

FAILING DEMOCRACY

THE 2005 ELECTION is not only about the choice between the political parties; it serves as a litmus test of democracy in the country. The concern about the condition of our democracy under Mrs. Thatcher's premiership that prompted the original establishment of the Democratic Audit is now re-emerging very strongly once more.

What are our conclusions? The simple one is that the condition of democracy in Britain improved a great deal between 1997 and 2001, but that it has now substantially regressed. The improvement in 2001 was largely the result of the constitutional reforms enacted by the first Labour government, especially the devolution and Human Rights acts. Action on the economic and social rights of ordinary citizens and the determination to bring more women into public life were also significant. In some areas of democracy no progress was made by 2001 and the UK remained adrift of best international practice; and two showed a decline from 1997 – voter turnout and the democratic contribution of political parties (see the bull's eye chart on page 3).

What is the evidence for the regression since 2001, and what are the reasons for it? The public has lost confidence in the representative process under the second Labour government. This is shown in the low and falling turnouts for non-Westminster elections; in the falling membership of the main political parties; and in the widespread belief that politicians do not tell the truth.

Tony Blair's determination to position his government on Tory ground has made the two parties virtually indistinguishable to the public. Only 30% of the people can see any difference, compared with 80% at the time of Mrs Thatcher. Large sections of the population have felt unrepresented as a consequence, and it is no coincidence that the period has witnessed some of the largest mass protests in British history – a sign of the vigour of civil society.

Two key episodes have demonstrated how insecure the foundations of our democracy are. The first was the tragedy of 9/11 and the government's response to the threat of terrorism. Alone among our European partners the government derogated from the European Convention on Human Rights to introduce detention without trial for foreign terror suspects. When the Law Lords declared such detention was illegal, the government introduced "control



Montage: Tony Garrett

orders" restricting the activities of suspects. This latest Prevention of Terrorism Act is merely the culmination of a series of anti-terrorist laws which have tilted the balance between security and civil liberties firmly against traditional freedoms, and left the Muslim communities in particular much more vulnerable.

The second key episode was Blair's decision to join the US in the illegal invasion of Iraq, which has had ramifications throughout almost every aspect of political life. The decision demonstrated a failure of cabinet government, the politicisation of intelligence to mislead both Parliament and public, the Prime Minister's unchecked powers to wage war and the absence of Parliament's capacity to scrutinise the executive or to hold any of the key decision makers to effective account. At the

international level, it showed contempt for the UN and the subordination of UK policy to a US President who has consistently acted to subvert the international rule of law.

The decision to invade Iraq is not an isolated occurrence, but forms one of a sequence of 'policy disasters' whose roots we have identified in previous audits. Policy disasters, such as the poll tax, the BSE scandal and the invasion of Iraq are the product of the virtually unlimited powers which an unrepresentative electoral and parliamentary system delivers to the leader of the dominant party at Westminster, yet without any of the checks and balances of a presidential system. In the absence of these, 'electoral democracy' degenerates all too readily into elective dictatorship, as we have witnessed once again under Tony Blair.

Equal citizenship

Most British people are formally citizens of the UK and EU and share a basic right to reside in and freely return to the UK, and to live and work in other EU countries. All citizens have a formal right to equal treatment under the law, though legally they remain subjects of the Crown. The failure of successive governments to reconcile international obligations on asylum with a hostile domestic press and public opinion has created an inefficient and discriminatory asylum system of deterrents, delays, detentions and dispersal policies. Racial and ethnic minorities experience discrimination at the hands of the police and courts, as in other public services. In 2000 the Labour government placed all public bodies under a duty to provide equal opportunities, but progress in tackling discriminatory practices, especially by the law-enforcement agencies, has been set back since 2001 by anti-terrorist legislation, which has increased insecurity for Muslim citizens especially.

The rule of law

The Human Rights Act in Labour's first term strengthened the rule of law throughout Britain's public administration. Appeals against miscarriages of justice have been accelerated under the Criminal Cases Review Commission. More worrying in the criminal justice system have been the limitations in legal aid, the increase in suicides in prison, especially of young offenders, and the decline in the percentage of convictions in rape trials. The biggest blots on Labour's record have been the abolition of due process under the latest anti-terrorism legislation, and the admissibility of evidence obtained under torture, provided it was not carried out by UK officials. The decision on the Iraq war has raised a number of concerns about the government's commitment to international law, about the circumstances in which the Attorney General's advice on the war's legality was given and about the politicisation of his legal function. The judiciary is socially unrepresentative, but fiercely independent; a new Supreme Court outside the House of Lords is being established. The worst sectarian violence in Northern Ireland seems to be over.



Democratic Audit is running an analytical review of the party manifestos with an emphasis on democratic issues.

Protecting civil and political rights

The Human Rights Act 1998 remedied the systematic inadequacies in the protection given to civil and political rights up to 1997 by incorporating the European Convention on Human Rights into British law. The government then derogated from the Convention in 2001 to gaoil foreign terror suspects indefinitely without trial. In December 2004 the Law Lords ruled that their imprisonment was unlawful and the government rushed through "control orders" in the Prevention of Terrorism Act 2005 that restrict the activities of terror suspects, again without trial. Derogation from the Convention is judged unnecessary so long as no order imposes house arrest. There are concerns that the Civil Contingencies Act 2004 may be open to abuse by government for political purposes.

Promoting economic and social rights

Poverty and inequality run deeper in the UK than in any comparable EU nation. Since 1997, the Labour government has sought to address the accumulated legacy of distress and disadvantage through targeted measures and increases in employment; and is committed to eradicating child poverty by 2020. The government has invested heavily in a health service largely free at time of need, but has neglected the need for social, affordable housing. Means-tested pensions benefit the poorest old people (so long as they fill in the forms), but pension policy is inadequate. Ethnic minorities suffer from multiple discriminations and disadvantages. The right to strike is unprotected in law.

Free and fair elections

Parliamentary elections are grossly disproportionate and regularly return one of the two larger parties to power with a large majority in the popular chamber won on a minority of the popular vote (in 2001, Labour won a huge 166-seat majority over all other parties in the House of Commons on just 40.7 per cent of a falling popular vote). The second chamber is an entirely unelected body. Proportional elections – the norm in Europe – have been introduced for the newly-devolved Scottish Parliament and assemblies and European Parliament, but a promised referendum on electoral reform for Westminster has been kicked into touch. Reforms under Labour have enfranchised excluded people, like the homeless, opened up voting generally, and established a body to oversee elections and referendums.

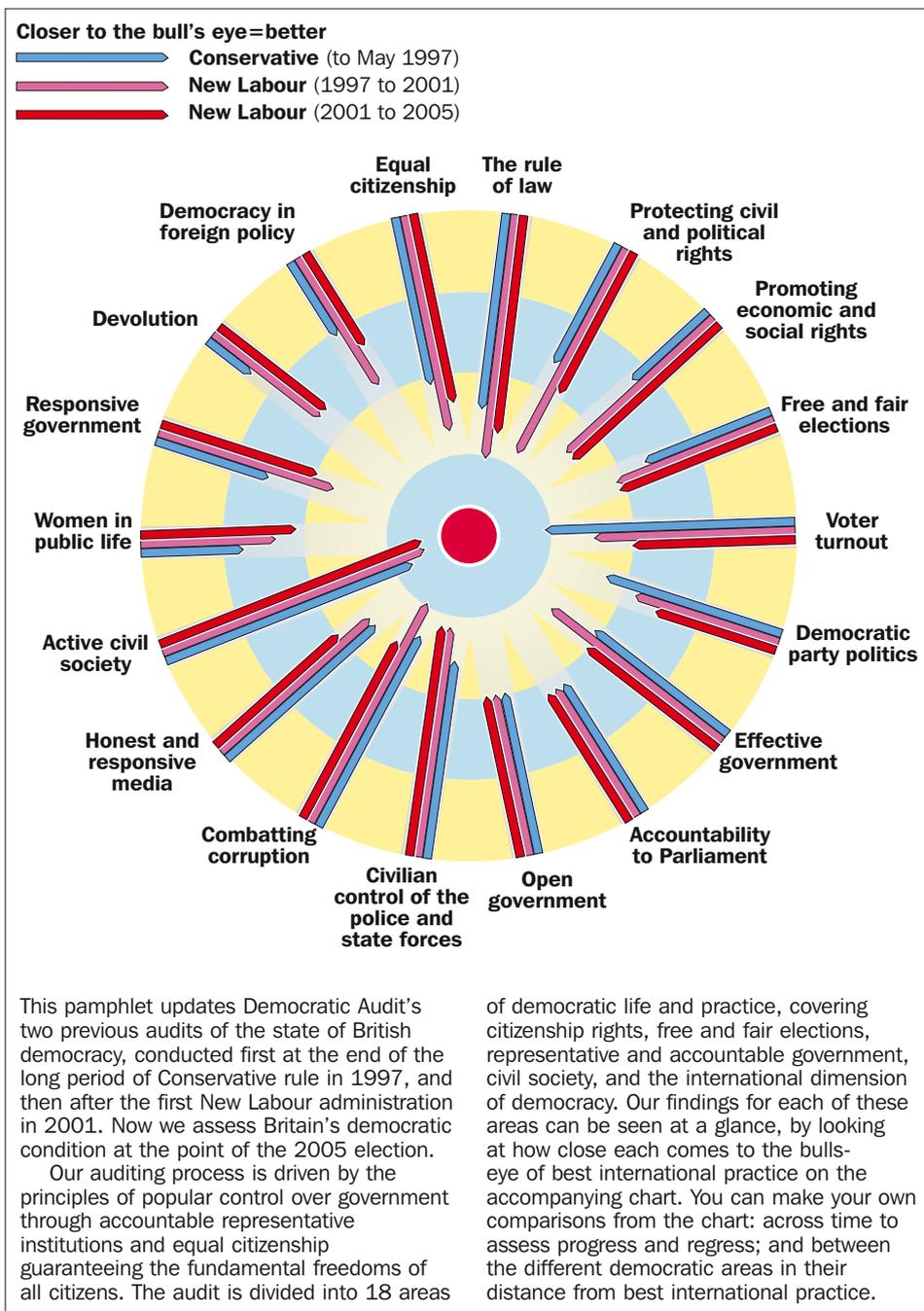
● Voter turnout at the 2001 general election was the lowest ever since the advent of universal adult suffrage at 59.4 per cent of the registered electorate and looks likely to be lower still in 2005 election. More people voted in the European (June 2004) and London elections (May 2003), fewer in the devolved Scottish and Welsh elections (May 2003). Various experiments have shown that postal ballots are most likely to raise turnout, but there is alarming evidence that they are vulnerable to fraud.

Democratic party politics

UK political parties are small by European standards, their memberships are falling and they are held in low esteem by the public. The electoral system and strong party discipline make the two dominant parties formidably efficient at forming and sustaining governments in office, but at the expense of representative government and more pluralist party politics at Westminster. Tony Blair's electoral strategy of positioning Labour on Conservative ground has wrong-footed the Tory opposition in Parliament and by reducing the perceived difference between the parties, has left much of the electorate feeling unrepresented. Internally the parties are run by small oligarchies that observe quasi-democratic practices; and increasingly rely on large donations from individuals for their finances. The rise of UKIP and the BNP may make party politics more pluralistic, but their messages are a matter for democratic concern and the presence of the BNP provokes hostility and harassment of ethnic minority communities.

Effective government

Governments in the UK are traditionally made "strong" through their unearned majorities in the House of Commons. In practice, their majority power makes Parliament and its law-making powers subordinate to their will and Parliament's legal sovereignty raises them above the judiciary. Recent governments have centralised power and their legislation, politics and actions are largely unchallenged in Parliament; despite some pre-legislative scrutiny, poorly framed laws still go through Parliament largely unchecked. The Butler report on policy-making on Iraq revealed how much government is run by the "sofa politics" of a small and informal court in Downing Street at the expense of cabinet government. Collective judgment, he suggested, was compromised. Thus



the invasion of Iraq must be added to an already long list of "policy disasters" in British governance – like the poll tax, the BSE/CJD scandal and rail privatisation. Government in the UK suffers from being unrepresentative, over-powerful, centralised and largely unchecked. It may be strong, but it is not effective.

Accountability to Parliament

The constitutional doctrine of ministerial responsibility to Parliament is a fiction. Legally undefined royal prerogative powers give the Prime Minister and ministers executive freedom unchecked by Parliament. The Prime Minister may even wage war without consulting Parliament. Select committees have improved Parliament's ability to scrutinise, but overall the House of Commons cannot make government accountable

for its policies and actions and has a negligible impact on legislation. The House of Lords has begun to challenge government, especially in issues of constitutionality and civil liberties. Parliament maintains scrutiny of EU directives and policies which determine much domestic legislation, but it is the government alone which has a real say in decision making in the EU and multilateral bodies like the IMF, World Bank, WTO, G7 and Nato. The European Parliament has formal power-sharing arrangements with Brussels, but is too remote from the UK and too weak to represent the interests of the British public in the Union.

Open government

The government's Freedom of Information Act 2000 establishes a statutory right of access to offi-

cial information, but bristles with 37 exemptions to unchallenged access. Some "class" exemptions protect all documents in a given category, like government policy, from disclosure. The government also retains the power to override any decision by the new Information Commissioner ordering disclosure. Another 300 acts (among them the Official Secrets Act) and orders further prohibit disclosure of information. The blanking out of a paragraph revealing changes in the Attorney-General's view of the legality of the invasion of Iraq suggests that the avoidance of political embarrassment – which is not a formal ground for exemption! - will remain a strong element inhibiting full disclosure.

Civilian control of police and state forces

The armed forces are formally under civilian control and Parliamentary consent must be obtained for their maintenance in peacetime. But the Prime Minister has almost sole command of their disposal and the heads of the three services exert considerable political influence in practice. The intelligence and security services are now statutory bodies and are subject to nominal oversight by chosen parliamentarians and a nominal complaints system. Yet the Iraq war has also revealed serious shortcomings, such as the manipulation of secret intelligence for domestic propaganda, and the inadequacy of military procedures for investigating death and injury to enemy civilians (though the High Court has ruled that the Human Rights Act extends to the treatment of those held in custody by UK personnel abroad). Over the past quarter century Home Secretaries have increased central powers over the police but there are now signs that a degree of local accountability may be restored. Police complaints are being taken more seriously, even though excessive police secrecy continues. Overall, police conduct remains of a higher standard than that of most European countries.

Combatting corruption

British politics are relatively uncorrupt by the standards of the larger European nations. Evidence of corruption in the Commons and "sleaze" generally in the Major era led to reforms, codes of conduct for politicians and officials at all levels, and new enforcement mechanisms. Concern has increased, however, about the degree of business influence over government, through party donations, the predominant presence

of business in advisory and executive committees of government, and the 'revolving door' process whereby retiring ministers and officials so rapidly gain directorships in companies relating to their former departments. Because of confidentiality, the burgeoning PFI schemes evade effective public scrutiny. As regards fraud in the private sector, the Serious Fraud Office has a lamentable record of successful prosecutions, and the UK has a relatively poor rating in the Transparency International bribe payers' index in relation to overseas contracts

Honest and responsive media

The British media are broadly representative of a diversity of interests and opinions, but ownership of broadcasting and the press is being concentrated in fewer corporate hands. The Communications Act 2003 loosened ownership rules, making it theoretically easier for newspaper owners and non-European media corporations to take over terrestrial TV channels. The BBC came under intense political fire from Downing Street in 2003 and the findings of the Hutton inquiry led to the resignations of the BBC chairman and director-general. But the BBC survives as a well-funded public service. Regulation is becoming more "light-touch". Television maintains high standards in the reporting of politics to an increasingly uninterested public. So do several broad-sheet newspapers, though political biases can distort their coverage. The tabloid press is however often intensely partisan, sensational and trivial and often exploits majority prejudices against asylum-seekers and, lately, travellers, thus creating space for populist electoral campaigning. The anti-European bias of a majority of newspapers has inhibited public debate on Britain's place in the EU.

Active civil society

Britain has a strong tradition of civic and voluntary activism in all walks of life through charities, voluntary organisations, trades unions, pressure groups, protest activity and so on. Although people may be less active in formal politics, our previous audits have shown this civic activism to be the strongest feature of our democratic life, bearing comparison with the most vigorous anywhere. The second Labour administration has been marked by some of the largest mass protest campaigns in British history, especially those organised by the Countryside Alliance and the Stop the War Campaign. Voluntary organi-

sations are mainly independent of the state, but their independence risks being compromised by their growing service role, and the fact that more than half their income comes from government sources. Central and local government rely on over 500,000 members of the public to serve on juries, quangos, local councils, school governing bodies, etc., and to act as JPs and special constables.

Women in public life

In the 1997 election the proportion of women returned to the Westminster Parliament doubled to 18%, but remained static after 2001. This proportion is still low by European and especially Nordic standards. More women were elected to the devolved assemblies in Scotland and Wales at the outset, and their proportions reached 40% and 50% respectively in the most recent elections. These figures reflect Labour's determination to select women candidates for safe seats and on party lists. The Labour government has also made a point of promoting women to government and cabinet office, and across the public sector more generally. So this is one area where we can record democratic progress since 2001, but still at a low level in comparison with best practice internationally.

● **Responsive government: Most people in the UK believe they have no influence over government policy between elections. In its first administration, Labour reformed official procedures for public consultation on policy and legislation, and made good use of public inquiries, such as that into the murder of Stephen Lawrence. Since 2001 it has launched a path-breaking series of consultations on GM crops and the public were enabled to participate on-line in the pre-legislative scrutiny of the draft Communications bill. Despite these efforts, sections of the electorate across the political spectrum have felt not just ignored but actively snubbed by the government on issues that they regard as vital.**

Devolution

The UK is a unitary state. Prior to 1997, no nation nor region within the UK had any degree of self-rule. The government has devolved power to a Scottish Parliament, less power to the Assembly of Wales, and less still to the London mayor and assembly. However there are holes in the heart of devolution – in England, where 80 per cent of the UK is still ruled from Westminster; and in NI

where direct rule has been in place since October 2002. The current measures of "home rule" are unequal and reserve much power at the centre; and the Treasury still rules so far as financial resourcing, tax and benefits policies are concerned (though Scotland can marginally vary the rate of income tax). But more representative and responsive government closer to the people now exists in Scotland and Wales. Proposals for weak elected regional assemblies in England have been rejected. Local government is too remote from local communities and too much under tight central control. Overall, Britain compares very badly on both regional, and local government with similar European states.

Democracy in foreign policy

The 1997 government's 'ethical foreign policy', emphasising human rights, control of arms sales, environmental protection, etc., has had a mixed record. The UK's attempts to reform EU agricultural subsidies which damage developing countries' economies more than the value of the aid they receive, and the commitment to improving aid for Africa in particular and debt reliefs for impoverished nations are both welcome. Yet the UK aid budget, though raised, will still amount to only 0.47% of GDP by 2007-08 (the UN target figure is 0.7%, which would require a £4.1 billion increase in UK aid). The invasion of Iraq caused untold damage to the integrity of the UN and the principles of international law on which it was founded, not to mention Britain's own international standing. It also demonstrated how far subordination to the US forms the keystone of Britain's international policy, for reasons that may well have more to do with intelligence sharing and nuclear dependence than broader national and global interests. The decision to enter into a wholly one-sided extradition treaty with the US, to the detriment of our citizens, and the failure for three years to secure the release of British citizens detained unlawfully at Guantanamo Bay, have only emphasised the extent of our national humiliation.



Democratic Audit is a research consortium attached to the Human Rights Centre, University of Essex. We publish regular audits on the state of British democracy. You can find out more about us and our work on www.democraticaudit.com