



The Governance of Britain

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On becoming prime minister in June 2007, one of Gordon Brown's first acts was to publish a Green Paper, *The Governance of Britain*,¹ outlining a number of measures designed to increase government accountability to parliament and to 'forge a new relationship between government and citizen'.² Coming soon after the opposition Conservative Party published the final report of its Democracy Task Force, *Power to the People: Rebuilding Parliament* and the Liberal Democrat's *Real Democracy for Britain*,³ it means that, unusually, constitutional reform and the quality of democracy are key political issues in the UK.

In fact, many of the proposals in *The Governance of Britain* involve building on or formalising recent developments and it comes after a period of steady, if unspectacular, change in areas such as parliament's relationship with government. These changes have increased parliament's capacity to scrutinise government and hold it to account, albeit 'in a way that has not threatened the executive's dominant position'.⁴ Given the relevance of the UK governance proposals to Australia, where the capacity of parliament to scrutinise the Executive has not been increasing but rather decreasing, a brief overview of some of the Green Paper's main proposals is given here.⁵

Executive power

The Governance of Britain contains proposals for limiting government's powers derived from royal prerogative: powers that the government wields on the authority of the monarch rather than parliament. Whilst government is not unaccountable to parliament in the exercise of its prerogative powers, 'Ministers still have very wide scope to act without Parliamentary approval'.⁶ Notably, whilst Ministers are accountable to parliament for the exercise of these prerogative powers, this is only

¹ Ministry of Justice, 2007, *The Governance of Britain*, Cm 7170

² *The Governance of Britain*, p.5

³ Conservative Party Democracy Task Force, 2007, *Power to the People: Rebuilding Parliament*; Liberal Democrats, 2007, *Real Democracy for Britain: Twenty Proposals to Strengthen Britain's Democracy, Restore Faith in Politics, Bring Government Back to the People*

⁴ Matthew Flinders, 2007, 'Analysing Reform: The House of Commons, 2001-5', *Political Studies*, Vol. 55(1)

⁵ A full list is included in the appendix. The proposals relating to the civil service and ministerial advisors are dealt with in Norman Abjorensen's Audit paper, '*Delegatus non potest delegare: Defining the role of ministerial advisors*', Democratic Audit of Australia Discussion Paper 12/07

⁶ Public Administration Select Committee, 2004, *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament* 4th Report of Session 2003-04, HC 422, p. 7

after the event. The exact scope of Ministerial prerogative powers is unclear: the Public Administration Select Committee of the House of Commons noted ‘Parliament does not even have the right to know what these powers are’.⁷ However, they include the powers such as the deployment of armed forces overseas, the making and ratifying of treaties, and dissolving and recalling of parliament. In *The Governance of Britain*, the government undertakes a widespread consultation and review of all government’s prerogative powers. It also makes specific proposals in a number of areas, including those mentioned.

The Green Paper proposes to review the means by which parliamentary approval for the deployment of troops abroad may best be institutionalised,⁸ but the principle of the need for parliamentary approval for such a measure was strongly put:

There are few political decisions more important than the deployment of the Armed Forces into conflict. The Government can currently exercise the prerogative power to deploy the Armed Forces for armed conflict overseas without requiring any formal parliamentary agreement....The Government believes this is now an outdated state of affairs. On an issue of such fundamental importance to the nation, the Government should seek the approval of the representatives of the people in the House of Commons.⁹

Whilst the previous prime minister, Tony Blair, was committed to retaining government’s prerogative powers in this area, he told a parliamentary committee that it was, in practice, impossible for a government to wage war without parliamentary support in some form so any reform was unnecessary. Even without the reform of the prerogative powers in this area, a parliamentary vote had already been taken on the deployment of British troops in Iraq in 2003. The reality is that, once this precedent had been established, it would have proved hard for governments to commit troops in future without seeking parliamentary approval. Nonetheless, a formal transfer of power to parliament in this respect is an important signal of parliamentary sovereignty.

⁷ *Ibid.*, p. 7

⁸ The Public Administration Select Committee proposed legislation in *Taming the Prerogative*; the House of Lords Constitution Committee favoured the development of a parliamentary convention: (2006, *Waging War: Parliament’s Role and Responsibility*, HL Paper 236). This latter option was also proposed by Conservative Democracy Task Force (*Power to the People*, p. 8). The Liberal Democrats advocate transferring all prerogative powers to parliament (*Real Democracy for Britain*, p.3).

⁹ *The Governance of Britain*, p. 18

Whilst government's exercise of prerogative powers is similarly constrained in other areas, such as the ratification of treaties, in practice, the Green Paper makes proposals to firm up these constraints and put them on a statutory footing.¹⁰ Under other proposals, the prime minister would have to seek parliamentary approval for dissolution of parliament for a general election, and a parliamentary majority could request a recall of parliament, rather than the government as is currently the case.¹¹

The Green Paper makes some proposal for changing the appointment process for various Church of England posts and for judges. And it also proposes strengthening parliament's role in appointments to various public bodies. Under the proposals, the government's nominated candidate for various watchdog posts such as Commissioner for Public Appointments, Local Government Ombudsman, or the Chief Inspector for Prisons, would appear before the relevant select committee before appointment, where their suitability for the post would be investigated. For posts deemed market sensitive—the Governor of the Bank of England, Chairman of the Financial Services Authority, or various utility market regulators, for instance—it is suggested that the committee hearing should take place after the appointment, but before the candidate actually takes up the post.¹²

Seasoned parliamentary commentator, Peter Riddell notes that the system falls well short of the sort of confirmatory hearings of the US Senate and suggests that the proposals essentially are essentially 'little different from now'.¹³ Certainly, the select committee's decision would not be binding. However, it is hard to see how a candidate whose appointment was condemned by a committee could credibly continue in the post. Furthermore, the reality is that select committee involvement in appointments has varied. For example, the Treasury Committee has sought a very active role, in the face of some opposition from the Treasury, in the appointment of candidates to the senior positions in the Bank of England and its Monetary Policy

¹⁰ Treaties that require enacting legislation are effectively subject to parliamentary approval as the legislation will have to pass through parliament. But beyond that, the provisions of so-called Ponsonby Rule, which governs parliament's voice in treaties, falls short of guaranteeing parliamentary debate.

¹¹ Requesting the speaker of the House of Commons recall parliament is not actually a prerogative power, but a Standing Order of the House. But it is included in the Green Paper because it is also a power that can be exercised without formal parliamentary approval.

¹² *The Governance of Britain*, p. 28-29

¹³ Peter Riddell, 2007, 'The message is "Blair is gone, I'm in charge"'. But the reality falls short of a full transformation', *The Times*, 4 July

Committee since the Bank became independent in 1997,¹⁴ the Education and Skills Committee plays an active role in the appointment of the Chief Inspector of Schools, and the Foreign Affairs Committee has expressed its intention to scrutinise diplomatic postings from outside the diplomatic service.¹⁵ However other committees were less active in this respect, only meet with a new appointment once they have taken up their post, for instance, and taking no interest in the process itself.

In this respect, the significance of the Green Paper's proposals on public appointments is that it extends the practice of a few committees to all of the relevant ones. Furthermore, the existing role of select committees in appointments has not been clear: they have taken steps to involve themselves, but not always with the support or full cooperation of the government. Under the new proposals, the committees' recommendations will not be binding, but it is at least an attempt to formalise their role in public appointments.¹⁶

Government accountability

As well as transferring powers from the executive to parliament, the Green Paper also includes proposals that it claims will increase executive accountability. Measures to increase the transparency of the secretive Intelligence and Security Committee, and the publication of a National Security Strategy, like the reform of the prerogative powers relating to the deployment of troops overseas, evidently reflect the unease that has followed the UK's military involvement in Iraq. Scrutiny of departmental reports, generally only considered by the relevant select committee, will be extended to the main chamber. Regional select committees will scrutinise the work of the newly established regional ministers (much regeneration and economic development policy is administered regionally, though proposals for devolution to the English regions proved unpopular and were abandoned). The Ministerial Code has been revised and tightened and a new Independent Advisor on Ministers' Interests will be established. The advice of the Advisory Committee on Business Appointment Rules, which advises ex-ministers on post-separation employment has, until now, only been

¹⁴ The MPC is the body that sets interest rates.

¹⁵ See Lucinda Maer, 2007, 'Parliamentary involvement in public appointments', House of Commons Library Standard Note SN/PC/4387, p.13-19

¹⁶ It should be noted that the Conservative Party Democracy Task Force has made similar proposals (*Power to the People*, p.4), whilst the Liberal Democrats propose extending parliamentary confirmation hearings to ministerial appointments, notably, though not only, those drawn from the House of Lords (*Real Democracy for Britain*, p.3-4).

adhered to on a voluntary basis: now, ‘former ministers will be expected to follow the advice of the committee’.¹⁷ This, of course, is of particular interest in Australia, where only the smaller States and the ACT have anything about post-separation employment in their Ministerial codes and there is no independent adviser or ethics commissioner at the federal level.

But perhaps the most interesting aspect of this section of the Green Paper is the proposal to open the government’s legislative priorities to consultation. Prior to the Queen’s Speech, which sets out the government’s legislative agenda for the forthcoming session of parliament, it is proposed holding a period of consultation with parliament and the public on the list and content of the bills. The results of the consultation would not be binding and the scope of this consultation is not clear, but, nonetheless, if implemented it would prove an interesting modification of the near-complete executive dominance of the legislative agenda in the UK.

Re-invigorating democracy

The section on ‘Re-invigorating our democracy’ deals with some potentially far-reaching changes to Britain’s political institutions—reform of the House of Lords, for instance—but in many ways it reiterates previous decisions or recommendations in a number of areas. In a free vote on Lords reform, the Commons came out in favour of a fully, or near-fully, elected upper house; the Green Paper confirms that cross-party consultation on how to implement this will continue. Similarly, there has been an ongoing debate on how to reinvigorate the House of Commons;¹⁸ the Green Paper merely ‘welcomes’ a recent Modernisation Committee report. Scotland’s devolved status within the Union is reiterated, following the success of the pro-independence Scottish National Party in the most recent elections to the Scottish Parliament, and there is support for greater representation of women and ethnic minorities in Westminster. Consultation on greater local community involvement in decision-making, possibly through the use of citizen’s juries, will also be conducted, following a 2006 Local Government White Paper.¹⁹

¹⁷ *The Governance of Britain*, p.39

¹⁸ The Modernisation Committee, in particular, has published a number of reports in recent years.

¹⁹ Department Communities and Local Government, 2006, *Strong and Prosperous Communities*, Cm 6939-1

Changes to the rules governing campaigning by charities are to be investigated, with the aim of enhancing their political role, following a recent report.²⁰ This is a matter of great interest in Australia where there has been a tightening up on public advocacy by charities rather than a relaxation. In October 2006 the Australian Tax Office revoked the charitable status of AidWatch, on the grounds that it had engaged in three ‘political activities’—namely: urging the public to write to the government to bring pressure on the Burmese regime; delivering an ironic 60th birthday cake to the World Bank; raising concerns about the developmental impacts of the US-Australia Free Trade Agreement. In April 2007 the ATO upheld its original decision after hearing an appeal. The loss of charitable status threatens the existence of AidWatch and is effectively silencing other charities.

However, there are some proposals in new areas. With low turnout at elections an ongoing concern, changes to elections are proposed. Notably the possibility of holding elections on weekends, rather than Thursdays, and the potential for electronic voting are both considered. From an Australian perspective, where Saturday elections were introduced more than a century ago to make it easier to vote, a move away from elections on a weekday is long overdue. Change to the unwieldy manner for lodging petitions to parliament (currently they are placed in a bag hung on the back of the Speaker’s chair) is also proposed, with greater use of electronic submissions suggested. Petitioning the prime minister can already be done electronically and, of course electronic petitions have been accepted by the Australian Senate since 1997.

The citizen and the state

The final section of the Green Paper relates to the citizenship, and to topic of what constitutes a modern British identity, and what values, rights and duties that entails. This has been an ongoing and controversial theme, given recent impetus by the terrorist attacks in London by some young British Muslims in July 2005, and, in a different way, by concerns about apparent disengagement, particularly of young people, from the political process. In this, it draws on the recent report of the Commission on Integration and Cohesion, and promises consultation on its findings.²¹ Specific areas for consultation are a Bill of Rights and Duties and a written

²⁰ Advisory Group on Campaigning and the Voluntary Sector, 2007, *Final Report*, <http://www.bond.org.uk/pubs/sector/campaigning.pdf>

²¹ Commission on Integration and Cohesion, 2007, *Our Shared Future*, www.integrationandcohesion.org.uk

constitution. The relationship of a Bill of Rights and Duties to the existing Human Rights Act, as well as to the European Convention on Human Right is not clear, but in the current climate, there is fear that it may involve weakening existing protections: the Green Paper notes the need to balance individual rights with protection of the public.²²

The proposals on a new Bill of Rights are tentative, but they are less so than those on a written constitution. Unusually, the UK's constitution is an amalgam of statute and common law, convention, treaties, and authoritative opinion which has never been formally codified into a single document. Whilst it has proved adaptable, critics argue that it lacks clarity and fails to provide a clear check on the executive. Taken alongside the other proposals formalising and clarifying aspects of executive power; the role and power of parliament; the rights and duties of citizens; and the status of the devolved assemblies, consideration of a written constitution is perhaps a logical step. Nonetheless, the Green Paper does emphasise that such a move is in the long term.

Conclusion

Many of the proposals in the Green Paper are based on the recommendations of previous reports or are reiterations of previous positions. And there are far more promises of consultation than there are definite proposals. In this the Green Paper could be dismissed as holding nothing new. Furthermore, the Liberal Democrats have criticised the absence of a commitment to change the first past the post (FPTP) voting system to the House of Commons, and there have been accusations that the Green Paper merely 'tinkers around the edges'. But the purpose of Green Papers is rarely to set out concrete proposals and perhaps its real significance is not so much the novelty or radicalism of the individual proposals, as the coherence and momentum it gives to existing but disparate components of constitutional reform. It is an acknowledgement that the quality of democracy should be improved and that this will involve institutional change. In doing so, and with the reports from the other major parties, it puts the issue of wide-ranging constitutional reform in the UK firmly on the political agenda.

²² *The Governance of Britain*, p.61

Appendix – List of recommendations

Executive powers to be limited

- Deploy troops abroad
- Request the dissolution of parliament
- Request the recall of parliament
- Ratify treaties
- Determine rules for entitlement to passports and granting pardons
- Restrict parliamentary oversight of intelligence services
- Choose bishops
- Have a say in the appointment of judges
- Direct prosecutors in criminal cases
- Establish rules governing the civil service

The Government will also:

- Increase parliamentary scrutiny of public appointments
- Review the role of the Attorney General

Executive accountability

- Increase transparency around Ministers' interests
- Increase transparency of ISC
- Publish a National Security Strategy
- Introduce a pre-Queen's speech consultation
- Simplify reporting of government expenditure to parliament
- Parliamentary debate on plans of government departments
- Limit pre-release of official statistics to ministers to 24 hours before publication

Re-invigorating democracy

- Develop reforms for an elected second chamber
- Increase capacity for using all-women shortlists for selection of electoral candidates
- Increase accountability of service providers to the communities they serve
- Impose a duty on public bodies to involve local people in major decisions
- Consider delegated budgets to communities
- Consult on weekend elections
- Review voting systems in the UK

- Review right to protest in vicinity of parliament

Citizen and the state

- An inclusive debate on a statement of British values
- Conduct a review of British citizenship
- Launch a Youth Citizenship Commission to consider citizenship education and votes at 16
- Consult on flying Union Flag from government buildings and parliament (currently limited to 18 days pa)