

A RUTHLESS GANG THAT CAME FROM NOWHERE... AND RULED A NATION

# THE EXECUTIVE



From the book by

**STUART WEIR**

& David Beetham

Meet the new boss

**TONY BLAIR**

The invisible man

**Richard Wilson**

The Consigliere

**Derry Irvine**



A DEMOCRATIC  
AUDIT  
PRODUCTION  
from Essex  
University

**P**arliamentary democracy in Britain is in danger.

At the movies, even if the villains get away with it, you can leave the cinema for the safety of your home. But democracy here is not safe because the villains are in charge.

The Executive – that is, the partnership of the elected government and the Whitehall bureaucracy – is all-powerful and almost unaccountable.

The Executive is a secretive and tightly-knit body which has huge and flexible powers. There are few checks on their

use. The Executive controls Parliament. Ministers, aides and civil servants make up the important rules which govern its conduct as they go along. No-one can prise away their mask of secrecy.

The Democratic Audit has taken a measure of their deeds. We also measure how little there is of the only power that can hold them in check – the power of democracy. It is all we have to save us from . . .



DEMOCRATIC POWER

IN BRITAIN

DEMOCRATIC  
FINDINGS NO. 3

DEMOCRATIC AUDIT  
OF THE UNITED  
KINGDOM

Human Rights Centre  
University of Essex  
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FRIENDS OF THOMAS PAINE

“It is not for the benefit of those who exercise the powers of government that constitutions, and the governments issuing from them, are established . . . A constitution is the property of a nation, and not of those who exercise the government . . . In England, it is not difficult to perceive that everything has a constitution, except the nation”

Thomas Paine,  
‘The Rights of Man’,  
1790-92

**A** FAR-FETCHED SCENARIO? Not at all. The executive in Britain is very powerful and possesses wide-ranging and flexible powers. Parliament is supposed to exercise political control over the executive; but MPs have long agreed that the balance of power between the executive and Parliament is so heavily weighted towards the executive that Parliamentary democracy itself is endangered <sup>1</sup>.

The executive is also formally superior to the judiciary, which is supposed to make it obey the law. But hardly any rules govern the way the executive behaves; no less an authority than a Cabinet Secretary boasted of making up constitutional rules “as we go along” <sup>2</sup>.

Effectively, neither MPs nor judges can prise open the executive’s secretive conduct of public affairs or hold it properly to account <sup>3</sup>. So the British political executive is both powerful and generally free of effective political restraint and legal supervision. Its huge, usually unchecked powers create the worst problems for democracy in Britain, but Labour’s constitutional reforms have failed to address them.

### Auditing British Democracy

The weakness of political and legal checks on the executive is the central concern which emerges from the Democratic Audit’s systematic audit of the political process and central institutions of government in the United Kingdom. This study, *Political Power and Democratic Control in Britain*, by Stuart Weir and David Beetham, was three years in the making. It is a companion to the first Audit study of political freedoms and human rights in the UK, *The Three Pillars of Liberty*, by Francesca Klug, Keir Starmer and Stuart Weir. Both books are published by Routledge.

*Political Power and Democratic Control in Britain* audits the quality of democracy in the United Kingdom against 30 ‘democratic criteria’. These criteria, developed by the authors, are based on the two basic principles of representative government – *popular control* and *political equality*. That is, people in Britain should be able to exercise control over their elected rulers and decisions taken in their name; and everyone should be equal in the exercise of that control. If the public is to exercise democratic control, it follows that government must be open and accountable, must consult the public and enable people to participate in decision-making.

The criteria measure all aspects of democratic government and society. This pamphlet concentrates on the Audit’s central findings on the powers of the executive, the role of Parliament, democratic checks and balances, and the rule of law, employing the criteria which measure:

- how representative, fair and free are elections to Parliament?
- how open and responsive is the political executive?
- how widely does the executive consult the public about its policies?
- are Parliament and other agencies able effectively to scrutinise government legislation and actions?
- how effectively do Parliament and the courts hold the executive to account?
- do the courts and laws ensure that the executive obeys the rule of law?

The study has used the criteria to audit the conduct of elections in the United Kingdom; the internal rules by which Britain’s strong and centralised political executive regulates its behaviour; and the principles and practical means by which Parliament, the judiciary and other agencies subject that executive to scrutiny and make it accountable.

### FREE AND FAIR ELECTIONS

Insofar as the major legislative and executive offices are subject to popular election by universal suffrage under conditions that are in the main procedurally fair, then the UK clearly qualifies as democratic. Citizens are free to campaign for electoral office without hindrance, and can turn a government out of office when it has lost their confidence. Such an outcome is accepted by the losers and all significant interests in society. A major advantage of democratic arrangements – that they allow for political renewal without upheaval or violence – is thus clearly met, at least in Great Britain, and hopefully now in Northern Ireland.

However, the study identifies serious failings in Britain’s electoral arrangements, which could be regarded as systemic rather than merely occasional or accidental.

### Non-elective Routes to Public Office

Many public offices exercising political functions are not given popular authority through elections. The office-holders on such bodies are appointed by the executive. They are therefore not accountable directly to the public and nor are they subject to popular recall – the ultimate means of securing accountability in any democracy.

Membership of the House of Lords is dependent on inheritance, holding (unelected) office as a judge or bishop, or executive appointment, rather than election. Unelected executive quangos, often hierarchies of national, regional and local bodies, perform political as well as administrative functions at various levels of public life. Unelected local quangos, normally unrepresentative of local communities, have taken over many functions from elected local authorities. There is no regional level of elected government in

<sup>1</sup> See Weir, S, and Wright, A, *Power to the Back Benches?*, Democratic Audit Paper No.9, 1997

<sup>2</sup> Sir Robin Butler, Cabinet Secretary from 1988-98 (cited in *This Time*, by Anthony Barnett, Vintage 1998, p.5)

<sup>3</sup> See Weir, S, and Beetham, D, *Political Power and Democratic Control in Britain*, Routledge, 1998

England, though elected assemblies are now being put in place in Scotland, Wales and Northern Ireland.

Elected local authorities remain in place, but there is a substantial case for arguing that local government is now so dominated by central government that it amounts in practice to little more than local administration.

### Elections to Parliament

Britain will soon have seven different electoral systems in place. But the most significant is the plurality-rule (or 'first past the post') system in use for elections to the House of Commons. The study found that this system denies citizens the basic democratic right of votes of equal value. There are systemic inequalities between citizens in the value of their vote, according to which party they vote for, and which region and constituency they vote in. The way in which votes in local constituencies are translated into parliamentary seats is entirely arbitrary, depending as it does on the number and relative strength of the different political parties in each constituency.

The overall results at national level are severely disproportional in terms of the voters' party choices, and usually exaggerate the parliamentary strength of the two leading parties at the expense of third parties. Thus plurality-rule elections, as they operate in the UK, also cause a systematic narrowing of electoral choice to those political parties and programmes which have a realistic chance of representation in Parliament, and lead to the distortion of voters' real preferences through 'tactical voting'.

Further, parties are encouraged by the way elections work in practice to concentrate their campaigning attention very narrowly on the views of swing voters in a small number of marginal constituencies. These voters are not representative of the electorate as a whole.

No electoral system works perfectly. But it would be difficult to find one that deviates in practice so markedly from the democratic principles of political equality and popular control. The government is pledged to hold a referendum, giving the public a choice between plurality-rule and a new system for elections to Parliament. The new system would reduce the gross disproportionality of the existing system, but it still will not achieve the levels of proportionality common throughout Europe. The government is determined to retain first-past-the-post for local elections, but the Scottish Parliament may decide to introduce a proportional system locally in Scotland.

### External Influences on Elections

Elections should be free from external or executive control. But a third systemic deficiency in parliamentary elections is a government's ability to control aspects of the electoral agenda to its own

advantage. The Prime Minister can determine the timing and campaign length of national elections at any point within the five-year term of a Parliament. Ministers can alter the structure and boundaries of local government at will, and through these exercise indirect influence over parliamentary boundaries. If they so wish, they may even delay the proposals of the independent Boundary Commission for their own political advantage. The government can determine whether and when to hold a referendum on constitutional issues, and the wording of any referendum.

These deviations from impartiality are symptomatic of the lack of separation between the powers and prerogatives of the government of the day, and the constitutional rules that are supposedly independent of party. Any such clear separation is impossible in a system where sovereignty allegedly resides in a Parliament, subservient to the executive, rather than in the people, within loose and flexible constitutional rules which are largely ungrounded in law and which the public has never been asked to approve.

Another concern is disadvantaged people are deprived of the right to vote through the operation of social and economic inequalities and the rules and procedures of voter registration. These people – inner-city inhabitants, young people, unemployed and homeless people, and those in temporary accommodation or institutional homes – also have less influence over the electoral process. By contrast, wealthy individuals and corporations who own newspapers, help finance political parties, or advise politicians who are running for office, are able to exercise a disproportionately strong influence. Women and members of ethnic minorities are greatly disadvantaged in the political processes for choosing candidates for office, and are therefore poorly represented in Parliament (as in public life generally).

These differential advantages and disadvantages are common to most European countries. But one test of the quality of democratic life is the seriousness with which attempts are made to reduce their impact.

### SUMMARY: ELECTIONS

Significant inequalities and limitations in electoral choice, weaknesses in electoral administration, the denial of effective opportunity to vote for vulnerable groups, differential influence over elections by different social groups: these four deficiencies seriously damage and neutralise what is at heart a recognisably democratic system of electoral accountability. The objection to parliamentary elections which produce single-party majority governments on a minority of the popular vote gains even greater weight because those governments assume a powerful governing position that is almost wholly unchecked politically or legally (see below).

## OPEN AND ACCOUNTABLE GOVERNMENT

In the second area of democratic life – open, accountable and responsive government – the balance sheet in respect of the political executive shows many obviously democratic features. The executive is supposed to be checked politically by Parliament and legally by the judiciary.

Political accountability is founded on the formal doctrine of ministerial responsibility, both collective and individual, to Parliament, under which ministers are obliged to render account to MPs for all their policies and actions, and those of their departments and associated public bodies. This means that government ministers must always be ready to explain and justify their policies to Parliament and the wider public, and do so in the face of tough questioning and criticism.

The executive also provides a huge, but carefully controlled, amount of information about its policies; and civil society and the media are rich in channels of expertise capable of independently assessing their effects.

In principle, government is subject to the principle of the rule of law; and in practice, the judiciary is independent of the executive. The state bureaucracy is accountable to elected ministers, and the armed forces are subject to civilian control. Public officials almost invariably maintain high standards of honesty, and the work of the independent Committee on Standards in Public Life has served to reinforce these. Government remains responsive to public opinion through the discipline of the electoral process, through processes of public consultation, and through the attentions of the independent media. These are all clearly democratic features of our political arrangements.

However, the audit criteria reveal serious deficiencies judged from a structured democratic perspective. These, again, are systemic rather than accidental.

1. Britain has a remarkably strong and highly centralised executive, in which the interests of the government of the day and the permanent civil service fuse. The central principle of British constitutional arrangements is that this executive is responsible to Parliament through ministers, both collectively and individually. In practice, the idea of ministerial responsibility to Parliament is a misleading myth. Thanks to the agency of party, which until recently was not formally recognised anywhere in these arrangements, the executive dominates Parliament. The House of Commons acts only very rarely as a unified political or corporate body, independent of government or the party whips, and usually only when MPs' salaries or allowances are being decided.

The House is of course usually

under the control of the majority party, or failing that, the largest party in the Commons. The governing party's prime duty is to sustain its government and government whips ensure that MPs fulfil this duty on a daily basis. By virtue of the party's loyalty, the tight organisation of the whips and majority control of the Commons, ministers in government have nearly unlimited executive and law-making power at their disposal.

2 The Audit's analysis shows that the capacity of Parliament to scrutinise the executive is hampered by the adversarial and partisan character of the House of Commons. On the one side, government backbenchers have a much greater interest in supporting the government and its programme than in exposing it to rigorous scrutiny. On the other, the main opposition party is largely powerless, except as a potential alternative government-in-waiting; and the chief aim of the governing party is to prolong its waiting for as long as possible.

3. The civil service owes exclusive loyalty to the government of the day, to assist it in managing information and policy presentation in Parliament and the media. Its advice is geared to the adversarial nature of party politics and media policies and practice. Civil servants are not allowed to recognise or act on any higher loyalty to Parliament or the public, as the Scott report on arms-related sales to Iraq amply demonstrated. The supposed sovereignty of Parliament thus means in effect the sovereignty of the executive in Parliament, which is all the more absolute, the tighter the control the governing party exercises over its backbench MPs. The Labour government, like all its predecessors, maintains very strict control over its parliamentary party.

4. The inability of Parliament to make the executive accountable is compounded by the near total absence of effective accountability within the executive itself. The system of policy-making within a closed and secretive world of cabinet committees hampers effective scrutiny of government policy by the cabinet itself, let alone by Parliament, and renders policy vulnerable to serious errors of judgement, whether of policy design or of public acceptability. The system is open to manipulation by a determined Prime Minister, who can set up carefully-selected ad-hoc committees which will take decisions which become binding on the whole government, or simply by-pass the cabinet and committees through various stratagems. The idea that the civil service acts as a *de facto* check on an arbitrary government, or ministers, if ever accurate, is now obsolete (at least since Lady Thatcher introduced 'conviction' government and encouraged 'can-do' ministers and bureaucrats).

Neither is the idea of 'cabinet

government' a reality in modern Britain. It suggests that we are governed collectively by a group of people who are representative of majority party MPs who in their turn represent a plurality of voters. But the cabinet does not control or keep sight of a government's overall strategy. Such control is divided between the Prime Minister, ad-hoc ministerial groupings, and cabinet committees which the Prime Minister appoints. The cabinet has no more collective control over the departmental policies of the ministers who make up its membership. Instead, individual ministers, their departments and public bodies are significant political actors in their own right.

5. Ministers themselves are unable to oversee more than a small fraction of the work of their departments or the public bodies for which they are formally answerable. In practice, government departments and their satellites are responsible for the great bulk of executive policy-making and decision-taking, even under dynamic political regimes, such as Lady Thatcher's. At the core of government, the immensely powerful Treasury rules over departmental spending, and thus also most policy-making; and the secret security and intelligence agencies have a degree of operational autonomy which is incompatible with democratic practice.

### Government Secrecy

If Parliament and the public are to make the executive responsive and accountable, they must have access to the information and analysis on which government policies and decisions are made. But secrecy is as old as government itself. Governments prize the ability to determine what information should be made publicly available or withheld, and how what is published should be presented.

Liberal democracies around the world have introduced freedom of information (FOI) regimes which make public access to official information a legally enforceable right. In the UK, public access to official information is governed by a voluntary code, which restricts the kinds of information available and does not confer a legal right to access (though there is a right of appeal to the Parliamentary Ombudsman). Further, ministers are in principle obliged to give full and frank information to Parliament and the public under rules for ministers issued by Prime Ministers to their cabinet colleagues at the beginning of each new administration. But this code-book was itself secret until 1992 and has only the force of convention, not law.

Over the past few years this duty of openness in Parliament has been the focus of intense parliamentary and public interest, most notably because the Scott inquiry showed that ministers and officials had deliberately withheld

information and given misleading information to Parliament. In 1996, MPs on a select committee drafted a resolution asserting ministers' duty of frankness to Parliament and the public as part of an attempt to make more of a reality of the doctrine of ministerial responsibility (see below). But the government then dictated the final draft of the resolution which was passed in January 1997, reducing it to a catalogue of pieties.

Ministers' duty of frankness has been made consistent with the Major government's voluntary code of practice for access to official information. Under the code, ministers and officials should provide information on request, so long as it does not fall within various categories of information which may be withheld. These categories are designed to protect national security, commercial confidentiality, personal privacy, etc. The executive's own policy-making processes, involving ministers and officials, are a strictly-protected areas; normally only raw information is made available and all policy analysis and a wide range of material, dubbed 'advice to ministers', is withheld.

The code leaves the executive as the final arbiter of what may be released and what is withheld. Recently, defence ministers denied information to a select committee which the department later released to BBC2 TV, and agriculture ministers and officials have prevented government information going to the inquiry into the BSE disaster.

The protection given to policy-making has proved contentious. Even specialist official agencies, such as the National Audit Office and Ombudsman service, which are charged with examining the executive's conduct, are prohibited from access to or scrutiny of 'policy' matters. The pervasive habit of secrecy extends to the conduct of ministers and civil servants and to their relationships with advisory bodies and outside interests.

The current British government is committed to legislating for a FOI regime in the UK, but for the moment access to official information is still governed by the voluntary code and there are fears that its reforming resolve is crumbling. The FOI bill was excluded from the 1998-99 session of Parliament.

### SUMMARY: THE EXECUTIVE

The idea of cabinet government, supposedly the lynchpin of balanced and collective government in this country, is nothing more than a reassuring myth. Instead, Britain is governed by a many-headed executive, in which the Prime Ministers and ministers play a leading role in policy areas which engage their attention. But ministers are simply not capable of exercising continuing control over their departments and associated public bodies. Senior bureaucrats and government departments exercise considerable ongoing powers to act and make policies, and the Treasury increasingly rules in Whitehall, exercising strict controls over departmental spending and thus also policy-making. The executive as a whole is traditionally secretive and the greater part of its policy-making is kept secret.

## CHECKS AND BALANCES

Since the late 1960s, while slavishly following the whips' members of the House of instructions, Commons have become increasingly concerned to make up the gap in political accountability. MPs on the Procedure Committee stated in 1978 that the imbalance in power between the executive and Parliament damages parliamentary democracy, and a survey in 1992 showed that most MPs still hold this view.

In 1979, the Thatcher government introduced a system of departmental select committees into the House to improve its ability to make the executive subject to more systematic and effective parliamentary scrutiny. These new committees have increased the Commons' ability to examine the policies and practice of government, and their inquiries have become part of the working life of ministers and civil servants. But they do not have effective powers to insist that ministers, MPs or named officials should attend their hearings; they cannot demand government documents as of right, and usually receive only official summaries; and officials give evidence under the direction of ministers. They are not backed up by adequate research resources, and so their reports are frequently superficial.

In the final event, select committees usually split on party lines over their findings or conduct on politically sensitive issues, as the Home Affairs Committee did recently over potential abuse by ministers of the government information services. As the government invariably has a majority of members on each committee, the governing party's views normally prevail.

### Executive Law Making

Parliament fails lamentably in its prime responsibilities for scrutinising and improving legislation. In 1992, the all-party Hansard Society, backed by an impressive array of elite and professional organisations, produced a compelling analysis of the weaknesses of parliamentary scrutiny of legislation. Their analysis showed that Parliament is not only powerless to stop a government from driving primary legislation through, but is generally unable even to improve the detailed quality of that legislation. The detailed scrutiny of bills on standing committees is shown to be driven by partisan motives and is wholly deficient as a result.

In addition, ministers can by-pass parliamentary scrutiny almost totally by means of secondary, or delegated, legislation. This is a substantial arena of ministerial and bureaucratic discretion. Secondary legislation was first introduced as a means of allowing governments to fine-tune and update primary legislation, but has now

developed into a parallel legislative process through which governments can change or abolish statute law, initiate major policy programmes, or assume wide discretionary powers, simply by way of executive orders which are virtually uncheckable in Parliament. Such secondary legislation, often characterised as 'executive law', has even been responsible for breaches of Britain's international human rights obligations.

### Strengthening Ministerial Responsibility

In the last years of the Major government, some MPs did try to make a reality of the principle of collective and individual ministerial responsibility to Parliament. There were also parallel efforts to make civil servants more directly responsible to Parliament. The Scott report's dissection of actual executive practice and the culture of the 'half-truth' which characterised the dealings of ministers and officials with Parliament over the arms to Iraq affair added impetus to this trend. But little was achieved; and Lord Nolan, Britain's first overlord of public standards, described the attempt as 'Lilliputians trying to tie down Gulliver'.

The symbolic House of Commons resolution of January 1997 (see above), re-affirmed the duty of ministers to be open and honest in their dealings with Parliament, but this pious hope is not enforceable, as MPs generally have no means of knowing whether ministers have misled the House. The principle of ministerial responsibility remains too loose and confused to serve as a practical mechanism for achieving genuine accountability; and given that ministers generally, by definition, command a majority in the House, the accountability it provides is never likely to be strong, except when a scapegoat is required or in other exceptional circumstances.

The distinction between 'policy' (for which ministers accept formal responsibility) and 'operations' (for which they rather controversially do not) further undermines the principle, being so hard to define in practice that ministers can shelter behind it and evade responsibility when serious failures come to public notice, as the former Home Secretary, Michael Howard, notoriously did over prison escapes and policy.

In addition, MPs are obsessed with the ultimate sanction – that of ministerial resignation – at the expense of rectifying and learning from the mistakes which have inspired any particular crisis. This obsession turns inquiry into any crisis into the stuff of party political warfare and encourages ministers and officials to be even more secretive and obstructive than they might otherwise have been. Episodes

such as the Westland crisis and the debate on the Scott report are trials of political strength which generate far more heat than light. Ministers have resigned over failings in their private lives, but almost never over failing in their public duties.

In sum, the supposedly reassuring concept of ministerial responsibility, like that of cabinet government, is substantially unworkable – and obsolete and unreal in terms of genuine ministerial control of the permanent civil service. The very idea focuses the accountability of the executive on a very narrow point – fewer than two dozen secretaries of state are made answerable to an assembly of some 650 men and women for all the activities of a vigorous and many-headed executive. It is a modern version of the medieval concept of counting angels on the head of a pin.

### SUMMARY: PARLIAMENT & MINISTERIAL RESPONSIBILITY

The House of Commons is reluctant to assert its own rights against the executive, and invariably accepts the executive's views of the conventions which govern their relationship. In part, this is the product of political realism. But MPs' continuing acquiescence in what is universally acknowledged to be a highly deficient system for the scrutiny of legislation; its unwillingness to tackle the evil of wide-ranging secondary legislation; the absence of any challenge to executive supremacy over its own rules: all these manifestations of impotence suggest a deeper malaise of the democratic spirit. The doctrine of ministerial responsibility fails to make ministers properly accountable in Parliament, and perpetuates an obsolete myth of ministerial control over the state bureaucracy.

### THE RULE OF LAW

The activities of the executive are largely ungoverned by consistent public rules of conduct. The United Kingdom does not have a written constitution nor a coherent body of constitutional and public law. The judiciary, though independent of the executive, is in practice subordinate to it. The doctrine of Parliamentary sovereignty makes Parliament the highest court in the land and superior to other courts (except under European law); but since the executive rules Parliament, the doctrine in practice raises the executive above the judiciary.

The judiciary has responded to growing alarm about the unaccountable nature of modern government since the 1960s onwards by developing the practice of judicial review. Basically, judicial review obliges the executive to observe rules both of due process and inherent quality in its decision-making and thus to avoid arbitrary, unfair or unreasonable government. The courts have begun to rein in executive discretion. They have decided, for example, that executive claims of public immunity for official papers relevant to court proceedings cannot be absolute; and that ministers' use of royal prerogative powers should at last be made justiciable.

But judicial review serves to curtail

executive discretion only at the margin, and is itself limited in scope. 'National security' remains a significant 'no-go' area and may be deployed to prevent judicial inquiry. The courts, unguided by any higher constitutional laws, are naturally reluctant to intervene in issues which have a political content. On the other hand, 'judge-made' review, based on the common law, has an in-built flexibility which a fixed constitutional system will generally lack.

Further, though the basic principles of judicial review correspond broadly with democratic norms, they fall short of modern democratic standards and do not, for example, insist on transparency, public consultation and the giving of reasons in executive decision and policy making. However, civil and political rights will shortly be protected more fully by the part-incorporation of the European Convention on Human Rights into British law, thus giving British courts some opportunity to give redress to those whose rights have been violated.

However, the overall position is that substantial areas of government activity remain open to wide executive discretion, governed only by the operation of conventions – informal guidelines which shift over time and can be varied at will. Some of these conventions are strictly-guarded secrets. Even the rules for ministers were confidential until 1992.

Government by convention makes for an executive 'flexibility', which is prized by those who defend the constitutional *status-quo*. But it represents yet another systemic weakness in British democracy, and has severely compromised the quality of government policy-making. The executive's legislative powers also give it the ability to reverse court decisions which are not to its liking.

The practice of judicial review also raises two serious questions. Are the courts the right instrument on their own to remedy gaps in *political* accountability? Is it right that the tests of natural justice, due process and reasonableness, which the courts apply to government and public decisions, should be judge-made, and not derive from the wider agenda which a publicly-approved written constitution would supply?

#### SUMMARY: THE RULE OF LAW

The constitutional doctrine of Parliamentary sovereignty places the government and state – the political executive – above the judiciary. In the absence of a written constitution, the courts have no higher laws against which to measure the constitutionality of government legislation – though part-incorporation of the European Convention will give them power to check and declare on measures and decisions which contravene the Convention. But generally the judiciary is confined to ensuring only that government and the state obey basic rules of due process and are not flagrantly irrational; and though such activity is generally consistent with democratic values, such values are not fully realised within the current scheme of things.

## PARTICIPATION AND CONSULTATION

The closed nature of British government astonishes American visitors. Obsessive secrecy is one aspect of this. Another is the quality of such consultation which takes place. Whitehall issues streams of consultation papers and official guidance now says that meetings and hearings should become standard practice. Since 1997, even the fortress-like Ministry of Defence has engaged in a wide-ranging consultation exercise on the government's strategic defence review. But open consultation remains rare and opportunities for citizen initiative and participation rarer still; and consultation processes are notoriously unbalanced and unsystematic in some areas. Departments rarely publish all the submissions they receive and thus it is hard for the public to discern what the overall weight and direction of these exercises might be. Further, the public has no access to quangos and other government agencies, as people do in the USA.

Much formative consultation takes place within narrow policy communities of government officials and selective organised interests which are generally closed to outside scrutiny, and tend to pre-empt more formal public consultation exercises where these take place. Certain powerful interests enjoy preferential access to ministers and their officials, and in some cases can be said to have 'captured' the department concerned. Legislative proposals can emerge from these policy communities which in effect bind ministers and cannot even be amended by MPs in Parliament because changes could 'unstick' carefully negotiated deals.

This collusion between the executive and powerful interests may result in a serious loss of public confidence, as has happened in areas of food policy, environmental protection and public health, and in major 'policy disasters' causing death, illness and economic damage. The effect is particularly damaging when major interests have close links with political parties and are involved directly in their funding. Such practices not only undermine public confidence in government. They also infringe the democratic principles of equality of consideration due to all citizens in the formulation of policy, and the openness of government to a wide range of opinion within the society.

### The role of quangos

The extensive use of quangos (see above) also diminishes the ability of ordinary citizens to contribute to debate over public policy, as well as the role and authority of Parliament and the more obvious erosion of local government. In practice, the quango state removes layers and areas of policy-making and action

from the parliamentary – and public – gaze.

The absence of a constitutional framework and the informal and secretive nature of government policy processes blocks scrutiny and leaves government free to co-opt and mobilise all manner of bodies, including private companies, consultants and advisers within the domain of quasi-government to carry out major tasks, such as industrial restructuring, training and employment policies. Although select committees are formally able to investigate 'associated bodies', Parliament has no effective oversight over the government's creatures, their interests and processes, as they operate under cover of ministerial discretion. Indeed, ministers themselves often have little or no contact with such bodies, let alone direct control over them. It is departmental officials, if anyone, who run and supervise them.

## LABOUR IN GOVERNMENT

Since May 1997, the Labour government under Tony Blair has been engaged in carrying out an electoral mandate for substantial constitutional reform:

- Scotland and Wales will now assume differing degrees of self-government. Elections by proportional representation to the Scottish Parliament and Welsh Assembly will take place in May 1999
- As part of the peace process, a power-sharing assembly has been established through proportional STV elections in Northern Ireland, with more firmly entrenched minority rights
- Regional self-government in England will be possible at a later date on a 'self-starter' principle; in the meantime appointed regional development agencies are being put in place on a time-honoured corporatist basis
- Proportional representation has been introduced for the elections in May 1999 to the European Parliament (though under a 'closed' list system which restricts voter choice)
- The European Convention on Human Rights is being largely introduced into domestic law (see above)
- Proposals for a first stage of reform of the House of Lords have been published, abolishing the right of hereditary peers to vote in the chamber, but no proposals for a democratic alternative to an appointed chamber have yet been made
- The Electoral Commission under Lord Jenkins has proposed a hybrid PR form ('AV-Plus'), for elections to Parliament. The Jenkins scheme retains the MP-constituency link and introduces a greater measure of proportionality than first-past-the-post while still making it possible for a party to win power at Westminster on a minority of the popular vote.

- London is to have an assembly and mayor, with elections under reformed systems in 2000.
- Local government is being partially liberated from the previous government's regime of strict central control, but British arrangements for local government do not meet the standards of the European Charter for Local Self-Government.
- Legislation on freedom of information has been further delayed, and there are signs that the government is in retreat from its bold white paper which established a commissioner with powers to enforce greater openness. The processes of policy-making will remain closed to public view.
- The limited reform programme for quangos, instituted under the Conservative government, is gradually continuing, but FOI laws and rights of public access to these bodies are required to open them up for genuine public scrutiny and debate.

Overall, Labour's substantial reform programme will address a number of the democratic deficiencies identified by the Democratic Audit. Its vigour also demonstrates the capacity for self-renewal of the political process in Britain. The Neill committee's proposals to clean up political funding and limit election spending will, if enacted, help to restore public confidence in politics; and the government's reforms may very well also encourage a more dynamic sense of democratic self-confidence, especially in Scotland and Wales. But even here there is no overall reformulation of what the new UK constitutional arrangements will be, and the devolved assemblies' roles. The task of resolving difficulties will formally be given to the Judicial Committee of the Privy Council, and in effect to ministers at Westminster.

However, even on an optimistic assumption about their effects, the reforms only address some of the deficiencies set out here. In particular, though they reveal a willingness to share power, especially in the devolution proposals, and possibly to open up the broad spectrum of government to the public gaze, they do not directly do much to alter the executive dominance over Parliament or the way the core executive itself functions.

## DEMOCRACY IN BRITAIN

The principal democratic deficiencies in British governing arrangements are interconnected:

- Parliamentary elections generally place a single party decisively in power, on a minority of the popular vote;
- The majority government and the permanent bureaucracy fuse into a dominant executive, protected from proper scrutiny by secrecy and operating in a context of informal guidelines and

discretionary powers

- The executive dominates Parliament and through Parliament is superior to the judiciary; and neither they nor any other bodies provide effective checks and balances on its conduct of public affairs.

It is often argued in mitigation that these democratic deficiencies contribute to Britain's tradition of strong and effective government. In other words, the British public is invited to choose between the virtues of effectiveness and democratic accountability. This is a false choice. Policy outcomes are both more coherent and more publicly acceptable if they are publicly tested against alternatives and a wide range of points of view; and they are more democratic if citizens have had the opportunity to contribute to them on an equal basis.

However, the traditions of strong central government are very powerful and have a place within Labour's own culture, be it Old or New. Tony Blair's electoral appeals were founded in part on the promise of 'strong' government. Thus, it remains possible that the more the process of democratisation encroaches from the periphery of British government (both geographically and institutionally), the more the post-imperial core will prove its ability to resist its force and impose its time-old will on the future.

The spirit of Labour government is more benign and open than under Lady Thatcher, but the reality remains that the writ of single-party government at the centre runs just as strongly. Executive dominance is masked formally by the doctrine of parliamentary sovereignty and politically by the government's presentational skills. Both the Democratic Audit volumes stress the need for strong political and legal restraints on this dominance.

The precise character and impact of New Labour in government and its democratic reforms have yet to reveal themselves fully, and to work their way through. The positive measures of democratisation could set going a dynamic process of wider democratic renewal. Equally, the resilient traditions of strong government could assert themselves over the reform agenda.

But the government's constitutional changes do not include introducing a written constitution or a new constitutional framework of rules for the conduct of government in this country. The first proposals of the government's modernisation programme in Parliament do not significantly strengthen Parliament against the executive's overweening powers. Indeed, they simply put a velvet glove on the iron fist of executive power.

There is an absence of democratic resolve in the government's programme; everything is being done in the name of 'modernisation'. There are no positive

plans to democratise the executive itself. The danger is that the government will drift into acceptance of the informal and flexible executive practice which is the biggest enemy of democratic practice in the United Kingdom.

British democracy requires a new constitution or constitutional framework, which sets out the respective powers of the executive and organs of the state, defines the limits to those powers and establishes rules of conduct. Such a framework would also specify the rights and responsibilities of citizens, and substitute *popular sovereignty* for *executive supremacy*. Otherwise, citizens of this country will continue to be governed under a 'magically flexible constitution' which allows their political masters to make up the rules as they go along.

## OVERALL SUMMARY

The overall conclusion, then, of the audit of the electoral and governmental process in the UK is that it is a process operating within democratic norms and procedures, but that systemic features are at work which substantially limit their reach and impact in practice.

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## FUTURE AUDITS

Given the Labour government's commitments to a more open and pluralist society, the judgments of the current audit – just two years into its programme – are bound to be preliminary. There is a need to assess just what democratic progress will be made over the next five and ten years. One purpose of the Democratic Audit volumes is to report on the current state of democracy and political freedom in the UK at any one time – as we do here. But the volumes are also intended as benchmarks, against which the country's progress towards democracy and freedom – or otherwise – can be measured.

That this report should become a matter of history is intrinsic to the audit process itself. But at the end of the Labour government's term of office, the Democratic Audit will publish further audits, working with the same criteria, to assess how far the democratic deficiencies identified here have been moderated or overcome in practice; and how far civil and political rights are better or worse protected. It is hoped that further audits will then continue the process over time.

● Thanks to Anthony Barker and Lord Smith of Clifton for their comments on this leaflet, and to Anthony Barnett for a witty first draft of the introduction.

# THE DEMOCRATIC AUDIT

The Democratic Audit is jointly managed by the Human Rights Centre, University of Essex, and the Joseph Rowntree Charitable Trust. Through the centre, the Audit has formal links with the Departments of Government, Law and Sociology at the University, and scholars from all three departments cooperate in its work.

However, scholars from 17 other universities, as well as lawyers, journalists and others, have contributed to the Audit's work. In particular, there are strong links with the Department of Politics, University of Leeds; the Department of Government, at the LSE; and the Department of Politics and Sociology, Birkbeck College, London. The Director of the Audit is Stuart Weir, a Senior Research Fellow at the Human Rights Centre. Professor Kevin Boyle, Director of the Centre, is Academic Editor and jointly chairs the Audit's advisory committee with David Shutt, chairman of the Charitable Trust's democratic panel. Professor David Beetham, of the University of Leeds, acts as consultant to the Audit.

The advisory panel consists of Kevin Boyle and David Shutt (chairs); Tony



Barker, Reader in Government, Essex; David Beetham; Patrick Dunleavy, Professor of Government, LSE; Francesca Klug, Research Fellow, King's College, London; Helen Margetts, Birkbeck; Keir Starmer, Doughty Street Chambers; and Maurice Sunkin, Professor of Law, Essex.

Apart from the two major audit volumes, the Democratic Audit has published a series of reports on British democracy, most notably on elections and quangos. The Audit also undertakes education, training and consultancy work. International courses for the British Council are held regularly at Essex. Staff are engaged in comparative studies with scholars and experts from Australia, India and Sweden, and have acted as facilitators and tutors on projects, financed by the EU and FCO, on strengthening parliamentary democracy, regional and local government and human rights in central Europe, India, Namibia and Zimbabwe.

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*Political Power and Democratic Control in Britain* is published by Routledge. The authors are Stuart Weir, Director of the Democratic Audit and Senior Research Fellow, University of Essex; and David Beetham, Professor of Politics, University of Leeds. It is a companion volume to *The Three Pillars of Liberty: political rights and freedoms in the United Kingdom*, by Francesca Klug, Keir Starmer and Stuart Weir, also published by Routledge.

This Findings leaflet and other Democratic Audit papers and information are available on the Audit website at < [www.fhit.org/democratic\\_audit](http://www.fhit.org/democratic_audit) >. Bulk orders of the leaflet, orders for other Audit publications, and further information about the Democratic Audit may also be obtained from Ms Anne Slowgrove, Human Rights Centre, University of Essex, Colchester, Essex, CO4 3SQ (tel: 01206 872558).

The Joseph Rowntree Charitable Trust funds a range of charitable work under its programme in support of the democratic process, focusing on such issues as freedom of information; civil and political rights, and electoral reform. Details of current funding policies may be found at the Trust's Web Site at < [www.gn.apc.org/rowntree\\_ct](http://www.gn.apc.org/rowntree_ct) >