



Continuing the journey towards a modern constitution for Britain

Rt Hon Charles Clarke MP



This pamphlet is based on a speech given by Charles Clarke at Labour Party Conference in 2008, at an Unlock Democracy lecture. Our lecture and pamphlet series are intended to provoke debate on and interest in issues relating to democracy and human rights. As an organisation promoting democratic reform and human rights, we may disagree with what our contributors say - but we are always stimulated by and grateful to them.

In this pamphlet, Charles Clarke provides an analysis on what democratic reform is needed now. While Unlock Democracy support many of the reforms he suggests, we do not necessarily agree with his stance on the Alternative Vote or the Secondary Mandate.

The views of the author of this work should not be presumed to be the opinion of Unlock Democracy or its staff.

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When future historians look back, they will consider the period since Labour's election in 1997 as one of enormous and generally positive constitutional reform.

Probably the most dramatic change is in Scotland, where there is now a devolved parliament with full legislative powers and an executive accountable to that parliament, now from a different political party than that of the UK Government. It takes (or more accurately should take!) full responsibility for most areas of Scottish national life.

Though there have been many doubters along the road to this constitutional success, sometimes including myself, I think that any fair-minded observer would have to conclude that, despite the tensions, devolution has been wholly positive and has improved the quality of political life both in Scotland and in the wider United Kingdom.

In Northern Ireland the process of change has been just as important, and a great deal more difficult. It is now reaching its conclusion after years of difficult negotiation to end the dreadful violence which dishonoured that society, and the implications are profound.

The same is true in Wales, with its elected Assembly, and in London, with its elected Assembly and elected Mayor. And the United Kingdom Parliament has changed as well, with the removal of most of the hereditary peers and a consequent shift in the balance of power between Lords and Commons.

At the same time the constitutional relationships between others of our great institutions have shifted as the Human Rights Act continues to change the balance of influence between the executive and the judiciary, and the Freedom of Information Act modifies that between the executive and the media.

So the last decade will certainly be marked down as a period of historic constitutional transformation. The question which faces the country after this momentous decade is what, if anything, to do next.

These substantial changes have inevitably and rightly led to a rebalancing of our constitution, between some of the great institutions of the realm, between the nations of the United Kingdom and between local and national power. However it is not the case that this range of reforms has yet taken us to a new and stable constitutional equilibrium and it is even possible that some of the changes could lead to future instability unless the appropriate action is taken.

The achievements of the last ten years are important but inevitably partial. Future constitutional stability is important for this country's success and it is necessary to bring the process of reform rightly started in 1997 to a stable conclusion. Therefore the process of constitutional change needs to be completed and this can and should be done by the end of the next Parliament.

The five priority areas for change are:-

- Increasing the strength and authority of the House of Commons;
- Completing the reform of the House of Lords (the second chamber);
- Establishing stable constitutional arrangements for the nations and regions of the United Kingdom, preferably removing uncertainties with a wide degree of political consensus;
- Developing the strength and autonomy of local government and establishing its independence and strength, in ways that have not happened in the last ten years;
- Establishing fixed term parliaments.

This offers a positive agenda for change which could also be taken step by step.

Increasing the strength and authority of the House of Commons

There is a variety of very strong cases for strengthening the role of the House of Commons in British public life. The first example which impressed me strongly when I became an MP in 1997 was the argument that House of Commons Select Committees should hold so-called confirmation hearings for key public appointments. The debate about this took place as part of the seminal legislation, introduced by Gordon Brown, to make the Bank of England independent.

I was then a member of the Treasury Select Committee which deliberated about, and took evidence upon, this proposed legislation. After careful consideration we argued that in addition to the other changes that were being made, there should be a process of confirmation hearings for the Governor himself or herself and for the Monetary Policy Committee in rather the same way as the American Congress confirms the key appointments in the US system.

The discussion and argument about this proposal were interesting but the Government was not prepared to go as far as we proposed. Giles Radice, then the Committee Chair, and I put down an amendment in the Commons to the legislation on behalf of the Select Committee. This amendment required a statutory process of confirmation hearings which would mean that any appointment of the Governor of the Bank had to be formally confirmed by a Select Committee vote. The amendment was selected for debate at Report Stage of the Bill but the Government whipped against it and the Opposition parties whipped for it so our amendment fell. Giles and I decided rather uncomfortably to abstain on our own amendment. That 1997 vote was the first (and for many years the only) time I voted against the Government.

I was therefore delighted when Gordon Brown returned very positively to this theme in the set of constitutional changes he proposed in June 2007. He acknowledged that there are a number of appointments where the authority of Parliament, and not only the authority of Government, would greatly enhance the ability of the post-holder to work with confidence and conviction. This is particularly, but not only, true of appointments in the period before a General Election where there are currently a bizarre set of conventions as to how the Opposition is consulted on certain appointments. Moreover the quality of public debate would be increased by the sense of drama about whether key appointments are actually to be endorsed by Parliament. The types of appointment where the

confirmation hearing procedure might apply include inspectors, such as those of schools, prisons or police. It would include appointments such as the Director of the Office of National Statistics or the Director-General of the BBC.

I am disappointed that this part of the June 2007 constitutional proposals appears to have run into the sand. But I hope that the path which the Prime Minister has set us on will be carried through to implementation.

A second improvement which I draw from that period of membership of the Treasury Select Committee is the establishment of a routine procedure whereby every agency of the government was reviewed by the Select Committee at least once during a Parliament. Such a procedure may seem trivial or otiose but agencies as large as the Learning and Skills Council (which when I was Education Secretary had a budget of the order of £11 billion a year, which at that time was about six times as much as the Department of Transport) or as small and powerful as the Bank of England need to be scrutinised on a routine basis, quite apart from any other specific inquiries. Select Committees are best placed to conduct this and should be resourced to do so.

The third strengthening of Parliament which is urgently needed is its position in relation to the decisions and conduct of the European Union. At the moment, Government ministers go off to the Council of Ministers with a very low requirement to report back to the House of Commons, either on what the Government was trying to achieve in relation to that particular Presidency of the European Union, or what had been achieved in the preceding period.

There is an excellent case for considering European Union matters in the relevant subject area (transport, education and skills, home affairs or whatever) as a serious discussion of policy and practice. That would be far better than considering these things through the very stereotyped pro- or anti-EU discussions of the current parliamentary processes. Regular (say annual) reports of progress on EU policy could be published. Select Committees could take evidence from Ministers on European business twice a year, in June and December, before and after each Presidency.

And finally, Parliament has now decided to establish Select Committees for each of the regions of England. At the Regional level there is a real need for scrutiny and focus upon matters such as rail and road links, operation of health and education services and economic development. There are a range of regional agencies, such as Government Offices, Regional Development Agencies, Regional Health Authorities, Regional Arts organisations and the like where greater parliamentary debate and scrutiny would greatly enhance their work. Under current arrangements these matters are very unlikely to get any scrutiny by Parliament despite their importance for our constituents. Moreover such considerations do fall naturally into the regional television broadcasting structure which still just exists.

So, to summarise, these four changes to strengthen the role of the House of Commons are:

- Confirmation hearings for about 25 key appointments of the State;
- Scrutiny by select committees of government departments and Agencies on a consistent and systematic basis;
- Better British Parliamentary Scrutiny of European Union actions, both in relation to European Union responsibilities and UK Government positions in the EU;
- Developing scrutiny of government in the English regions.

These changes of practice would all enhance the position of Parliament and strengthen engagement with politicians in this country. In addition to these organisational changes, I think that there are two other changes which would significantly strengthen the role of the Commons.

The first is a change of political custom and practice. It is consciously to encourage more free votes in the House of Commons. This is a matter for the Whips of all parties, but principally for the Government. In most legislation there are a number of issues where free votes could quite legitimately happen. Such free votes would force MPs to account to their electorate on how they vote on such matters, without simply being able to use the perfectly legitimate defence of following the Party Whip. Free votes already happen of course on a range of issues like Sunday trading, fox hunting and embryology. These are normally described as 'matters of conscience', though I've never myself seen why there's more 'conscience' in Sunday trading than, for example, tax rates.

Extending the number of free votes would be beneficial for parliamentary democracy in a number of ways. It would allow MPs to develop their own political style and personality around a range of issues; it would encourage greater engagement between the MP and the constituent; it would lead to greater transparency of government legislation; and I think it might actually lead to more progressive legislation by giving greater weight to the constituency experience of MPs.

My final change for the Commons is to replace First Past the Post by the Alternative Vote for members of the House of Commons. I've argued this position for a number of years for the fundamental reason that an AV election would positively change the relationship between an MP and their electorate.

For me the issue of proportionality is not as central as it is for many reformers. I am a very strong supporter of the constituency basis of our Parliamentary system which I believe contrasts very positively indeed with those comparable countries where the constituency relationship is less robust. My principle motive in supporting the alternative vote (AV) is to strengthen the constituency system. AV permits every voter to place every candidate in order on the ballot paper and ensures that every elected MP needs the support, at some level, of a majority of voters. This both strengthens the relationship between the MP and all constituents and weakens the political sectarianism which can be assisted by First Past the Post.

The reason why I oppose both perfectly proportional representation and the various alternative member systems is that they inevitably weaken the constituency link of Members of Parliament which is absolutely fundamental to our politics in Britain. That link would be strengthened by the Alternative Vote, as would some of the other changes which I've set out.

Completing the reform of the House of Lords

The second priority area of change has to be the continued reform of the House of Lords, the second chamber, which is of course by no means easy. The first phase of change, which was to eliminate most of the hereditary peers, is complete. However, after that we have got stuck, despite the work done by Jack Straw and others.

I do not think that a legislative chamber based on patronage - a life peer system extending indefinitely into the future - can last. We cannot simply freeze what has been achieved and say 'job done'.

Patronage inevitably leads to damaging controversy about the nature and conduct of the appointment process. We have seen that in the so-called 'cash for honours' allegations. Though I do not believe that there was ever any foundation to these claims, in truth such accusations are inevitable in a world

where patronage determines membership of the legislature, simply because of the highly political nature of the role of Member of Parliament, even in the Upper House.

It is true that some people believe that a patronage-based system is sustainable. They say that there are worthy and trusted individuals who can objectively identify the people who can contribute to the Lords in various ways. There is something in this but this is not an argument which can be sustained for long if there is no democratic base for the second chamber. So I believe that change to a more democratic system is inevitable and it would be better if it happened sooner rather than later.

Moreover it is important that a settlement is reached which is widely agreed across politics and society and so is stable.

That is a very difficult task and the problem is to decide what the basis of the change would be and how it would be carried through. The whole subject ends up in the too-difficult box because any particular proposal ends up having more opponents than supporters, even if a majority favour change.

Despite these very real difficulties Labour needs to give priority over this Parliament and the next to achieving change in this area, preferably on the basis of cross-party support and not for any sectional advantage which would be unstable.

My own view is that the main principles of reform of the Lords ought to be to:-

- Maintain the explicit and time-limited law-revising role of the second chamber;
- Reduce the duplicated accountability functions of the second chamber;
- Achieve a predominantly or wholly elected second chamber, though I accept the need for a long period of transition towards this.

The central step for me is to agree an explicit role for the second chamber which is about review of legislation. The role of the Lords ought not to be to ape the Commons. There is no need to duplicate the accountability of the Government. There is no need for government statements to be made in both the Commons and the Lords, nor for the Question Time procedures to operate in both chambers.

There should be clarity that the principal role of the Second Chamber is to revise legislation. This could include promoting debate, and taking evidence, about proposed legislation and there may well be value in a number of Select Committees, particularly considering constitutional and related developments.

But it also needs to be clear that in the long term the Second Chamber should be predominantly elected and that there is an agreed path to that end.

I would suggest that these overall approaches are the starting point from which discussion should proceed. It is not necessary to lay down policy positions above and beyond that.

Some people want to be more specific, arguing for particular characteristics of any change. However I think it's more important to get agreement across the main political parties and I think flexibility is essential if further change is to be achieved.

My own view, though I would not lay this down as a condition, is that there's a very good case for

making the elections to the Second Chamber dependent on the elections to the First Chamber in order to reduce the danger of conflicting electoral authority between the Lords and the Commons. This could be done in a variety of ways but in all cases membership of the Second Chamber would depend upon votes cast in the elections for the First Chamber.

However, whatever one's view about the merits or demerits of any particular proposal for change, it is the case for change which is overwhelming. The case for the current system of patronage will become increasingly discredited and there will be an obligation to find arrangements which are more publicly defensible and that will inevitably mean greater democracy. Labour should do what it can to bring that about and complete the process of reform which it has rightly initiated.

Establishing stable constitutional arrangements for the nations and regions of the United Kingdom

My third priority area for change is to consolidate the relationship between the nations and regions of the country which have massively changed in the last ten years and which are now being tested.

In Scotland, the election of the Scottish National Party has led to a series of unprincipled and opportunist stances by the Scottish Executive which are explicitly designed to exacerbate tensions between Scotland and England. The SNP is quite deliberately playing fast and loose with the electorate in Scotland on a wide range of issues with the specific intention of promoting a referendum on separation of Scotland from the rest of the UK.

The UK's response to such tactics has to be based upon a clear set of approaches and principles. This is not at all easy to achieve in current circumstances, and it needs more discussion in the Labour Party if we are to avoid more serious and difficult problems. Current issues include financial arrangements and the Barnett formula, and the possibility of passing some powers currently held by the UK Parliament to Scotland.

Our approach on these matters needs to be openly discussed on an informed basis rather than being swept to the margins or under the carpet. Though within Labour this has to be principally a matter for debate within the Scottish Party, it does also require wider involvement and an agreed conclusion. I do not believe that major changes in the current constitutional settlement are required but Labour does need a clear and agreed position if the destabilising opportunism of the SNP is to be challenged and exposed as effectively as it needs to be.

In Wales the situation is more stable. The changes put through by Peter Hain as Secretary of State allow a more flexible approach to evolving what is or is not to be devolved. In Northern Ireland the enormity of change over the last ten years has been stunning, but the political need to build the co-operation which is essential for the Executive to function remains very problematic.

London is different and has been put in the media spotlight by the election of Boris Johnson. The fact is that there is too large a number of major London-wide organisations whose responsibilities overlap in a way which inhibits good co-operative working arrangement. These include the Mayor, the London Assembly, the Government Office for London, the London organisations for health, skills and the arts and the Metropolitan Police Authority as well as the London boroughs and the City of London.

These are major and significant organisations whose responsibilities for key issues like law and order, transport, planning, environment, and so on overlap in ways which are wasteful and ineffective. The

confusion also inhibits transparency to the public. We need a more rational process for dealing with these matters and a further stage of reform is needed.

But far and away the most serious problem is the position of the regions in England, outside London. The failure of the referendum to establish a Northern Regional Assembly clarified the need to look at this whole matter afresh. The model of the elected regional assembly has no future.

Though there was clearly no desire for an elected Regional Assembly it remains true that the current situation does not give sufficient priority to the needs of the English regions and so is potentially unstable. It needs to be addressed.

The following two suggestions are loosely based upon the arrangements which existed in Scotland prior to devolution.

The first, which is already in progress, is to organise all the functions of central government in a way which respects regional boundaries, and then to establish appropriate co-ordinating relationships at the regional level, including health, police, arts and culture, economic regenerations and so on. This may seem obvious but we still need to bring together the government agencies which are active on an English regional level. There are a wide range of different agencies and different quangos. They have varying accountabilities but most of them are in no way answerable to electorates in any particular locality. Consequently there is often lack of clarity as to how they're operating. This needs to be brought together into a much more rational and clear picture.

The second suggestion, to which I have referred above, is to establish more effective parliamentary debate about the work of central government in the regions. Parliament is already moving in this direction with the establishment of Regional Grand Committees, rather like the Scottish and Welsh Grand Committees of the past, with English Regional Select Committees to examine particular aspects of central government provision on a regional level. More effective debate in Parliament and public scrutiny of what is happening in each region of the country whether by regional grand committees or regional select committees will give greater profile to the issues.

More effective regional co-ordination and accountability, with less bureaucratic overlap between national and regional layers of government, is a higher priority than a new regional tier of government.

Again, regional government in England has been massively enhanced in the last ten years but a number of problems remain and Labour needs to address them.

Developing the strength and autonomy of local government

My fourth area is local government. It remains the case that we need a new partnership between central and local government where both parties acknowledge the contribution and role of the other. The partnership has not evolved as needed over the last ten years and the grudge match between local and central government continues in too many areas.

There is not the scope within this article to give justice to this local government aspect of 'unlocking democracy', except to say that the current arrangements are simply not sustainable.

There is a constant argument between local government and national government basically around

two points: money and democracy. On money, local government consistently argues that central government doesn't give them enough and central government argues that local government doesn't spend the money well. On democracy the argument is about which elected authority has the moral right to determine which policy. This is not a stable or strong way of operating and it has to be sorted out. The new partnership needs to agree which responsibilities should be local, which should be national and how they should be financed. This is quite attainable and would have massive benefits for the citizen.

The current arrangements for financing local government demonstrate the current problems clearly. No reasonably intelligent citizen has any idea of the relationship between tax and spending in any given locality, and consequently has no means of participating in, or influencing, vital local decisions except absolutely tangentially. The system of local government finance is so complicated that it is alleged that less than a dozen people in the country understand it.

The importance of open and transparent local government is often underestimated by those campaigning to improve democracy in this country, who sometimes focus their efforts principally at the national level. 'Unlocking Democracy' at the local level needs to move up the campaigners' agenda.

Establishing fixed term parliaments

My final priority area for change is the case for fixed-term parliaments.

The right of the Prime Minister of the day to determine the date of a general election is often thought to give significant party advantage. If that's true it is quite difficult to make the democratic case for the Prime Minister to hold such an advantage. However at least in the case of Labour the alleged party advantage is pretty doubtful. It's certainly been a poisoned chalice on at least two very important recent occasions, for Jim Callaghan in autumn 1978 and for Gordon Brown last year in autumn 2007. In neither case was the Prime Minister's ability to choose the timing of a general election an asset.

There is in my opinion both a democratic and a national interest case for certainty about the time of the next General Election. Game-playing about when the general election is going to be helps neither our democracy nor our economy. People behave with greater confidence if they see the process of political change as orderly and reasonably predictable. Whilst the outcome of an election will never be absolutely predictable it definitely helps to know when it will be and for there not to be constant speculation about election timing.

There is no evidence from other comparable countries that fixed term parliaments have damaged their national life and it would be far better if the UK had a fixed term Parliament as well.

Of course there needs to be an emergency procedure to address major national crises, such as war, and Parliament would have to retain that responsibility. However since 1945 (an election which took place whilst fighting continued) there are no obvious occasions where it would have been necessary to have overruled the fixed term of a Parliament. In practice strong governments like Tony Blair's and Margaret Thatcher's went for a four year parliamentary term and usually where there was a change of Prime Minister the term got extended to five years.

Such a change would increase confidence in our national political and economic life, increase confidence in Parliament and politicians, and would lead to consequential changes which would lead to a more open democracy. It is a measure which could be considered by Parliament on a free vote.

Conclusion

Labour has made enormous constitutional changes since 1997. These have been positive and have advanced the cause of democracy. Some of the changes have been of historic significance. But they all have to be assessed and considered. For example the operation of the Human Rights Act, the Freedom of Information Act, and the new party funding and electoral regulation arrangements need to be analysed.

This article attempts to suggest five areas where constitutional progress needs to continue if the democratic improvements of the last ten years are to be consolidated.

These five areas are: the strengthening of the authority of House of Commons and building up the role of Parliament; continuing reform of the House of Lords until it is sustainable; stabilising the arrangements for the nations and regions of the United Kingdom; strengthening the role of local government; and establishing fixed term parliaments.

I hope that these offer an agenda of constitutional change which really will help to 'unlock democracy' in this country.

Rt Hon Charles Clarke MP

Charles Clarke is Member of Parliament for Norwich South.

He worked as a researcher and then Chief of Staff to former Labour Party leader Neil Kinnock from 1981 to 1992. From 1992 to 1997, before his election as a Member of Parliament, Mr Clarke was chief executive of Quality Public Affairs, a public affairs management consultancy.

He has been MP for Norwich South since 1997. He gained extensive experience of local government in the London Borough of Hackney where he was chair of the housing committee and vice chair of economic development between 1980 and 1986.

Charles became Parliamentary Under Secretary of State for School Standards in July 1998. He was appointed Minister of State at the Home Office on 29 July 1999 and became Minister without Portfolio and Labour Party Chair in July 2001.

Secretary of State for Education and Skills since October 2002, Mr Clarke was appointed Home Secretary in December 2004 leaving the Home Office on May 5th 2006. Educated at Highgate School, London, Mr Clarke read mathematics and economics at Kings College Cambridge, graduating BA (Hons). He was President of the National Union of Students from 1975 to 1977.

Born in 1950, Mr Clarke married in 1984. He and his wife Carol have two sons.

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