

The British Constitution in the Twentieth Century

ALL Constitutions evolve – but an unwritten Constitution evolves obscurely. The rules of the game of British Government have changed subtly, year by year. It is the job of the political scientist to monitor the changes, constantly assessing whether seemingly established rules still apply. Vernon Bogdanor's brilliant achievement in putting together *The British Constitution* emphasises this theme. What follows is a brief attempt to underline the transitory basis of our governmental arrangements.

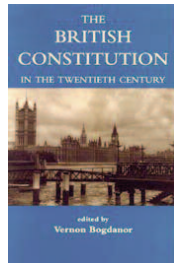
Let me set out, in one portmanteau sentence, what any middle of the road teacher of politics might have expounded to his students forty or fifty years ago.

Britain is (1) governed under an (2) unwritten constitution that is (3) unitary and (4) centralised by a (5) Cabinet that is (6) individually responsible and (7) collectively responsible to a (8) Sovereign Parliament with (9) two parties elected (10) first-past-the-post by a (11) stable electorate.

Each of the eleven propositions implicit in that sentence has come under challenge during the last half-century

1. *Britain is governed.* Are we governed? The sense that there is an authority in Westminster capable of controlling the economy and shaping the nation's future has diminished with the advance of globalisation and the entry into Europe. A widespread scepticism has developed about the ability of any government to govern.

2. *Unwritten Constitution.* A century ago Austen Chamberlain could say 'unconstitutional is just a term used in politics when the other fellow does something you don't like'. There was no document to turn to in order to decide what was constitutionally proper. But now there exists the Treaty of Rome and its successors, the Scotland Act, the Government of Wales Act; and the Human Rights Act also set limits to what the government at Westminster can do. Many of the rules of the game are still unwritten but there is much now set down in de facto unrepeatable law which judges in London or in Strasbourg can interpret.



The British Constitution in the Twentieth Century, edited by Professor Vernon Bogdanor FBA, was first published in summer 2003. This British Academy Centenary Monograph was reissued in paperback in 2004. Dr David Butler CBE, FBA, who spoke at the original launch of the volume, notes some of the constitutional changes over the last half century.

3. *Unitary.* Fifty years ago it was possible to argue that Montesquieu and Blackstone were fundamentally wrong and that there was no separation of powers in Britain. The executive and the legislature were merged, buckled together through a Cabinet dependent on parliamentary approval, and, in contrast to the USA, Parliament could not be overridden by the judiciary. Today there is much more conflict between executive and legislature, Party rebellions in the Commons have significantly increased. The Upper House presents much more of a problem to the government. But the separation of the judiciary has become even more important. In the last twenty years recourse to judicial review of executive actions has multiplied five-fold. More and more government policies have been challenged under the European Convention of Human Rights which, since the Human Rights Act 1998, has produced many cases for British judges. The growth in the influence of the judiciary means that the student of British Government today needs to be versed in law to a degree unknown in the 1950s.

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Details of *The British Constitution in the Twentieth Century* can be found on the Oxford University Press web site (www.oup.com)

4. *Centralised.* The overwhelming bulk of public business used to be conducted in London. In the last thirty years it has moved more and more to Brussels and to Edinburgh and Cardiff. There has also been a great deal of administrative devolution to provincial centres. Elected English Regional Authorities are now on the political agenda.

5. *Cabinet.* The Cabinet meets for many fewer hours than it did forty years ago. Government decisions tend now to be announced in the name of the Prime Minister rather than the Cabinet. The idea that they all emanate from serious collective discussions around the Cabinet table is seen as absurd.

6. *Collectively responsible.* The doctrine remains that 'we all hang together lest we hang separately' and that 'any minister who disagrees with government policy must resign – or at least keep silent'. But the leaks about ministers' disagreements have vastly increased and the fact that so much less is debated in full Cabinet has greatly eroded the doctrine.

7. *Individually responsible.* The old doctrine was that 'for every action of a servant of the Crown a minister is answerable to Parliament' and 'ministers take both the praise and the blame for policies and administration; civil servants are anonymous.' The doctrine still stands but it has been eroded by officials appearing more in public and testifying before Select Committees. It has also been eroded by ministers passing the buck to officials.

8. *Sovereign Parliament.* The absolute sovereignty of Parliament, idealised by Blackstone and Dicey and Jennings, has been much reduced. Since Britain's adherence to the Treaty of Rome in 1972, authority has passed increasingly to European institutions. The European Convention of Human Rights, ratified in 1950, especially after the Human Rights Act, 1998, has guided British Courts more and more. The absolute sovereignty of Parliament looks increasingly mythical.

9. *Two parties.* In 1955, 97 per cent of the popular vote was divided between

Conservative and Labour and all but 7 of the Members of Parliament were attached to those parties. In 2001 the big parties only got 72 per cent of the vote while 81 MPs represented other groupings. In nine of the sixteen post-1945 Parliaments that figure would have been enough to deny the government a clear majority. The possibility of hung parliaments has greatly increased.

10. *First-past-the-post*. The electoral system for the House of Commons remains unchanged – but since 1974 it has become the subject of active discussion. The Labour party entered government in 1997 committed

to holding a referendum on a change of system. The referendum was never held and the pioneering Jenkins Report was not taken seriously. But the government installed the Additional Member System for the new devolved assemblies in Scotland Wales and London and for elections to the European Parliament. The first-past-the-post electoral system (which now works in an increasingly capricious way) can be less and less trusted to produce clear single party governments.

11. *Stable electorate*. Party loyalties used to be much stronger than they are today. Between 1945 and 1959 in only one by-election in

twenty was the incumbent party defeated; between 1974 and 1997 the figure jumped to one in three. Opinion polls also showed much more violent fluctuations. In these circumstances, it becomes increasingly necessary to expect the unexpected.

Much of Britain's established parliamentary, judicial, and administrative culture survives. The past remains a useful guide to the future. But there can be no doubt that exact observation and thinking about constitutional rules is going to be needed. A new edition of *The British Constitution* will be required before many years have passed.