive once again. On 27 November he consulted the Ulster Unionist Council, which endorsed his proposals for government by 480 votes to 349. With 58% support, this was not a comfortable victory and was gained only by Trimble agreeing to reconvene the Council in February 2000 to review the IRA's progress on decommissioning. The support of the UUP's governing body is still provisional. But it was enough to enable the power sharing executive to be formed, with the two ministers from Sinn Fein (including Martin McGuinness, former IRA chief of staff, as Education Minister). In a flurry of activity, Orders were made under the Northern Ireland Act 1998 transferring power to the new executive in time for its first meeting on 2 December. But as a harbinger of the difficulties inherent in power sharing, the meeting was boycotted by the two ministers from Ian Paisley's Democratic Unionist Party, who refused to sit round the table with Sinn Fein.

Regional government in England

Labour's 1997 manifesto had promised to establish Regional Development Agencies to coordinate regional economic development and Regional Chambers to coordinate transport, planning, and bids for European funding. It had also promised in time to introduce legislation allowing people in England, region by region, to decide in a referendum whether they wanted directly elected regional government. In its first year the new government introduced the Regional Development Agencies Act 1998, but it did not include provision to establish Regional Chambers on a statutory basis and made no moves towards directly elected Regional Assemblies.

The eight new Regional Development Agencies (RDAs) went live on 1 April 1999. Contrary to the hopes of the English Regional Associations, they are not executive arms of the Regional Chamber, but are appointed by ministers and are accountable through ministers to Parliament. Their budgets come from Whitehall, and even though their board members are chosen from the region, they are clearly agencies of central government. Each has a board of 13, with half the members from business and a third from local authorities.

Regional Chambers have not been wholly written out of the script, but they are voluntary, non-statutory bodies which, if 'designated' by the Secretary of State, must by consulted by the RDA in the formulation of its regional plan. During the summer of 1999 eight Regional Chambers were so designated, one for each RDA. They vary in size from 40 to over 100 members. No more than 70% of their members can be from local government, the remainder come from the other regional stakeholders—business, the trade unions, education, the voluntary sector. Instead of being the political masters of the RDAs, the Regional Chambers are mere appendages, which may wither on the vine. With no statutory powers and no budget beyond the tiny sums contributed by member local authorities, they are simply a forum or sounding board. The government's strategy is to wait and see whether these new regional structures build up regional support and a momentum for further decentralisation.

Several regions have ambitions to go much further. The North East is setting the pace. A MORI poll conducted in March 1999 showed the strongest support there for an elected regional assembly (50% in favour, 27% against). The North of England Assembly is following the example set in the 1980s by the Campaign for a Scottish Parliament: in April 1999 it held the first meeting of the North East Constitutional Convention, a cross-party body charged with drawing up a blueprint for a directly elected regional assembly. Not to be outdone, the North West Regional Assembly planned its own Constitutional Convention, launched at a conference in July. Another pace setter is the Regional Assembly for Yorkshire and Humberside. In January 1999 even the South East Forum changed its name to the South East Regional Assembly.

Despite choosing the name Regional Assembly, none of these bodies is directly elected, and none is even close to that. The test for all of them is to formulate a coherent set of functions for an elected assembly; to demonstrate to local authorities and to central government that it would add value; and then to persuade the people of the region, who will have to approve the proposals in a referendum. Richard Caborn, then Minister for the Regions, said in a Glasgow speech in June that devolution for the English regions should get under way immediately after the next election,[5] but he was transferred to the Department of Trade and Industry in the reshuffle two months later. In August, Downing Street was reported to have hardened its line against regional assemblies in England.[6] The Prime Minister was said to be wary after the election results in Scotland and Wales and the difficulty of finding a New Labour candidate for London's Mayor. Following Richard Caborn's move, responsibility for regional government was subsumed by Hilary Armstrong: although retitled Minister for Local Government and Regions, she is unlikely to be as strong an advocate for regional government as was Caborn.

Local government and London

1999 saw the passage of the Greater London Authority Act to establish an elected assembly and a directly elected mayor for the capital. It is a huge and complex piece of legislation, with over 300 sections and some 30 schedules. The assembly will have 25 members elected by the Additional Member System—14 'constituency' members and 11 London-wide members selected from closed party lists to ensure a more proportional result. The first elections will be held in May 2000, with plans to use electronic voting and extensions of postal voting to increase turnout. Towards the end of 1999, attention switched to the contest to secure the nomination of the major political parties for the post of mayor. The Liberal Democrats were the first to select their candidate after a relatively low-key contest won by Susan Kramer on a postal ballot of members. The Conservatives announced, after a ballot of all London members, that Jeffrey Archer (former deputy party chairman) was to be their candidate, but in November he resigned in the face of allegations that he had perverted the course of justice by suborning a witness in a libel action. Meanwhile, the Labour Party were experiencing almost equal difficulty as its leadership tried desperately to stop Ken Livingstone, the popular former leader of the Greater London Council, being selected as the candidate against the former Health Minister, Frank Dobson, and Glenda Jackson. The party opted for an electoral college, as used in Wales, instead of allowing one-member-one-vote amongst party members, in the hope that this would ensure a Dobson victory; and Tony Blair declared that Ken Livingstone would be a disastrous choice as London's first elected mayor.

Despite these difficulties in London, the government pressed ahead with its plans to introduce elected Mayors or cabinet systems in local authorities elsewhere in England. The hope is to revive interest in local politics and to reverse falling electoral turnout, which reached its lowest level ever at the local government elections in May 1999 (an average of 30%). The government published its draft Local Government (Organisation and Standards) Bill, which will require councils to seek voters' views on whether to move to a cabinet model and/or a directly elected mayor. The status quo will be an option only if the proposals are defeated in a referendum. Should councils not hold a referendum—which can be triggered by a petition supported by 5% of electors—the government would retain the power to force councils to put the issue to a popular vote. The bill was subject to pre-legislative scrutiny by a joint Parliamentary committee which reported in July,[7] and a Local Government Bill featured in the Queen's Speech in November.

European elections and the Treaty of Amsterdam

The British constitution operates within the wider constitutional framework provided by European law. Early in 1999 the government finally

succeeded in bringing the electoral system used in the UK for the European Parliament elections into line with the proportional systems used in all the other member states. The European Parliamentary Elections Bill had not originally been in the first year legislative programme but was introduced following pressure from the Liberal Democrats applied through their membership of the Joint Consultative Cabinet Committee. However, it fell right at the end of the first session, in November 1998, because the House of Lords refused to accept closed party lists, even though it was sent back from the House of Commons five times. It was reintroduced in December, passed quickly through all its stages in the Commons, and was voted down again on second reading in the Lords. The government then invoked the Parliament Acts 1911 and 1949, bypassed the Lords and the bill received Royal Assent in January 1999. This provided just enough preparatory time to enable the European Parliamentary elections in June 1999 to be held under the new regional list system of voting.

During 1999, the Treaty of Amsterdam, implemented in the UK by the European Communities (Amendment) Act 1998, began to come into force. Third Pillar matters on Justice and Home Affairs, previously dealt with on an intergovernmental basis, were brought within the regime of the European Treaties and the jurisdiction of the European Court of Justice. This began to make itself felt in tighter cooperation on issues such as immigration, asylum, policing, supranational enforcement of court judgments, and arrangements for the mutual inspection of court systems in other member states. These issues were the subject of a special EU summit meeting held in Tampere, Finland in October 1999 to discuss the implementation of a European area of Freedom, Security and Justice. The summit concluded with the aim of creating EU-wide policies on immigration and asylum, as well as a European judicial sphere, with mutual recognition of court judgments in both criminal and civil areas of law. In criminal cases additional measures proposed include a forum for European police chiefs, a 'Eurojust' unit of prosecutors and investigating judges, and a system of 'Eurowarrants', making it easier to arrest suspects resident in another member state. The Tampere meeting also proposed that there should be a European Union Charter of Fundamental Rights, gathering together existing provisions on human rights protection within a single instrument.

Human rights

The Human Rights Act 1998 will not come fully into force until October 2000. Only then will the European Convention on Human Rights (ECHR) be fully incorporated into domestic law throughout the UK. But it has already come into force in Scotland and Wales, and for certain preparatory purposes in the rest of the UK. In November 1998 the Home Secretary, Jack Straw, brought into force section 19 of the

Human Rights Act, which requires that all ministers in charge of bills in either House make a 'statement of compatibility', indicating that in their view the bill is compatible with rights under the European Convention. If unable to do so, ministers must make a statement that they wish the House to proceed notwithstanding any incompatibility. At the moment, the practice is that a note appears on the face of each government bill stating that 'in my view the provisions of the Bill are compatible with the Convention rights'. There is no indication of the grounds on which that view is reached, and on a number of bills (such as the Immigration and Asylum Bill) the government has been pressed hard by parliamentarians to provide a fuller statement of its reasoning.

In Scotland and Wales, the Human Rights Act effectively came into force on 1 July 1999, because the Scottish Parliament and Welsh Assembly, together with their Executives and law officers, are bound by the devolution legislation to act in accordance with the ECHR. The Scottish courts have been quick to explain the implications of the Executive's human rights obligations. In an early—failed—petition to punish a journalist and editor for contempt of court the Court emphasised that the Lord Advocate cannot move the court to grant any remedy that is incompatible with the ECHR (*Lord Advocate v Scottish Media Newspapers*). The impact of the Human Rights Act began to make itself felt mainly in criminal cases, and in the autumn the first major ruling declared that the Lord Advocate's powers to appoint temporary sheriffs was incompatible with Article 6 of the Convention (the right to an independent and impartial tribunal) because he was also the head of Scotland's prosecution system. This will have major implications for the court service, which had been using hundreds of temporary sheriffs; and for judicial appointments generally.

Scotland may be forced in advance of the UK into having to think about an independent Judicial Appointments Commission; and there are other indications that the implementation of the Human Rights Act in Scotland may lead to the development of a distinctive Scottish human rights regime. The Justice Minister, Jim Wallace, has announced that he was in favour of a Scottish Human Rights Commission and was also proposing distinctive Scots solutions to freedom of information.[8] Scottish experience is also filtering through to the higher courts in London. In a landmark case decided by the House of Lords (*Kebeline*), the Scottish law lord, Lord Hope, commented that incorporation of the ECHR 'will subject the entire legal system to a fundamental process of review and, where necessary, reform by the judiciary'. The Human Rights Act will give the judges a much higher profile.

Northern Ireland is also developing its own human rights framework. The Belfast Agreement promised a Human Rights Commission for Northern Ireland, and in January 1999 Professor Brice Dickson was appointed as Chief Commissioner. In July the Republic of Ireland followed suit, publishing a bill to establish an Irish Human Rights

Commission. It will cooperate with the Northern Ireland Commission through a Joint Committee.

Regulation of the political parties

The UK is increasingly coming into line with practice in other liberal democracies by closely regulating party funding and elections. The first step was to require parties to register as legal bodies, under the Registration of Political Parties Act 1998. Shifting them from a voluntary to a statutory basis was, however, a relatively minor move. The real shake-up arises out of the recommendations of the Committee on Standards in Public Life, chaired by Lord Neill, which submitted its report on party funding in October 1998. The government responded in July 1999, in a White Paper and draft bill (Cm. 4413), in which 98 of the committee's 100 recommendations were accepted. Following Neill, its overall themes were the greater disclosure by the parties of their funding, limits on election spending, a qualified extension of state support for parties, and a strong independent body to police parties and elections.

The first part of the package deals with the disclosure of funding sources. Henceforth, parties will have to disclose donations higher than £5,000 (or £1,000 to a 'sub-unit', such as a constituency branch). Disclosure will be made four times a year to the Electoral Commission, except during general elections when parties will have to report every seven days. The second part of the package works from the opposite end, restricting election spending. The government adopted Neill's recommendation of a £20m limit on each party for general elections (spending by Labour and the Conservatives at the 1997 election was estimated by the Neill Committee at £26m and £28m respectively). The limits will be lower for elections to the European Parliament and devolved assemblies. The time limits will apply for the 365 days prior to a general election and the four months prior to other elections. The parties must submit their accounts to the Electoral Commission within six months of the poll.

The sweetener for the parties comes in the form of an extension of state support for their activities. The opposition parties will receive more 'Short money' for their parliamentary activities. Both the governing and opposition parties will also be able to claim support for policy development from an annual pot of £2m. However, the government rejected Neill's recommendation for tax relief for small donations. Its reasons for this decision—that the relief would amount to state aid, and the estimated annual cost of £4–5m—look odd, however, when set against the increase in public support of £5m per year contained elsewhere in the White Paper.

Supervising the new rules and reporting requirements will be an Electoral Commission (which was recommended not only by the Neill Committee on party funding, but also by the Jenkins Commission on

the Voting System in 1998). Its main task will be overseeing party donations and spending. It will also incorporate the functions of the Parliamentary Boundary Commission and Local Government Commission, although not until 2005, as well as producing reviews of the conduct of elections to ensure effective practice. It will also have some responsibility for 'promoting awareness of electoral matters'[9] and for citizenship education. Given the need for the new regulatory regime to be in place before the next election, the Electoral Commission will have its work cut out in equipping itself to receive the parties' disclosures and monitor their spending. Importantly, though, it will be accountable to Parliament, not to the Home Office. Its membership, of between five and nine, will be the subject of interparty consultations; its budget and strategy will be overseen by a new Speaker's Committee. Both in the intention and execution, the Commission will operate as a powerful and independent body.

A glimpse of how the Commission might work, and the problems it will face, was provided in Scotland, where a Scottish Election Commission was established before the May elections by an initiative by the parties. Chaired by Professor Anthony King, its role was to oversee spending limits and disclosure of donations. In its final report, it noted that there had been a high level of compliance by the parties with an agreed voluntary code.[10] However, should there be a lack of such trust between the parties—highly likely at Westminster elections!—the UK Election Commission will find it far more difficult to police spending. The latter will also need an adequate resource base to enable it to keep track of spending by non-party groups, which the Scottish Commission found beyond its capacity. Its task will be made more onerous by the flexible nature of many of the UK's constitutional rules: for example, the requirement that election spending be capped for the twelve months prior to a contest will be difficult to define in the absence of fixed-term Parliaments.

One issue into which the Neill Committee strayed without the government intending it to, and on which its recommendations have not been accepted, is referendums. In its White Paper, the government rejected Neill's proposal that it should refrain from participating in a referendum and agreed only to a moratorium on public information in the 28 days prior to the poll. It also rebutted Neill's rejection of spending caps by suggesting limits for umbrella groups and the parties of £5m and for other groups or individuals and groups of £0.5m. The last is likely to cause the most concern, since it severely restricts the resources available to the anti-EMU group at the promised referendum on the single currency.

Electoral reform

While the elections in Scotland, Wales and for the European Parliament introduced new voting arrangements, the reform debate spread to other

tiers of government. The most headway was made in relation to local government in Scotland, which was the focus of a report to the Scottish Executive in June 1999. Headed by Neil McIntosh, the Commission on Local Government and the Scottish Parliament recommended, inter alia, that proportional representation be introduced for the next local government elections in Scotland in 2002.[11] It recommended a further review of specific electoral options be set up, commending in particular the AMS, STV and AV Top Up (the recommendation of the Jenkins Commission) systems. The Renewing Local Democracy Working Group, chaired by Richard Kerley, started work in September 1999.

Electoral administration

The Cinderella of elections, their procedures and administration, was also the subject of reform proposals in 1999. After sitting since January 1998, the Home Office Working Party on Electoral Procedures issued its final report in October 1999.[12] The review was established by the Home Secretary following concern about falling voter turnout and was asked to consider ways in which the electoral process could be modernised. Its main recommendations were: a continuously updated, or 'rolling', register to replace the current one which is updated once each year; legislation to allow pilots of new voting approaches (e.g. variations in polling hours and days, out of area voting); a looser regime to cover absent voting, so that this option becomes more effective.

Freedom of information

In July 1998 responsibility for freedom of information was transferred from David Clark in the Cabinet Office (who was dropped in the first government reshuffle) to Jack Straw in the Home Office. This inevitably caused delay as a new ministerial team and new group of officials got to grips with the issues, and as other Whitehall departments exploited the fresh opportunity to dig their heels in. The Home Secretary published the long awaited draft Freedom of Information Bill on 24 May 1999 (Cm. 4355). It represented a major retreat from the proposals in David Clark's White Paper *Your Right to Know* (Cm. 3818, December 1997), and was widely criticised in the press and in Parliament. Criticism focused in particular on the exemption provisions (which include unnecessarily broad exemptions for policy advice, information about investigations and commercial information) and on the capacity to create new exemptions by ministerial order. In place of the overriding public interest test in the previous government's Code of Practice, departments and public authorities would merely have to consider the release of exempt information on a discretionary basis.

The draft bill was subjected to pre-legislative scrutiny by two select committees in summer 1999, the Public Administration Committee in the Commons and an ad hoc Select Committee in the Lords. Both called for substantial changes. The Commons committee stated: 'An effective

Bill needs to be based more firmly on clear rights and less on discretionary duties. This requires a rebalancing of the draft Bill in the direction of the right to know.'[13] The Lords added: 'The most important single amendment needed is to give the Commissioner a public interest override power . . . to overrule a ministerial decision . . . and to order disclosure.'[14] In its reply, the government gave little ground, leading the Commons committee to take the unusual step of publishing a further critical report.[15] A Freedom of Information Bill was included in the Queen's Speech and introduced in November 1999.

Implications for central government: Whitehall

The final part of this survey considers the implications of the constitutional reform programme for central government. So swift has been the pace of constitutional change, and the design so piecemeal, that corresponding changes at the centre have not hitherto formed part of the government's programme. But as devolution has come into effect, the centre has inevitably been forced to adapt, with changes being seen both in Whitehall and at Westminster.

In Whitehall, the immediate effect was a shrinking in the role of the territorial Secretaries of State. Donald Dewar stepped down as Scottish Secretary to become the First Minister in Scotland. He was replaced by John Reid, who inherited a tiny headquarters staff in London (now known as the Scotland Office) because all the rest of the old Scottish Office was devolved to the Scottish Executive. Alun Michael stepped down as Secretary of State for Wales after becoming First Secretary of the new Welsh Assembly and was replaced by Paul Murphy. To reflect the shrinking role of the centre there was a reduction of junior ministers in the July reshuffle: the Welsh Office lost one (down from three to two) and the Scotland Office was reduced from five (originally six) down to two. In the further reshuffle in October, Mo Mowlam was replaced as Northern Ireland Secretary by Peter Mandelson.

Whitehall has also begun to adapt its behaviour to take account of the new administrations. Most departments now have Devolution or Constitutional Units to handle relations with the new devolved administrations. During 1999, written agreements, called Concordats, were drafted to provide a framework of guidance. On 1 October the government published the Memorandum of Understanding and the first four Concordats between the UK, Scottish and Welsh administrations (Cm. 4444). Further bilateral Concordats will be published by individual departments. The four initial ones cover Coordination of EU Policy Issues, Financial Assistance to Industry, International Relations, and Statistics. The Memorandum provides for a joint ministerial committee as part of the new machinery for intergovernmental relations within the UK. In summit form, it will be chaired by the Prime Minister, with sectoral meetings chaired by the responsible UK ministers. A reflection of the asymmetrical approach to devolution is that there is no represen-

tation for England: the Memorandum states that 'UK ministers and their departments represent the interests of England in all matters'.

Implications for the centre: Westminster

At Westminster, the Procedure Committee initiated an enquiry into the Procedural Consequences of Devolution. The government's memorandum to the committee was brief and minimalist, but the Committee was inclined to go further. Its report (HC 185) was published on 19 May 1999. While wishing to undertake a full review in due course, its initial recommendations included abolition of the Scottish, Welsh and Northern Irish Grand Committees; new rules restricting questions to the Scottish and Welsh Secretaries to matters relating to their reduced responsibilities; and a new procedure for bills relating exclusively to one part of the kingdom. This would involve a special Second Reading Committee, composed of a minimum of 35 English members for English bills, 18 Northern Irish members for Northern Ireland bills, 20 Scottish members for Scottish bills, and 20 Welsh members for Welsh bills. It also discussed the possibility of Westminster committees holding joint meetings with committees of the devolved assemblies and access for members of the devolved assemblies.

The government's response was published in October. Maintaining its cautious line, it argued in favour of retaining the Scottish, Welsh and Northern Ireland Grand Committees and against the Procedure Committee's proposal that the Speaker should be able to certify bills as relating exclusively to Scotland, Wales, England or Northern Ireland. The Leader of the Opposition, William Hague, argued that such changes do not go far enough. Speaking to the Centre for Policy Studies on 15 July, he pointed out that the government, having devolved power, must now turn to the anomalies affecting England: 'It is our duty to find a way through that strengthens the Union after devolution. I believe the answer lies in giving a voice to England; in English votes under English laws.' His proposals do not entail the creation of an English Parliament but a restriction of the rights of Scottish MPs so that they could no longer vote on matters that affect England only.

On 29 July the Conservative Party announced a Commission to Strengthen Parliament, chaired by Lord Norton of Louth (otherwise Professor Philip Norton). It will report during 2000, in time to inform the Conservative manifesto. Working to a longer time-scale is the new Commission launched in October by the Hansard Society into Parliament's Role in Scrutinising the Executive. That is chaired by Lord Newton, former Conservative Leader of the Commons, and aims to report by March 2001. Another suggestion for a new forum to discuss English business has come from the House of Commons Modernisation Committee. In a report published in April 1999 it recommended a new committee (similar to the Australian Main Committee) to reduce pressure on debates in the chamber (HC 194). The parallel chamber is to

start in the 1999–2000 session, sitting in the Grand Committee Room off Westminster Hall. It will deal with non-contentious business such as Green Papers, adjournment debates and select committee reports, but will not vote on business. The Modernisation Committee also mooted the idea that it could be used to discuss matters of interest to the English regions.

Parliamentary privilege

The Joint Committee on Parliamentary Privilege, chaired by Lord Nicholls (a law lord), delivered its report in April (HC 214, HL 43). It recommends updating the laws regulating freedom of speech in Parliament by a new Parliamentary Privileges Act and removing the change in the law that allowed Neil Hamilton MP to bring his libel action against the *Guardian*. It also recommends that all laws should apply to Parliament itself, which should cease to be a statute free zone.

The continuing revolution

In private discussion at the Labour Party conference in 1998, Tony Blair suggested that constitutional reform was Year 1 business: the party had been there, done that, and could now get on with the bread and butter issues of more direct interest to its supporters. It is true that in its first year the new government introduced an immense programme of constitutional change, with a dozen constitutional bills in the first session. But although the pace of constitutional change has slackened, the momentum continues—in terms of further legislation and in terms of the knock-on consequences from the first wave. Constitutional change is not a one-off process: changes as big as devolution and the Human Rights Act release a powerful dynamic whose effects will be felt for many years to come.

The second session saw three constitutional bills being passed, each of them heralding further major change. The House of Lords Act 1999 removed the hereditary peers as the first stage of Lords reform. The Greater London Authority Act will introduce a directly elected mayor for London, the first ever in the UK; but if the government has its way, not the last. And the European Parliamentary Elections Act introduced the first UK-wide elections to be held under a system of proportional representation. These may be the only nation-wide elections held under proportional representation, but Labour's 1997 manifesto contained a promise that a referendum would be held on changing the voting system for the House of Commons—a promise currently left hanging in the air because the government has not moved to implement the commitment that the referendum would be held during this Parliament.[16]

The Queen's Speech in November 1999 shows the pace of change continuing, with four constitutional bills in the third session: freedom of information, local government reform (elected mayors and cabinets), controls on party funding and establishment of an Electoral Commis-

sion, and reform of electoral procedures to make voting easier. The first three bills were published in draft during the second session: another small constitutional innovation, enabling a consultation stage to take place before a bill is introduced, and Parliament to hold pre-legislative scrutiny hearings. The Queen's Speech promised the publication of more draft bills and further long-term reform of the House of Lords following the report of the Royal Commission. The year 2000 is the first full year of implementation of the devolution settlement and sees full implementation of the Human Rights Act. Tony Blair may believe that the constitutional revolution is over but his government is providing us with plenty of material for a constitutional survey of the year 2000.

1 *Modernising Parliament—Reforming the House of Lords*, Stationery Office (Cm. 4183).
2 For further detail see J. Mitchell, 'The Creation of the Scottish Parliament: Journey without End', *Parliamentary Affairs*, October 1999.
3 For further detail see L. McAllister, 'Establishing the National Assembly for Wales', *Parliamentary Affairs*, October 1999.
4 Northern Ireland Act 1998, s. 4.
5 *The Times*, 4.6.99.
6 *Daily Mail*, 3.8.99.
7 HL 102, HC 542, July 1999.
8 *Scottish Executive: An Open Scotland*, SE/1999/51, November 1999.
9 *The Funding of Political Parties in the United Kingdom*, Cm. 4413, Stationery Office, 1998, p. 12.
10 *Final Report of the Scottish Election Commission*, June 1999, p. 9.
11 *Moving Forward: Local Government and the Scottish Parliament*, report of the Commission on Local Government and the Scottish Parliament, Stationery Office, June 1999.
12 *Final Report of the Working Party on Electoral Procedures*, Home Office, October 1999.
13 HC 570, July 1999.
14 HL 97, July 1999.
15 HC 925, November 1999.
16 The commitment on the timing of the referendum was in the report of the Joint Consultative Committee on constitutional reform issued just before the election in March 1997.