5 The Monarchy and the constitution

This class will look at the position of the Monarchy in the UK. We shall try to understand the present role of Queen Elizabeth II (on the British throne since 1952) as well as see the historical trend which has taken power away from the monarch and handed it over to other institutions, such as Parliament. Finally we shall think about current attitudes to the Monarchy.

1. Royal Power and the "Royal Prerogative"

The UK is designated by the word "kingdom", that is to say a political entity which has a monarch (i.e. king or queen) at its head. This implies a particular organisation of power, since the monarch is traditionally found at the very summit of a social hierarchy. Thus, traditionally, the British population have been subjects (suggesting subordination) and not citizens (suggesting equality).

Indeed, the British (not English, remember, we are dealing with the British Royal Family and the Queen is the head of state of the whole of the UK) monarch retains a great amount of symbolic power. Images and references to the monarch are to be found everywhere:

Stamps and money carry the Queen's portrait and are the responsibility of the *Royal* Mail and the *Royal* Mint respectively. Political power is wielded by *Her Majesty's* Government, composed of Ministers of the *Crown*, while the UK is defended by the *Royal* Navy, the *Royal* Air Force, and numerous *Royal* regiments of troops. Both MPs and the armed forces swear an oath of allegiance not to the country or the people, but to the Queen. Judges may sit in *Crown* Courts or on the *Queen's* Bench, while senior lawyers may have the title of *Queen's* Counsel. The British national anthem is not a celebration of the United Kingdom as such, but of its monarch: *God Save the Queen*.

Images and mentions of the Queen are omnipresent because this reflects the extent of her *theoretical* powers as:

Head of State

Head of the Government

Head of the Judiciary

An integral part of the Leglisature (Royal Assent, the approbation of the monarch, is the final stage in the process of passing an Act of Parliament)

Head of the Armed Forces

Head of the Church of England

As such, she possesses extensive powers known collectively as the "Royal Prerogative". This includes the power to: approve legislation (or veto it); dissolve and open Parliament; declare war; enter into international treaties; appoint judges and ministers (including the Prime Minister).

It has been said that, on paper, the Queen of the United Kingdom is perhaps the most powerful head of state in the world. Nevertheless, we must realise that in reality she has virtually no political power at all. There is an important separation between her theoretical powers and her actual powers. To sum up this situation, we say that the Queen "reigns, but does not rule". In fact, while the Queen retains great symbolic power, the real political power is now held by the Prime Minister. The Queen, on the other hand, is obliged to be apolitical and neutral.

There is no one date when the Monarchy in Britain lost its power to other institutions such as Parliament and the Government. This has been a gradual change over centuries; we shall look at a few of the major periods when power shifted away from the Monarchy.

2. Historical Perspective

The process of a shift away from royal power began around 800 years ago. In what is regarded as one of the cornerstones of Britain's constitution, a confrontation between the monarch and his noblemen began to erode royal power.

Magna Carta 1215

In a feudal system land is ultimately owned by the Crown with the king giving land and titles to noblemen in exchange for services such as military support and financial levies. The English monarch, King John was felt by his barons to be making excessive tax demands in order to wage expensive wars abroad. His barons were also imprisoned and threatened as the king attempted to intimidate them into paying what he demanded, but the barons revolted and forced the king to sign a charter stating exactly what the new relationship between the king and his subjects was to be. It included elements like the demands for a fair trial to protect against arbitrary imprisonment and for taxes to be agreed jointly, not simply decided by the king. The Magna Carta is the best known example of an early document (although not the first) which attempted to limit royal power.

17th Century

In the 17th Century a number of conflicts between the dynasty of Stuart kings and Parliament ended in crisis and confrontation, but eventually confirmed the new superiority of Parliament as the key political power. Conflict was inevitable as the Stuart's conception of the "divine right of kings" came into opposition with Parliament's desire to place limits on the monarch's actions, e.g. his ability to raise taxes.

Charles I came into conflict with Parliament as his expensive foreign wars made him demand more and more taxes, leading him to attempt to intimidate Parliamentarians when they resisted. Charles I attempted to rule without Parliament but was issued with a **Petition of**

Right in **1628** which demanded that the king should not unfairly imprison or force payments. He then ruled for another 11 years without Parliament, but found the need to convene Parliament in 1640 and in 1641 again faced demands that abuses should end (Grand Remonstrance). When he again attempted to have Parliamentarians arrested in 1641 the tensions with Parliament led to a Civil War.

Civil War broke out in 1642, leaving England to be ruled first by Parliament, and then by dictatorial rule under **Oliver Cromwell**. King Charles I was beheaded in 1649 and the monarchy was overthrown. England effectively had become a Republic (known as the Commonwealth), but Cromwell's austere Puritanical regime became unpopular and the monarchy was restored in 1660.

Glorious Revolution 1688: With the return of Stuart kings (Charles II, and then James II) tensions increased again shortly afterwards. Parliament (firmly Protestant) was hostile to James II's autocratic tendencies and to his Catholicism. When James II began to appoint Catholics to high office and repeal laws discriminating against Catholics, Protestant Parliamentarians asked **William III of Orange and Queen Mary** (James' son-in-law and daughter), who were both Protestant, to be joint monarchs. James II fled and died in exile.

Bill of Rights 1689: William and Mary were offered the throne on the condition that they formally recognised the supremacy of Parliament. The monarch's powers were to be limited: he would no longer have the power to raise an army, to raise taxes or to modify laws without the will of Parliament. This was the key stage in the creation of Britain's "parliamentary monarchy" or "constitutional monarchy". A further Act of Parliament (Act of Settlement 1701) specified that in future all British monarchs must be Protestant and organised the royal succession to pass to the Hanoverian dynasty, denying the descendants of the Catholic James II (Jacobites) the possibility of returning to power.

Declining power: After 1688 the monarch retained some important legislative and executive powers, but these gradually fell into disuse. **Queen Anne** was the last monarch to refuse to give **Royal Assent** to an Act of Parliament (1708) : since this date no monarch has refused to pass legislation. It would now be impossible for one to do so without triggering a major constitutional crisis.

The monarch also initially retained executive power, i.e. the power to orient the general policy of the country, a task for which he would be aided by his ministers. However, **King George I** (reigned 1714-1728) was, in fact, a German, sometimes portrayed as being unable to speak English or uninterested in British politics. These characteristics may be exaggerated by certain historians, but it is true that during George's reign, actual political power began to be less and less exercised by the king himself and increasingly by his chief minister, **Robert Walpole**, who is thought of as Britain's first **Prime Minister**. His reign thus marks the beginning of modern Cabinet government.

3. Attitudes to the Monarchy today

Traditionally the British have remained very proud and supportive of the Royal Family and appreciate the stability of having a long-serving, non-elected head of state. The Queen is most visible when performing her constitutional functions in ceremonial robes or when visiting communities in her characteristic brightly-coloured hats and coats. Nevertheless, tensions have appeared in recent years over questions of the Royal Family's expenses, their capacity to act as models for the nation and their isolation from the rest of the country.

The Queen is listed in the Times' Rich List as having a personal fortune of £270m which only makes her the 180th richest person in the UK and the 15th richest woman. Nevertheless, she did not pay many taxes until public pressure prompted her to begin paying taxes on her personal revenue in 1993. The Royal Household has also attempted to limit its

expenses, although it received around £37m from the state in 2005. The monarch contributes to the state's finances by donating the revenue from land and property which is held in the name of monarch (the so-called Crown Estates generated around £180m for the state in 2005.)

The divorces of the Queen's children Princess Anne, Prince Charles and Prince Andrew weakened the argument that the Royal Family should act as a model family of high moral values. The end of Charles' marriage to Diana in particular revealed a relationship which was characterised by the highly public infidelity of both partners and by emotional problems. When Diana, who remained a very popular figure, died in a car crash in 1997, the Queen shocked the British public by appearing cold and unfeeling.

The Queen's popularity subsequently declined, although since 2002 it has begun to improve again due to the celebrations around her 50th anniversary as monarch (Golden Jubilee 2002) and compassion following the death of her mother, the very popular Queen Mother (2002). In 2006 the Queen celebrated her 80th birthday.

Prince Charles, who is next in line to the throne, is often regarded as a rather eccentric and unlovable figure although 52% still approve of him as the choice of future monarch (Mori Poll, 2006). In 2005, he married Camilla Parker-Bowles, with whom he had been having an affair while married to Diana. In opinion polls at the time, a majority of people (55%) expressed the view that she should not take the title of Queen when Charles becomes King. However, the percentage of the UK population who wish to abolish the monarchy in favour of a republic is regularly estimated at around only 20%.[1] In 2012, the Queen celebrated her 60th anniversary ("Diamond Jubilee") on the throne and the general mood in the country was one of renewed support and admiration for the Queen who is seen by many as an symbol of stability and continuity for the UK.

[1] http://www.republic.org.uk/What%20we%20want/In%20depth/Public%20Opinion/index.php

The Monarchy and the constitution : what is a constitution?

This class aims first of all to clarify what a constitution is, what it can be composed of and how it influences the political life of a country. We shall see that the British constitution is quite particular in many respects and we shall thus pay special attention to its composition and to the implications that arise due to its special nature. Lastly we shall look at how the situation has changed in recent years to try and evoke some of the main issues related to constitutional reform.

1. What is a constitution ?

Dictionary definitions of a constitution may explain that a constitution is a body of rules and principles which specifies the relationship between those who govern and those who are governed, that is to say a formal record of how the state should be run. Often a constitution will begin with some declaration of the basic principles on which the state is founded (e.g. democracy? equality? monarchy or republic? primacy of the rule of law? secular or religious state?) and may well contain a definition of the fundamental human rights which all citizens of that state can refer to as the basis of their civil liberties. A constitution will logically include a full description of the political institutions, the roles of each of these institutions, and the manner of organising elections, choosing leaders, revising the constitution etc. It may also specify what the limits of the state are understood to be in geographic terms – its principal territory, frontiers, dependencies etc. A brief glance at the French or American constitution will show that they conform to this general model.

It should also be understood that from this description that a "constitution" is in no way a synonym for a country's "laws". If you go over the speed limit or steal someone's telephone you will have broken the law, but not the constitution, which defines the political structure of a country, the relationship of the citizen and the state. A constitution is not the

sum total of a country's law either: in France there is a "code pénal" and a "code civil" which compile the country's laws but are quite separate from the 1958 Constitution detailing, for example, the role of the President, the manner of his election, and the length of his term of office.

2. The UK's unwritten constitution

As we have seen, a constitution is a fundamental element of any developed country, as it will be an important element in providing its political institutions with necessary transparency and stability. The UK, however, is quite unlike most countries in the world in that it does not possess a written constitution. (The only other developed countries in this situation are New Zealand and Israel.) We therefore say that the UK has an **unwritten** or **uncodified constitution**. This does not mean that no constitution exists, but signals instead that the UK constitution cannot be easily consulted as it does not exist as a single, unified document. There is no one constitutional text, meaning that the constitution must be thought of as a composite, a body of rules and principles made up of different sources which have gradually been added to and modified over time. Nor does this mean that nothing is written in the UK constitution and that the UK constitution is an ethereal product of the mind: although it is true that there are some important unwritten elements of the constitution, there are also many important constitutional documents which exist in written form (e.g. Acts or treaties).

3. Key components of the UK constitution

One of the things a constitution will provide is a general orientation of the country it defines by erecting a number of fundamental principles which should be the basis for the laws and institutions. Whereas the French constitution includes a number of clearly codified principles on which the Republic is based, the UK constitution, due to its composite nature,

does not. However, it is possible, *a* posteriori, to define a number of important constitutional principles which are visible in the UK. For example, the UK is a **non-secular** country (unlike secular France), having an official state religion (known as an established church) in England, the Church of England, and another in Scotland, the Church of Scotland. Another important principle is that **Parliament is sovereign**: there are no limits placed on the legislation that Parliament can pass, meaning that the ultimate power in the political system is said to lie with the Westminster Parliament. The UK is a **parliamentary monarchy**, meaning that the monarch continues to play a role which is defined by Parliament. It is also a **democracy**, which gives legitimacy to the last two points since Parliament is a reflection of the will of the people. However, there is **no clear separation of powers** in the UK, particularly between the executive and legislative branches which are very interlinked (see later). Because of the close interlinking of Government and Parliament in the UK there is no effective system of mutual self-restraint and there tends to be an accumulation of power by the executive.

The UK constitution also deals with issues such as the composition of the state, notions of human rights and the functioning of the political institutions. However, these can be found in a multiplicity of documents and other sources which include **historical documents** such as the Magna Carta; **statute law** (laws passed by the UK Parliament); **EU law** (which takes precedence over UK law if there is conflict between the two); **common law** (laws made not by Parliament, but based on the decisions made by judges over the centuries nd which represent a unified legal precedent); and **convention** (unwritten rules which have the force of law and which often form the basis of the political institutions, e.g. the monarch's choice of PM; the fact that ministers must come from Parliament; the fact that monarch always grants Royal Assent. Conventions can evolve slowly over time and they are based on tradition, accepted practice and consensus.)

In the UK, the Acts of Union and Acts relating to Devolution and Irish Home Rule can all be considered as important constitutional documents defining the territorial limits of the UK and specifying the nature of its Parliamentary institutions. The Magna Carta and the 1689 Bill of Rights are constitutional documents which attempt to codify the relationship between the King (executive power) and his subjects. The latter document is particularly important in that it signals the birth of the UK's parliamentary monarchy since Parliament now codifies and limits the powers of the King. The Parliament Act of 1911, 1949 (see later) are important Acts which define the relationship between the two houses of Parliament, while the various Representation of the People Acts are constitutional documents which define who can vote.

In terms of human rights, the British tradition has strongly tended towards an uncodified approach. As such, the 1679 **Habeas Corpus** Act is something of an exception. It codifies an earlier common law decision which, by guaranteeing all subjects the right to be informed of the charges made against them and allowing them a fair and speedy trial, is an important protection from arbitrary imprisonment and is seen as a cornerstone of British civic liberties. However, in the UK the main approach to human rights has traditionally been that of **implicit rights**, rather than explicit rights. This has been defined as an ***a contrario*** approach, meaning that British law tends to place limits on certain rights, rather than defining a list of the rights its citizens hold. Thus one is told what is forbidden, rather than what is allowed. This is not a repressive notion: from a philosophical standpoint it is justified by the idea that humans are fundamentally free and that it is not for the state to "grant" them freedoms they already enjoy.

Rather than a law allowing, say, the freedom of assembly in order to demonstrate, the British have enjoyed an implicit right to demonstrate, so long as their demonstration does not break other laws, e.g. obstruction of the highway, breach of the peace, threat to public order etc.

A recent change of this approach took place in 1998 as the UK legislated to incorporate the **European Convention on Human Rights** into British law.

Since joining the EEC in 1973, the UK had been obliged to follow European legislation which guaranteed certain human rights for European citizens, however these rights could only be defended before the European Court of Human Rights in Strasbourg: a complicated affair. In 1998, the UK Parliament passed a **Human Rights Act** (effective after 2000) which meant that the rights guaranteed by the European Convention on Human Rights were now protected in British law and could be defended before British courts. For the first time in the UK's history, British citizens possessed an explicit guarantee of certain, fundamental rights such as the right to freedom of speech, freedom of conscience, freedom of association etc. This text gives citizens new powers to defend their rights and also allows judges to call into question the validity of an Act of Parliament if it is incompatible with the Human Rights Act: judges may now ask that such a law be reviewed by Parliament. In this way, in December 2004, the House of Lords (acting in its judicial capacity – see later) ruled that an Act of Parliament permitting foreign-born terrorists suspects to be detained indefinitely without trial was incompatible with the Human Rights Act. Consequently, the Government had to pass new anti-terrorist legislation through Parliament which took account of this decision. Judges cannot, however, strike down a piece of legislation and nullify it because it is considered incompatible with human rights. The notion of parliamentary sovereignty therefore continues to exist in the UK, even if the Human Rights Act introduced the idea of a stronger guarantee of human rights. Whereas previously legislation which, say, limited free speech or allowed detention without trial could have been passed just like any other law – i.e. by a simple Act of Parliament – the Human Rights Act, based on the European Convention, must now be considered by UK legislators. As long as the UK remains within the EU, British citizens will be protected by these rights, thus indirectly introducing, by dint of

the European dimension, the notion of explicit, fundamental rights for the first time in the UK.

4. Issues concerning the UK's unwritten constitution

Because the UK constitution is not a single document but a multiplicity of documents and other sources, there has never been the notion of **constitutionality** in the UK. Most constitutions are thought of as being both apart from and superior to the law – the foundations and principles on which the laws are based. For example, in most countries the constitution may be invoked if, say, a new law affecting human rights is thought to undermine the fundamental rights which are guaranteed in the constitution. In this way, the "Conseil Constitutionnel" in France examines new legislation to make sure it is compatible with the constitution. In the UK, however, the constitution has not traditionally been considered superior to the laws passed by Parliament and thus could not be invoked to prevent any laws considered abusive (the issue has been complicated in recent years, as we have seen, by the passing of the Human Rights Act. But even this could ultimately be repealed by another Act of Parliament, although this would call into question the adherence to the European Convention on Human Rights, which would call into question the UK's membership of the EU).

Similarly, the unwritten nature of the UK's constitution means that there is no notion of **entrenchment**, i.e. of the constitution being protected from changes in its form and content. In practice, this means that the UK constitution can be modified simply by passing a new law relating to constitutional matters in Parliament. On the other hand, particular, complex procedures must be undertaken in France if the constitution is to be revised (e.g. a referendum or a Presidential proposition adopted by the whole Parliament (National Assembly and Senate combined) with a 3/5 majority). This "entrenchment" of the French

constitution is in order to ensure that the constitution cannot be easily modified to suit the desire of an individual President or a party with a strong majority in the National Assembly.

Together, the absence of constitutional rights, the lack of entrenchment and the fact that the UK constitution can be **easily modified** has left some commentators claiming that the British are at a disadvantage, since any government with a parliamentary majority could easily change the institutions to their advantage. Similarly they were, until recently, able to easily pass laws which might go against traditional elements of the UK constitution, such as the freedom from arbitrary imprisonment. In this way, the Government, citing the breakdown of law and order, authorised **internment without trial** for suspected IRA terrorists in the early 1970s in contradiction with the age-old principle of **Habeas Corpus**.

In addition, the unwritten nature of the constitution can be criticised as making it unclear to citizens just what rights they actually possess. At the same time, this **lack of clarity** in the definition of political roles and responsibilities may allow those with political power (in particular the Prime Minister) to gradually expand the limits of their power. A written constitution would provide a safeguard, by defining, for example, just what it would be legal for a Prime Minister to do with or without the support of Parliament or his Cabinet. At present there are no constitutional texts which even mention the existence of the office of Prime Minister. This lack of clarity and the reliance on implicit rules such as conventions is one of the reasons why the UK constitution can only function in a climate of consensus.

Consequently, it has been said that the British are reliant on the reasonableness of their rulers. Were the spirit of consensus to break down (e.g. the accession of a monarch who wished to exert a political choice over the choice of PM in a hung parliament; or the arrival of a PM who wished to test the absolute limits of his uncodified powers), the country could well be thrown into constitutional crisis.

However, supporters of the British unwritten constitution argue that it is **flexible** and thus allows gradual change over time. Rather than being stuck with a rigid constitution which can only be revised with difficulty, the UK constitution can adapt to changing social and political conditions and provides the British political system with **stability** and **continuity**.

Topic 6: Parliament

Introduction

The UK Parliament, which is situated in the **Palace of Westminster** on the River Thames is one of the oldest in the world and can, in something resembling its current form, be traced back to the 13th Century. This class aims to describe the Britain's Parliament, also called a *legislature* or the *legislative branch* of power, in terms of its component parts.

The French political thinker Montesquieu stated that for democracy to be effective it was necessary for there to be an effective separation of the branches of political power (executive, legislative and judicial). This is known as the "separation of powers". According to this theory, each branch of power (the Government, Parliament, Judges) is able to act as a restraint on the others, thus ensuring that tyranny – as one institution or person becomes all powerful – is avoided. This system of mutual restraint is known as a system of "checks and balances" (*freins et contrepoids*).

However, as we shall see, contrary to Montesquieu's definition of democracy (for which he regarded the British constitution a model – although this was in the 18th Century), today there is no clear separation in the UK between the legislative and the executive branches of power. Because of this intertwining of the two key branches of power, it will be necessary to describe the UK Parliament in terms of its relations to the UK Government. One of the most important constitutional principles in the UK is that "**Parliament is sovereign**", i.e. that the Westminster Parliament is the ultimate source of political power in the UK. This legitimacy is related to the conception of Parliament as the expression of the will of the people, although we shall see that the UK Parliament is far from being a model democratic institution.

1. Composition of the UK Parliament

The UK Parliament is a **bicameral** institution, composed of two distinct chambers or houses, known as the **House of Commons** (**lower chamber**) and the **House of Lords** (**upper chamber**). Despite being known as the UK Parliament's lower chamber, the House of Commons has, over time, become the most important and powerful element of Parliament.

The UK is a parliamentary democracy, so logically we can begin to analyse Parliament by beginning with the participation of the electorate. After a gradual extension of the vote to the lower classes in the 19th Century by removing restrictions based on the ownership of property, universal male suffrage was granted in 1918 (males 21+, females 30+) and this was made equal between the sexes (21+) in 1928. Today, anyone over 18 may vote although there are certain exceptions (convicted criminals, members of the House of Lords, those considered mentally incapable). Elections must be held at least every five years, meaning that the maximum duration of a Parliament is five years, although many do not last for their full term.

On the day of a **general election**, British electors vote for their **MPs (Members of Parliament)** who each represent a **constituency** in the country and who each take a **seat** in Parliament. There are at present 650 MPs who represent 650 separate constituencies across the entire UK. But it must be noted that this abbreviation is rather misleading: MP is the term used to designate the elected members of the **House of Commons**. (The work of MPs in the House of Commons shall be examined later.) As for the upper chamber, it is an entirely unelected chamber. Thus the democratic deficit of the UK Parliament is immediately clear in that the House of Lords does not contain the chosen representatives of the British electorate.

The **House of Lords** is an ancient institution which has, until the last decade, remained largely unchanged from its medieval origins and was described as comprising **Lords Temporal** (powerful noblemen) and **Lords Spiritual** (church leaders). As the name suggests, the House of *Lords* was traditionally dominated by the country's powerful

aristocratic elite: those who had inherited land and titles such as Duke, Marquess, Earl, Viscount or Baron. Until very recent times these noblemen, known as **hereditary peers**, were by far the most numerous category within the House of Lords (over 700) and thus the upper chamber tended to have a strong conservative bias, reflecting the positions of a wealthy (and exclusively male) socio-cultural elite. This vision of an unelected, conservative chamber which is not accountable to popular opinion and may be out of touch with the everyday reality experienced by the vast majority of the population has obvious failings in a democracy.

From the middle of the 20th Century (1958), a new category of Lords was created, allowing greater breadth of expertise and experience as the new peers were not noblemen and aristocrats, but drawn from public life. Known as **Life Peers**, these peers are formally appointed by the monarch (although on the recommendation of the Prime Minister) and may sit in the House of Lords for the duration of their lifetime, but may not pass on this privilege to their descendants. The first female life peer appeared in 1963. Life peers are often experienced politicians such as Cabinet Ministers or ex-Prime Ministers who receive a **peerage** on retirement. The Prime Minister, through the Queen, may appoint life peers to take on an active political role. These "working peers" do so by supporting the Government's policies in the House of Lords (by convention the other political parties are also allowed to choose a certain number of peers to represent their party in the Lords). Life peers also include non-partisan figures, such as respected public figures like writers, artists, scientists, businessmen or religious figures from other faiths. Today, an independent commission is responsible for proposing these and also has the job of validating (or not) the appointment of those who are proposed as peers by the PM and other party leaders.

The existence of life peers shows the strong link between the executive and the legislative branches of power in the UK, since they are appointed on the formal recommendation of the Prime Minister. The capacity of the legislature to act independently

from the executive is thus weakened if the Prime Minister has the power to partly decide on the composition of Parliament.

Scandal erupted after the 2005 General Election when it emerged that a number of important donors to the main political parties had been proposed as life peers (the money donated was officially in the form of loans, not a gift). This became a criminal investigation which saw Prime Minister Tony Blair interviewed by police. The allegation was that political office (peerages in the House of Lords) may have been "sold" in exchange for political donations, although the charges were later dropped for lack of evidence. The suspected corruption was obviously a worrying trend for a so-called democratic country.

In addition to life peers and hereditary peers there are also 26 **Lords Spiritual** (archbishops and bishops of the Church of England), which reminds us of the non-secular character of the British State.

Twelve **Law Lords** also traditionally carried out the judicial functions of the House of Lords. The Law Lords – traditionally Lords who were also senior judges – acted as the highest court of appeal in the UK (with the exception of Scottish criminal cases), giving the House of Lords (part of the legislature) an important judicial role. This is another constitutional oddity which has been addressed in recent years (see below).

2. Parliamentary Reform

Due to the presence of the archaic, undemocratic anomalies that affected the House of Lords, an essentially medieval institution, the Labour Government of Prime Minister Tony Blair has undertaken a major reform of the House of Lords. This reform began in 1999, although the process has since stalled and today it is uncertain what exact form the House of Lords will take in the future.

Since the key problem was the presence of a large number of hereditary peers in Parliament, the decision was taken to eliminate them from the institution entirely. However, a last-minute compromise led the Government to accept that a small number should remain during the transition period. Thus in 1999 the number of hereditary peers was reduced from 759 to 92. Consequently, life peers (around 600, although the number fluctuates) now dominate the House of Lords, although the questions of political patronage remain, and it should be noted that the appointment of lifetime members of the legislature is hardly a more democratic solution.

At present, the reform has become stuck in this transition phase and debate rages about the final form the House of Lords should take, although it is clear that hereditary peers will no longer sit in the House of Lords after the reform is complete. Democrats argue that the House of Lords should be entirely elected, but critics of this approach point out that that would replicate – and therefore cause confrontation with – the House of Commons, since both Houses could claim equal legitimacy through universal suffrage. The Government favours a House of Lords which is at least partially appointed, allowing Lords to be chosen by both the Government and the various other political parties present in the House of Commons. According to the latest reports, the remaining "Lords" may, in the future, be elected by proportional representation to represent the different regions of the UK and may have a shorter term of office than at present.

In 2005 (Constitutional Reform Act) the Government also decided to create a UK Supreme Court in order to create a clearer division between the judicial and legislative branches of power in the House of Lords. This Act was also responsible for effecting a clearer separation of powers relating to the figure of the UK's most senior judge, the **Lord Chancellor**. Previously a political figure who had concentrated executive, legislative and judicial power (as, respectively, the minister who represents the Government in the House of

Lords; the Speaker of the House of Lords; and the leader of the Law Lords and ultimate judicial authority), the Lord Chancellor has lost his legislative and judicial functions under the 2005 Act, continuing only to represent the Government in the Lords. This separation has cleared up one of the most enduring anomalies of the British political system.

Parliament: activities

Introduction

This class aims to explain what the two houses of Parliament actually do, which inevitably raises the question of the relationship between the Commons and the Lords, but also of the relationship between Parliament and Government. This last point will be treated in more detail in next week's class.

1. The Legislative Process

The word "Parliament" comes from the French verb "parler" and this reminds us that Parliament is essentially a debating chamber. Indeed, one of the functions of Parliament is to simply allow its members to voice concerns of national and local interest, to organise debates on such issues and to publicly exchange their views. A faithful record of everything that is said in Parliament is kept (known as Hansard).

The principal function of Parliament, a *legislature,* is to legislate. It must be remembered that it is misleading, however, to say that Parliament "makes laws", since this may seem to imply that laws *originate* from the will of Parliament. They do not. The vast majority (95%) of legislation in the UK is Government legislation, that is to say it originates from the will of Government and thus reflects the Government's desire to orient policy in a particular direction. Parliament's role is to "pass laws", which means voting on a piece of proposed legislation (a **Bill**) to say whether or not it should become law (an **Act**).

The legislative process (the passage from a Bill to an Act) follows a number of steps, and it is important to be familiar with the relevant terminology.

Before legislation is officially introduced in Parliament, the Government may publish a **Green Paper** (a consultative document which announces a possible change in the law and asks for the reactions of the groups or organisations who would be affected in order to better prepare the Bill) or a **White Paper** (an official statement of Government policy, indicating what future legislation will aim to do).

The legislative process (overwhelmingly in the hands of the Government – see below), usually begins in the House of Commons (reflecting the superiority of the Commons over the Lords) and is conducted by a number of stages, known as "readings".

The **1st Reading** is merely the formal introduction of the Bill in Parliament. The minister in charge of the legislation makes an announcement of the Bill and its name is read out. The **2nd Reading** relates to the presentation of the general principles of the Bill and gives rise to a lengthy debate, where MPs can vote for or against the proposed legislation. If the 2nd Reading is passed, then it becomes necessary to scrutinise the Bill in detail, paragraph by paragraph, line by line.

This is much too complex a job to be done by hundreds of MPs in a large chamber. Instead, the work is conducted by MPs working in a smaller committee, known as a **Standing Committee**, and this detailed stage of the process is known as the **Committee Stage**. It involves carefully inspecting the Bill, then potentially modifying its details and wording (though not its general purpose). **Amendments** will be proposed, debated and voted upon by the committee, whose members may be advised by specialists from public life and civil servants.

The committee then reports back to the House of Commons as a whole with the amended form of the legislation (**Report Stage**), giving the other MPs the possibility to accept or reject these amendments.

Lastly, the legislation will be presented in its finalised form – the **3rd Reading**. The legislation can be accepted or rejected in its entirety by the MPs in the Commons.

The Bill now must pass through the upper chamber of Parliament, and the whole process is carried out again in the House of Lords (although the Committee Stage is carried out by the House of Lords as a whole). It is here that the function of the House of Lords becomes apparent. With more time at its disposal, with a large number of non-affiliated peers (**Crossbenchers**) with a less partisan approach, and with a large wealth of expertise and experience to draw upon, the House of Lords plays an important role in "**scrutinising**" Bills. Thus it will propose its own amendments to the legislation, based upon peers' judgement about what would make the Bill fairer, more workable, more desirable etc.

Due to the perceived wisdom and experience of the House of Lords, the amendments it proposes will often be accepted by the Commons as reasonable and pragmatic. If the amended Bill is adopted by the Commons without further changes, it can then proceed to the stage of **Royal Assent** (the formal approbation of the monarch) and then become an **Act**.

Occasionally the House of Lords will vote to reject legislation or will seek to impose amendments unacceptable to the House of Commons, although a convention (**Salisbury Convention**) demands that the Lords do not block legislation which has been mentioned in the Government's election manifesto (the suggestion being that it would be undemocratic for an unelected chamber to oppose legislation that the electorate has voted in favour of). Potential conflicts between the Commons and the Lords are dealt with next.

2. The House of Commons v. the House of Lords

In the early 20th Century the House of Lords was still very largely dominated by hereditary aristocrats (plus bishops and law lords). They were traditionalist in nature, enjoyed wealth and privilege and supported the Conservative Party. When in 1909 a progressive Liberal Government attempted to reform the State by taxing wealthy landowners in order to finance social measures the Lords rejected these plans. The resulting constitutional crisis (a Government formed after democratic elections whose plans are vetoed by an unelected upper house) led to the **Parliament Act 1911** which redefined the power of the Commons and the Lords.

The Liberal Prime Minister, who had been returned in two successive general elections – thus giving him the legitimacy of popular support – sought then to introduce legislation to limit the constitutional power of the House of Lords. The PM asked the King to promise to create enough new *Liberal* peers in the House of Lords to allow this legislation to be passed by overcoming the traditional Conservative majority in the Lords. Faced with this threat of a flood of new peers, the House of Lords accepted the legislation. It would no longer allow the Lords to veto legislation, only delay it. In certain conditions, legislation could now be passed without the assent of the House of Lords. In addition, under the Parliament Act the House of Lords lost the power to amend "money bills", i.e. questions of taxation and the country's budget.

The **Parliament Act 1949** then built on the first Act by limiting further the power of the House of Lords. If the Lords reject a Bill, it can be reintroduced in the next parliamentary session by the Commons. If the Lords then reject it a second time, the Commons can use the Parliament Act to have the desired Bill become law anyway, despite the opposition of the Lords. Thus the Parliament Act effectively ends the veto of the Lords, allowing them only to

delay legislation for a maximum of two parliamentary sessions (usually 1 year). It also confirms the superiority of the Commons as a more legitimate, democratic body. The Parliament Act is rarely used and the Government will usually try to reach a compromise with the Lords whenever possible. It was, however, used four times in the 1990s to overcome resistance by the House of Lords to reforms enacted by Tony Blair's Government, e.g. the law (Hunting Act 2004) which banned fox-hunting in the UK (*chasse à cour*) was passed using the Parliament Act.

Topic 7 - Government

Introduction

It has already been said that there is no clear separation of powers in the UK, and that the legislative (ie. Parliament responsible for law-making) and executives branches (i.e. those who *execute* power in the sense of running the country through the government ministries and deciding on policy) are particularly inter-linked. In this way, the formation of the Government follows directly the results of the legislative elections to the House of Commons, known as **General Elections** : by convention the monarch appoints the leader of the largest party in the House of Commons as Prime Minister and invites him to form a Government. There is no separate election whereby voters choose a Prime Minister, thus it is incorrect to talk about the PM being elected.

Convention also dictates that all ministers, including the Prime Minister, must be drawn from Parliament. Thus the Government is entirely composed of MPs and, to a lesser extent, Peers. The executive also has the power to appoint members to the legislature (life peers), giving a further example of the intermingling of the two branches of power.

The formal mechanisms which are meant to provide some equilibrium ("checks and balances") between Parliament and Government such as a **Vote of No Confidence** or the power of **dissolution** are imperfect. A Vote of No Confidence, if passed by Parliament, will, by convention, force the Government to resign, but this is a very rare occurrence because by definition the government of the day benefits from a large majority in Parliament. The last time a Government fell due to a Vote of No Confidence was in 1979. On the other hand, Governments have traditionally used their power of dissolution for political advantage, by choosing to hold general elections at a time when they thought that they could best win and

thus prolong their power. We see that the checks and balances of the UK political system have tended to favour the power of Government over that of Parliament.

The current Government (2010 - ?) has however promised not to use this power and is committed to hold elections after a fixed five-year term of office. It must be remembered that the current government shows a number of differences with previous governments in that it is a **coalition government** where more than one party (Conservatives / Liberal Democrats) shares power and runs the different ministries. Following an inconclusive election result in 2010, no single party had an absolute majority in the House of Commons (over 50% of the seats) and so the Conservatives (the biggest party) formed a formal coalition with the Liberal Democrats (the third party) in order to have a Parliamentary majority. Thus the country is led by a Conservative Prime Minister (David Cameron) assisted by a Deputy Prime Minister (Nick Clegg) from the Liberal Democrats. In David Cameron's Conservative-dominated Government there are a number of Liberal Democrats ministers. This sort of Government is very rare in the UK and this was the first coalition government since the Second World War.

We shall now look to see how Parliament and Government traditionally interact to better understand the relationship between the legislative and executive branches.

1. Government and backbenchers

As stated earlier, most legislation emanates from the Government, reflecting the decision-making role of the Government and its power to orient the general policies it wishes for the country. Indeed, only a very small percentage emanates from ordinary MPs or **backbenchers**. Such bills are possible and are known as **Private Members' Bills**, but they are very often unsuccessful, since they are not allocated the necessary time in Parliament to successfully complete the various stages from Bill to Act. (If a Bill does not manage to complete one of the stages or if it has not completed the entire process before the end of the

parliamentary session, then the Bill is lost). A Private Member's Bill can only hope to succeed if it has the approval of the Government, e.g. it deals with a non-controversial topic, or an issue that the government wishes to give tacit, but not overt, support to (e.g. legislation legalising abortion in the 1960s was the result of a Private Member's Bill.)

When the House of Commons is voting on legislation it is quite rare for the Government (the origin of most legislation) to be defeated. This is firstly because the Government has – quite logically – been formed from the largest party in the Commons after a General Election. Thus the party of Government also has the largest number of MPs in the Commons. Moreover, it is frequent for the party of Government to possess not only a **relative majority** in the Commons (over half of the seats) but an **absolute majority** (more seats than all the other parties put together). For reasons to do with the electoral system, it is rare for there to be a **hung parliament** in the UK such as we have had since 2010 (i.e. a Parliament where no party has an absolute majority). Most of the time, a strong Government with an absolute majority in the Commons can only have its legislation rejected in the Commons if some of its own MPs (**backbenchers**) vote against the Bill, i.e. if a Conservative backbencher decides to vote against a Bill which has been proposed by the Conservative-led Government. When a number of MPs decide to abstain or even vote against their own Government (thus helping the Opposition side) it is known as a **backbench revolt**. It can, occasionally, lead to the defeat of a Bill or amendment or the forcing of a debate on a particular issue : under the Cameron Government Conservative backbenchers have already rebelled on a number of occasions over the questions concerning the UK's role in the EU. However, a number of factors mean that such revolts are usually quite rare. It was over eight years before Tony Blair encountered his first backbench revolt as Labour PM in 2005 (during his attempt to pass a law allowing police to hold suspects for 90 days before charge).

2. Government and Whips

In addition to the size of the Government's majority in the Commons, one factor which strengthens the Government's position is that when MPs vote on legislation it is not a secret ballot in the manner of an election but an open matter. Such votes in Parliament are known as Divisions, and involve MPs walking into one of two chambers adjacent to the main debating area. The members, who have chosen the "Aye" Division lobby or the "No" lobby, are counted as they come back out and the result of the vote is thus known.

Since it is a practice which allows it to be known which way an MP has voted, it is also a practice which allows a certain amount of pressure to be put on MPs. To maximise its strength in Parliament, each party would like to ensure that its MPs vote according its wishes. This function of maintaining **party loyalty** and discipline is institutionalised in the British system, in the form of the party **Whips**. We shall concern ourselves primarily with the Government Whips, although similar functions are carried out by Opposition Whips.

On the Government side, the Whips act as intermediaries between backbenchers and ministers. Led by a **Chief Whip**, they are responsible for ensuring that Government legislation is supported by the party's MPs and they also inform the Government of the opinions, intentions and actions of backbenchers, collectively and individually. Thus they will also be influential in signalling MPs who could deserve promotion as ministers in the future, or, on the contrary, in indicating potential trouble-makers. As regards ensuring the necessary support for Government legislation, a weekly document is published by the Whips (the document is also, confusingly, known as a **Whip**) which lists the upcoming debates in the Commons and indicates how serious the matter is regarded by the Government. Each item is underlined: once if it is insignificant, twice if some opposition is expected, three times if the

matter is of vital importance and the presence of every MP is needed to ensure the success of the Government in the vote. A backbencher who intends to go against a **Three-Line Whip,** thus voting against the explicit instructions of his party, will face the attention of the Whips' Office.

The Government Whips will attempt to make a rebel change his mind, either by reasoning with him (e.g. by better explaining the ramifications of the issue in question), by compromising with him (e.g. by proposing some possible amendment that might placate him), or by gently pressuring him (e.g. by explaining the necessity of allowing the Government to win the vote). Since most MPs hope to become ministers one day, it is also possible to remind them that their future career will be harmed if they have a bad record as rebels and trouble-makers. In more serious cases, the pressure applied by the Whips may become more intense (e.g. the MP may be threatened with de-selection or exclusion from the party).

The role of the Government Whips in maintaining party loyalty among its MPs thus helps maintain the power of the executive over the legislative branch. This has led some critics to remark that Parliament has become little more than a "**rubber stamp**" in recent years, a docile institution that merely endorses decisions that the Government has already taken.

3. Scrutiny of the Government

One area where Parliament can play an important role, however, is in the examination of Government activities. The simplest way that this can be done is for an MP to ask the relevant minister a question during the regular slots allocated to this activity – known as **Question Time** – in the Parliamentary timetable. All ministers, according to a pre-established rota, must come before the Commons and field questions in this way. The Prime Minister too takes part in a regular **Prime Minister's Questions**, which lasts thirty minutes every

Wednesday. In the Question Time slots, the MPs' questions to ministers about their Government department's activities are submitted in advance, thus allowing ministers to prepare answers to often complex questions which must be adequately researched. This does also allow ministers to be well-prepared and thus deflect criticism. In addition, MPs are also allowed to ask a supplementary question, however, which has not been signalled in advance. This supplementary question may be an attempt to make the minister recognise a deficiency in his department, but ministers are skilled orators who will not be likely to openly admit any failings. Instead, the minister will doubtlessly try to use his answer to say what a good job the Government is doing, in any case a better job than the Opposition party when it was in power. The adversarial nature of Question Time is often less about serious scrutiny of the Government's activities, and more about attempts to score political points, with the Opposition doing all it can to embarrass the Government and vice versa.

A more effective job of scrutinising the Government is also done by groups of MPs working behind the scenes in **Departmental Select Committees**. There is roughly one Select Committee for each Government Department, e.g. the Home Affairs Select Committee will oversee the work done by the **Home Office** (*ministère de l'Intérieur*), while the Foreign Office Select Committee will study the work of the **Foreign Office** (*ministère des affaires étrangères*). Each select committee (comprised of MPs from the different political parties, possibly aided by outside specialists and advisors) will have the remit of studying a Government department in detail: its activities, its policies, its aims, its spending etc. These committees have the power to call individuals to give evidence, to ask to see documents and records and to interrogate ministers and other officials. Their power stops there, however, as they have only the authority to publish reports of their findings, not to demand that action be taken. A relatively recent phenomenon, these Select Committees have been a welcome

addition to the British constitution in that they help to redress the balance by strengthening the Parliament in its dealings with the Government.

4. The PM and Cabinet

Historically, the Prime Minister, whose exact role remains very vague because of the uncodified British constitution, was considered as being more pre-eminent but not of a higher rank than his fellow ministers. The PM was considered to be the **"first among equals"** according to the well-known phrase. This idea of the supposed equality of ministers rests on the concept of collective decision making and collegiate responsibility, i.e. that policy is largely the result of the consensus achieved in Cabinet. This vision has since been weakened by the increasingly important personal role that Prime Ministers have played in the twentieth century.

One reason that has facilitated this is a constitutional convention known as "**collective responsibility**". This convention means that members of the Cabinet must agree publicly with the actions of the Government, even if privately they do not agree with them. The objective is to present the Government as a coherent and unified force and is related to the convention that the Government as a whole must resign if it loses a vote of no-confidence in Parliament. It indirectly strengthens the position of the Prime Minister, however. With the power to appoint and dismiss ministers at will (e.g. during a **Cabinet Reshuffle**), the Prime Minister can also expect the discretion of any minister within his Cabinet who dislikes his policies, thus ensuring that opposition to the Prime Minister remains chiefly private. Any dissenting minister who cannot, because of his conscience or ideology, remain silent and feels the need to openly criticise the Government is expected to resign. Following Tony Blair's decision to invade Iraq in March 2003, **Robin Cook** (Leader of the House of Commons) resigned from

the Cabinet, followed by **Claire Short** (Secretary of State for International Development) two months later.

Increasingly, the criticism is that the UK constitution permits Prime Ministers to play a **presidential role**, a term which suggests great personal autonomy and power. It is simply not humanly possible for a single figure to govern every area of the life of the state on a personal basis, and thus much power will always be devolved to other government ministers aided by senior civil servants. However, aided by their own team of civil servants, their own private policy advisers, their own media and communication specialists ("spin doctors"), recent Prime Minister have indeed shown themselves capable of a great deal of initiative and autonomy within the government. Famously, **Margaret Thatcher** once remarked that, "as Prime Minister I couldn't waste time having any internal arguments". **Tony Blair**, who quickly gained a reputation as a "control freak" has shown with his handling of the Iraq war how much influence the Prime Minister's own beliefs and ideology can bring to bear on his country's policies. Despite hostile public opinion, uncertain legal advice, erroneous intelligence documents, the chaos and bloodshed of the post-war situation and the absence of the Weapons of Mass Destruction which were the justification for the war, Tony Blair remained confident that he was right to support the US-led invasion. Indeed, on British TV (Parkinson, ITV, March 2006) he caused controversy when he suggested that it was God who would ultimately decide whether he had been right or not to invade.

The important degree of personal power shown by Prime Ministers such as Thatcher or Blair has led some commentators to remark on the **quasi-monarchic role** of the British Prime Minister. Indeed, it must be remembered that the constitutional monarchy has not done away with the Royal Prerogative – the collective name given to the rights of the monarch –, but that the decisions related to these constitutional tasks are now generally taken by the Prime Minister. Thus although it is the Queen who officially dissolves Parliament it is the

Prime Minister who decides when the new elections are to be held; although the Queen officially declares war, it is the Prime Minister's decision to do so; although the Queen is the "fountain of honours" it is often the Prime Minister's decision to grant, say, a peerage to a particular person.

The absence of effective opposition to the power of the Government, and in particular of the Prime Minister, led to the coining of the phrase "**elective dictatorship**" to describe the current British situation. First used in 1976 to criticise the Labour Government of the day, this phrase suggests that, after the democratic phase of electing MPs to the Commons and the forming of a Government by the winning party, there is virtually nothing that can limit the power of the executive. The Commons is dominated by the party of Government, often with a large majority, due to the electoral system (see later). The Whips work to ensure party loyalty and limit dissent among MPs, while the doctrine of collective responsibility limits dissent amongst members of the Government. The House of Lords, following the Parliament Act and the Salisbury Convention of the 1940s, has less power to block legislation and is subordinate to the Commons. All in all, once elected, the Government of the day stands an excellent chance of having the majority of its legislation adopted over the next five years until the next elections. This, of course, is argued by some as an advantage. The British constitution, it is claimed, allows the formation of strong Governments who can rule and reform with ease. Critics and commentators, however, often suggest that the British system allows strong powers to be given to unrepresentative Governments who can then act without concern for the wishes of the general population. The Iraq war is often cited as an example in this sense.

What is certain is that no Prime Minister can rule with absolute impunity because of the certainty that new elections will be held no later than five years after the last. As such there will always be a risk for a political party that keeps a leader who has become unpopular with the public. If the PM has divided his party by calling into question its basic doctrines

there may be MPs and members who would prefer another party leader. If the PM has created political rivals for the leadership of his party by sacking high-profile ministers, this internal danger will be exacerbated. It should be noted that in 1990 Margaret Thatcher was forced to resign as leader of the Conservative Party (and thus as Prime Minister) after she had become unpopular with the public and after a leadership battle which involved ministers who had resigned from her Government after disputes. As for Tony Blair, he would possibly have attempted to win a fourth election victory had hostile public opinion over the war in Iraq not made this extremely unlikely. In 2006, pressure from Labour backbenchers forced him to publicly promise to step down in 2007..