

**THE
UNSPOKEN
CONSTITUTION**



DEMOCRATIC AUDIT

£5

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UNSPOKEN
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in association with **Unlock Democracy and Our Kingdom**

This document is inspired by an original idea by Graham Allen MP. It is written and edited by Stuart Weir in conjunction with Stuart Wilks-Heeg, and with contributions from Graham Allen, Anthony Barnett, Andrew Blick, Keith Ewing and Peter Facey. The views expressed here do not represent the view or the policy of Democratic Audit, Unlock Democracy or OurKingdom.

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FOREWORD

FROM TIME to time scholars have attempted to define the British Constitution. In the nineteenth century Bagehot argued that it was a myth to deceive the ignorant. Dicey held that the thing that mattered was parliamentary sovereignty. In the mid-twentieth century Jennings maintained that the British Constitution was a magnificent articulation of the benign power of the modern bureaucratic state.

Stuart Weir and his collaborators belong to the Bagehot tradition. Like Bagehot, they believe that the British Constitution belongs to “them” and not to “us”. Like Bagehot, they think that the British constitution was imposed cynically from above. Like Bagehot, they see the British Constitution as something which protects elite interests.

But at this point they and Bagehot part company. Bagehot was convinced that the anti-democratic nature of the British Constitution was a very good thing, because “the masses of Englishmen are not fit for an elected government”. That is why he celebrated the myths and illusions that enabled elite rule.

Weir *et al* are appalled by the identical phenomenon. The Unspoken Constitution sets out with deep penetration and astonishing clarity the real state of the British Constitution at the start of the twenty-first century. It explains how democracy is withering away; how the traditional functions of the civil service have been handed over to big

business; and how all but 200,000 people — the swing voters in marginal constituencies — have been denied a meaningful vote in general elections.

I do not agree with all of the assumptions which underlie this analysis. For instance, it seems to be suggesting (see section 8.6) that judicial decisions should reflect “the wishes of the people”. But surely judges should be impartial and immune to political pressure, while it is Parliament that should make the law?

Nevertheless this brilliant document makes the formidable case that the British system of government is now an illegitimate and undemocratic shambles. Democratic Audit under Stuart Weir has long urged root and branch reform and a new written constitution. It is a case which Conservatives like me who instinctively disagree with Weir and Stuart Wilks-Heeg, his successor at the Audit, can no longer afford to ignore.

Peter Osborne

BACK STORY

From: [REDACTED]@moj.gov.uk

Sent: 17 July 2009 14:08

To: [REDACTED]@moj.gov.uk

Subject: written constitution

Hi [REDACTED]

Sorry to trouble you with this over the summer, but this business about a written constitution is not going to go away. As you know, the Secretary of State told the Justice Committee a few days ago that he thinks that 'seeing whether we can get to a single text which better describes our arrangements would be a good thing'. Thankfully he's pretty much quashed those daft ideas going around about drafting it via a constitutional convention, holding a referendum, and so on, but he does seem to think we could have 'a sort of summary and codification of the existing arrangements'. I've pasted the full text of what he said to the Committee below.

I'm off to Cornwall tomorrow for my 'staycation', so could you have a go at drafting this? Basically, what we need is a summary of how the constitution actually works at the moment – not some idealised, restrictive democratic construct like they tend to saddle themselves with elsewhere. I'm not at all sure that bringing together all the texts he's talking about will really work – there's so many of them and they can be quite contradictory (just have a read of any of those dull constitutional law text books). So I'd suggest something much shorter – a sort of 'digested read' of all the constitutional materials, written and unwritten.

Sorry to dump this on you.

Best, [REDACTED]

P.S. It looks as though the Secretary of State would like the idea that parliament is sovereign to be at the heart of it all. I'm not sure what's happened to those ideas about 'executive democracy' that he was bandying around a few years back, but I'd suggest that should figure strongly — though it might be best not to use that actual phrase.



Jack Straw to House of Commons Justice Committee, 14 July 2009, Question 61:

'There are two models of a written Constitution. One is a text which seeks to bring together the fundamental principles, sometimes called conventions, of our constitutional arrangements, the most important of which is that Parliament is sovereign, but also to bring in other texts as well, which include things like the Parliament Acts, a Bill of Rights and Responsibilities and so on, basic texts which add up to the arrangements which we have today. So that is one model; a sort of summary and codification of the existing arrangements. The second model is an entrenched and overarching Constitution which is more powerful than Parliament. That is what many other countries do. If you go down that route you would have to have some special means of endorsing that text, and probably generating it as well through some kind of constitutional convention. It would have to be endorsed by Parliament and

then by a referendum and you would also have to have a special process for amending it as well. Typically in other countries that is a combination of either special majorities in the Parliament, two-thirds and so on, and/or a referendum. I am not in favour of that. I think however seeing whether we can get to a single text which better describes our arrangements would be a good thing'.



From: [REDACTED]@moj.gov.uk
Sent: 10 August 2009 11:15
To: [REDACTED]@moj.gov.uk
Subject: re: written constitution

Hi [REDACTED]

Welcome back — hope you had a good break.

Have had a first stab at this. I was cursing you to start with, but once I got going I found that it was pretty easy to sum up our constitutional arrangements. I stuck as closely as I could to just cataloguing how it all works in practice.

Given that most of the sources are unwritten, I thought it might be best to call it something like 'the unspoken constitution'.

Presumably we're just doing this for internal reference, aren't we? It's not subject to the Freedom of Information Act or anything is it?!?!

Cheers

[REDACTED]



From: [REDACTED]@moj.gov.uk
Sent: 11 August 2009 10.04
To: [REDACTED]@moj.gov.uk
Subject: re: written constitution

Dear [REDACTED]

Are you out of your mind? Forget Freedom of Information. This really is 'unspoken' stuff and if it

were leaked, the whole establishment – let alone the service and Gordon – would be outraged and we could kiss goodbye to all hopes of a K or even a measly CBE! Please kill this off at once.

Sincerely [REDACTED]



From: [REDACTED]@moj.gov.uk
Sent: 11 August 2009 10.10
To: [REDACTED]@moj.gov.uk
Subject: re: written constitution

Dear [REDACTED]

Just teasing! It is already dead.

[REDACTED]

PREAMBLE

We, the elite, do not believe in the kind of constitution most other advanced nations have — those that boast a belief in popular sovereignty; with resounding declarations such as ‘we, the people’, and that tend to contain rules about how governments should act.

We describe ours as the ‘unwritten constitution’. It is a collection of laws, fictions, powers left over from the old monarchy and powers that we make up as we go along. It allows us to decide what governments can do; and best of all, only we have the power to change it.

We disguise the fact that it is neither popular, representative nor accountable through a set of myths about the ‘Mother of Parliaments’, Magna Carta and the rule of law.

We hide our power behind a grand title, *the Sovereignty of Parliament*. It has a democratic ring to it, but legally this sovereignty is vested in the Crown in Parliament, or in plainer language, in the hands of the Prime Minister and government within Parliament. This enables us to combine executive and legislative power and allows us to keep the judges in their place. Parliament by and large passes all the laws that we tell it to, or better still, we can employ devices, known as statutory instruments, to make the law so that we do not have to bother with Parliament that much.

Parliament, far from being representative of the people, is actually our bulwark against

the people. We are also able to treat the people not as citizens but as subjects. We encourage people to believe that they are free, though actually they are in chains, unfelt but real chains nevertheless.

One most helpful myth is widely believed – that the great virtue of the obsolete electoral system that we use for elections to Parliament is that it enables the people to ‘chuck the rascals out.’ Actually it is the secret of our grasp on power. Elections are unavoidable, but we can reduce their unpredictability in a variety of ways. First-past-the-post elections limit the number of parties that have a chance of winning power, and most MPs – four out of every five – can count on being returned at a general election (if not after an expenses scandal). Moreover, once in power governments can usually expect to be returned over a series of elections. The electoral system for the House of Lords is even more efficient – we do not have one. We are quietly perfecting the principle of non-election by creating bodies known as quangos at all levels of government, national, regional and local, and run by people whom we appoint and trust. A great number have usurped the roles of elected local authorities allowing us to subdue local councils and more or less abolish local democracy.

We justify our ability to create new powers and ways of governing, or to change how we run the country to suit the Prime Minister or his or her cabinet, by extolling

the flexible nature of the unwritten constitution. The great advantage of this flexibility is that once we have hit on a new way of behaving, it becomes part of the constitution. And we can modernise easily. So we have moved on from old-fashioned cabinet government to sofa government by the prime minister with trusted allies and special advisers. Presidential, yes, but faster and more efficient.

This excellent state of affairs allows us to exercise executive power more or less as we please while the whole world admires us as a democracy.

These are the Unspoken Articles of what the Minister of Justice calls our executive democracy.

1

The Crown

1.1. All public business shall be conducted in the name of the Crown or Crown-in-Parliament. The Crown shall not always be subject to the rule of law.

For the purposes of this Constitution, for ‘Crown’ read the Prime Minister and government of the day.

2

Secrecy

Secrecy shall be the watchword of government activity since it is well known that transparency can harm executive democracy and embarrass ministers.

3

The Rule of Law

Government, like every subject, shall be free to do whatever is not unlawful. The government shall decide what is unlawful.

4

Head of State

4.1. The Head of State shall be a hereditary monarch, descended from the most excellent Princess Sophia of Hanover, being Protestants, giving preference to males over females and recognising the right of primogeniture.

4.2. The monarch shall be head of the Church of England, the official organ of the Christian Protestant state religion, and is bound to that religion, defending and taking communion in that church. Roman Catholics and those who marry Roman Catholics are disqualified from the succession, as are all outside the Church of England.

5

Monarchical Powers

5.1. The monarch shall have no political powers, save that he or she shall:

- a) approve Acts of Parliament — a formality;
- b) dissolve Parliament at the bidding of the Prime Minister;
- c) appoint the Prime Minister from the majority party after an election;
- d) choose the Prime Minister in the event of a hung Parliament, or political crisis, advised in secret by his or her Private Secretary, the Cabinet Secretary and the Principal Private Secretary to the Prime Minister, this choice being too serious to be entrusted to Parliament;
- e) having taken secret advice, as above, be entitled to refuse a request by the Prime Minister to dissolve Parliament, to dismiss the Prime Minister and appoint

a successor in undefined circumstances, such a decision again being too serious to be entrusted to Parliament;

f) advise the Prime Minister at regular audiences.

5.2. The heir to the throne shall also be given licence to advise the Prime Minister and other ministers in confidence, to approve or dismiss plans for new buildings in sensitive areas, and generally to interfere in public policy.

5.3. The monarch shall enjoy great personal wealth and possessions, an annual salary

1 It is often erroneously stated that Her Majesty owns all the swans in the UK and that it is an offence to eat one. She in fact only owns most of the swans

and allowances along with certain members of the royal family, and sundry other possessions, privileges and immunities.¹

5.4. He or she, along with members of the royal family, shall be exempt from parliamentary scrutiny or criticism, from Freedom of Information legislation and from regular tax regulations.

5.5. Acts of Parliament shall not apply to the monarch, unless it is expressly provided for.

6

Government

6.1. The Prime Minister shall be the head of government with power over all his or her colleagues and the state. The Prime Minister

a) shall not be elected, but shall be the leader of the majority party after a General Election;

b) may be changed between elections by his or her own political party as they see fit.

6.2. If no party has a majority after a General Election, the monarch, as stated at Article 5.1 (d) above, shall choose the next Prime Minister.

6.3. The government of the day, residing within Parliament, shall govern with the support of and on behalf of the majority party in the House of Commons. The main rival party shall be awarded the title of Her Majesty's Opposition, signifying that no other party matters.

6.4. The role, duties and powers of the Prime Minister shall not be defined in law.

6.5. The Prime Minister shall appoint a Cabinet of ministers who shall meet at his or her discretion to discuss policies and decisions. The Prime Minister shall also appoint a large number of subordinate ministers.

6.6. The existence of the Cabinet, its duties and powers shall not be defined by law.

6.7. The Prime Minister shall not be required to consult the Cabinet or to gain its approval for any decisions that he or she takes, however important.

6.8. The Prime Minister may take decisions alone or with any ad-hoc group of ministers and advisers that he or she determines. A sofa may be set aside in Downing Street for informal decision-taking meetings.

6.9. All ministers shall be bound by the convention of collective responsibility. All major government decisions, no matter who has taken them, shall in consequence be presented as taken collectively by all members of the Cabinet, government and parliamentary aides and none shall dissent.

6.10. The Prime Minister shall retain or

dismiss ministers as it seems expedient.

6.11. Ministers shall sit in Parliament but need not be elected. The Prime Minister shall appoint as ministers MPs or peers, creating new peers to take office as needs arise, and may choose them from any or no party.

6.12. The Prime Minister, with advice from the Cabinet Secretary, shall be responsible for determining and enforcing the rules of Cabinet and ministerial conduct.

6.13. Ministers shall be free after they leave office to take lucrative consultancies with the firms with which their department previously did business.

7

Government Powers

7.1. The Prime Minister and his government shall possess wide-ranging executive and legislative powers that shall be exercised with as few constraints as possible from within or outside Parliament, the judiciary, or any other public institution or process.

7.2. The government of the day shall have authority to take any actions, as it sees fit, that are not unlawful. The Prime Minister, ministers and officials shall in particular exercise powers, known as royal prerogative powers.

7.3. Royal prerogative powers derive from pre-democratic royal rule. These powers shall not be formally defined or listed, but shall empower the Prime Minister to act without the knowledge or consent of Parliament.

7.4. Royal prerogative powers shall enable the Prime Minister, or ministers or officials

as he or she sees fit, to:

a) commit the armed forces to wars and military adventures, if necessary to assist in winning elections;

b) deploy the armed forces at home or abroad on such tasks as they see fit;

c) order a nuclear strike, defensive or pre-emptive, against any other nation or peoples.² The Prime Minister shall retain the power to order

² It is considered advisable to ask the permission of the US President first

a nuclear strike even when dead. In the event of a nuclear attack that destroys the UK, a dead Prime Minister shall continue to exercise control over the armed forces by means of sealed instructions issued in advance to each Polaris submarine.

d) make treaties and alliances with other nations;

e) make policies and laws in the European Union and the World Trade Organisation;

f) participate behind closed doors in policy-making in global inter-governmental bodies;

g) regulate the civil service (and, using secondary legislation, to make, abolish, merge or re-name government departments);

h) award or withhold passports to British citizens and non-citizens;

i) refuse people they do not like entry to the United Kingdom; and

j) perform other indeterminate functions.

7.5. The government of the day shall

have the power to enact ministerial edicts, known as statutory instruments or Orders in Council, this secondary legislation being in effect law-making that can almost wholly escape parliamentary scrutiny and debate.

7.6. To facilitate this power to make law and regulations, the government may incorporate powers to make such orders in primary legislation, often in what are known as skeleton bills.

7.7. The government shall also have the power to declare an emergency and thus to amend and repeal statute laws using secondary legislation (see Article 7.5. above).

7.8. Under warrant, the government may authorise the nation's external intelligence services to break international and domestic laws abroad.

7.9. There shall be freedom of information, except that in the interests of executive power the legislation governing access to official information shall systematically protect from disclosure information pertaining to all matters of national security, internal policy-making, international relations and other sensitive or potentially embarrassing information.

7.10. There shall be an independent appeal process against refusals of access to official information, except that the Prime Minister and ministers shall have an ultimate power of veto over any ruling in favour of disclosure.

7.11. In the event of controversy over government actions, the government may have recourse to carefully chosen judges or former civil servants to hold an inquiry that has due respect for government's need for support and discretion. The govern-

ment shall set the terms of reference for any inquiry, have powers to suspend it or restrict public access to it, and may censor an inquiry report to prevent any information emerging which we say may harm state economic and security interests.

7.12. The Prime Minister shall choose the date of the general election to give him or her the best possible chance of being re-elected. Ministers shall direct government spending to those seats and areas where it may be electorally advantageous and may undertake advertising campaigns that encourage support for the government.



The Judiciary

8.1. The judiciary shall be independent of government, except that members of the judiciary shall be appointed by a cabinet minister acting on the advice of a Commission that is government-appointed.

8.2. Judges shall be appointed on merit, regardless of gender, ethnic origin or colour, though the grasp of the white male middle or professional class on preferment seems advantageous to stable governance.

8.3. There shall be a supreme court that shall:

- a) hear appeals from the lower criminal and civil courts (except for cases in Scotland and Northern Ireland which have separate legal systems);
- b) review and interpret legislation;
- c) review the conduct of government and public institutions, according to legalistic rules rather than substance; and

d) determine issues in dispute between central government and devolved administrations, and between those administrations.

8.4. The supreme court shall consist of twelve judges, who shall not be required to hear cases together. They may pick and choose those cases they hear in smaller groups, making its decisions unpredictable and thus more newsworthy.

8.5. Judicial power shall be exercised according to the following principles:

a) private property shall take precedence over all other interests;

b) the social and economic rights and general well-being of the population shall be disregarded; and

c) there shall be a presumption of deference to government, especially but not exclusively in cases of national security.

8.6. The courts shall determine cases according to the common law, a judge-made set of rules that shall not have reference to the wishes of the people.

8.7. Jury trial has proved to be a tiresome and occasionally unpredictable process and shall be confined to as few cases as possible and shall ultimately be abolished.

9

State Bureaucracy

9.1. There shall be a state bureaucracy, known as the civil service, which shall have no statutory existence.

9.2. There shall be a Civil Service Commission to safeguard civil service values. It shall have no statutory existence.

9.3. The first duty of all civil servants shall be to the Prime Minister and ministers, to whom they shall be accountable, not to the public nor to the public interest. They shall owe a duty of care to ministers not to reveal damaging or embarrassing truths or facts. Ministers shall have powers to:

a) dictate the evidence that civil servants give to Parliament and in public arenas;

b) refuse to allow Parliament to call particular civil servants to appear before its committees.

9.4. The Prime Minister and ministers shall be empowered to appoint temporary civil servants whose chief purpose shall be to maximise political gain for their minister and the government, most especially through cultivation of the media. Such appointments shall be made purely on the patronage of the appointing minister and shall be exempt from employment law.

9.5. These temporary appointees, known as special advisers, shall not be bound by civil service rules of ethical and impartial conduct so that they may carry out partisan tasks, such as seeking to discredit political opponents from opposition parties and government and party colleagues alike.

9.6. Ministers shall have the power to make their special advisers the channel for issuing instructions to permanent civil servants.

9.7. Civil service departments shall give preference to private industry and commerce in processes of consultation over policy and legislation.

9.8. Any senior civil servant who takes duties, such as acting as Accounting Officer, or giving inconvenient advice so seriously as

to embarrass ministers shall be encouraged to leave the service or denied preferment.

9.9. Civil servants shall in normal circumstances be granted the security of employment for life, regardless of their performance, and shall be allowed to enhance generous pensions by taking advantage of their departmental experience and contacts through lucrative appointments in relevant private companies. In addition, they shall receive preferential treatment in the allocation of honours and peerages.

10

Parliament

10.1. The electoral system for the primary chamber, the House of Commons, shall confine the choice of governing party at general elections to one or other of two main parties and shall usually confer upon that party a disproportionately large majority in the House of Commons in order to swell its power. For the convenience of the two main parties, general elections shall generally be won or lost by the votes of fewer than 200,000 electors in less than 100 seats. Through this remarkably efficient arrangement, most electors shall be afforded the opportunity to participate while being freed from all burdens of how they may inadvertently influence the outcome.

The electoral and party system shall in the process produce a chamber that is politically and socially unrepresentative of the electorate.

10.2. For the safety of members, the chamber shall be divided so that the government and opposition benches are two and a half sword lengths apart and silk ribbons shall hang in

the cloakroom with which to hang swords, or umbrellas, whichever is most appropriate.

10.3. The House of Lords, the second chamber, shall consist of unelected members, by way of appointment, hereditary succession or position in the hierarchy of the established religion. Members of the Lords shall enjoy jobs for life without having to put themselves to the bother of having to stand for election. In return, the Prime Minister may make reasonable requests for payment to party funds or for favours in kind.

10.4. The hereditary principle shall be modernised for the election by hereditary peers of one of their number to fill a vacancy, switching from the old-fashioned feudal principle to the hereditary electoral system practised by the Holy Roman Empire. A benefit of the small franchises involved is that these elections produce the highest electoral turnouts in Europe.

10.5. Membership for appointees shall be life-long and used as a reward for party, personal and financial favours. Peers may be removed from office only by way of a special Act of Parliament, notwithstanding criminal conviction or gross misconduct.

10.6. Parliament shall be the creature of the executive. This happy state of affairs shall be secured, on the one hand, by the government's in-built majority in the House of Commons, party loyalty, personal ambitions and the supine traditions of the House and, on the other hand, by the lack of legitimacy of the House of Lords.

10.7. The governing principle of parliamentary activity shall be that the government's business must get through.

10.8. The government shall determine the parliamentary timetable in the House of Commons, allocating the great majority of parliamentary time for its own business, controlling its budget and allowing only inadequate scrutiny of its bills. Party whips will maintain discipline through a series of measures ranging from favours given and withheld, exploiting hopes of promotion to outright bullying.

10.9. Bills in front of Parliament shall be framed in abstruse and archaic language, and as often as possible in the form of amendments to existing laws, so few people reading the government's proposals, including most legislators, can understand them.

10.10. MPs shall be under no obligation to study new legislation, as the party whips will instruct them on how to vote.

10.11. Scrutiny of government Bills shall be a ritual process in the House of Commons, undertaken by committees on which a majority of the members belong to the majority party. MPs of all parties shall be free to deal with their correspondence, read books and knit. The House of Lords shall be a repository for late government amendments to Bills and may act as a revising chamber for legislation.

10.12. The government shall determine the membership and balance of parliamentary select committees set up in the House of Commons to scrutinise its policies and actions. Each committee shall have a majority drawn from the governing party, as the majority of chairs shall be.

10.13. Select committees shall have inadequate powers to summon witnesses and no powers at all to require government minis-

ters or chosen civil servants to appear as witnesses.

10.14. Parliament shall be consulted over the exercise of prerogative powers as the government sees fit, or not at all.

10.15. The government shall nominate a political member of the Cabinet as its legal adviser and his or her advice shall be confidential. Parliament shall be denied independent legal advice

10.16. Private business interests shall have a determining influence over parliamentary legislation.

10.17. To restrict further Parliament's power to make government accountable, Parliament shall sit for only 160 or so days a year. The attention of MPs shall be focused on the complaints of constituents, thereby increasing their power of incumbency and saving the Treasury considerable moneys that may otherwise be spent on an effective system of legal and administrative justice and legal aid and advice.

11

Elections

11.1. Periodic elections shall take place to return representatives to the House of Commons and the European Parliament, devolved parliaments and assemblies, and local authorities.

11.2. Any subject of the Queen who is over 18 and lives in the United Kingdom may vote in parliamentary elections; and if they are not a member of the House of Lords, they may stand for election to the House of Commons, subject to the condition that they can afford to lose £5,000.

11.3. The electoral system for elections to the House of Commons shall formally be known as a majoritarian system, although no majority shall be required to win power in the House or in any constituency for a candidate to secure election.

11.4. The boundaries for constituencies shall be drawn up so as to ensure that the outcomes are generally predictable in two-thirds of constituencies, known as ‘safe seats’. The remaining one-third of constituencies shall be drawn up so as to ensure less predictable electoral outcomes and shall be known as ‘the marginal seats’.

11.5. The division of seats shall allow the two largest parties to dominate the House of Commons and render attempts to alter the electoral system ineffectual; and shall have the added advantage for the parties in drastically reducing to less than 200,000 the number of voters that they need to target in order to win an election.

11.6. The system shall be known informally as ‘first past the post’ to reflect popular interest in horse racing. Its merits are as follows: it

- a) enables the two established parties to dominate the House of Commons and to take turns in governing the country;
- b) returns one or the other dominant party with an exaggerated majority in the House at general elections, so that it can rule on its own with the minimum of parliamentary fuss and opposition;
- c) protects the political careers of up to 550 MPs who sit in ‘safe seats’; and
- d) further protects incumbent MPs against candidates for election from other

parties through generous funding of their activities; and

- e) severely restricts the opportunities for third parties to gain representation in the House.

11.7. Lip-service shall be paid to notions of political equality and the electoral system shall adhere to the symbolic notion of ‘one person, one vote’, while ensuring some votes to count for more than others and most votes for nothing.

11.8. The two largest parties shall adhere to the current electoral system for elections to the House of Commons until such time as ‘turkeys vote for Christmas’.

11.9. All elections shall take place on a fixed electoral cycle, as defined by statute, except those for elections to the House of Commons where the Prime Minister may vary the electoral cycle in order to maximise the scope for partisan advantage in the election with the additional benefit that he or she in doing so can stop all further parliamentary activities and inquiries.

11.10. The executive may impose more proportional electoral systems for other elected bodies, such as devolved administrations. Individual voters may be required to cast ballots using up to five different voting systems. This shall generate voter confusion about proportional representation and embed a general reluctance to alter the system of elections to the House of Commons.

11.12. The secret ballot shall be sacrosanct, except that each vote cast has a registration number from which people’s votes could be ascertained should it prove desirable. Meanwhile electors opting to vote by post are

advised to ask family members, friends and party canvassers to leave the room while they mark their ballot paper.

11.13. Electoral registration and the casting of ballots shall operate on the basis of trust. No form of identification shall be required to register to vote or to cast a vote. An exception shall be made in Northern Ireland where a minority of voters have demonstrated they cannot be trusted.

11.14. Election results may be challenged by a registered elector, candidate or agent issuing an Election Petition. The burden of providing proof and the cost of making the petition shall deter all but the political parties from challenging results, thereby ensuring that challenges are infrequent and are made only in the interests of a party.

11.15. All matters relating to electoral law and regulations shall be monitored by an independent Electoral Commission which shall show the utmost respect to the wishes and interests of the main political parties.

12

Political Parties

12.1. As the United Kingdom is a pluralist democracy, everyone shall be free to form political parties, recruit members and contest elections so long as they register the party with the Electoral Commission.

12.2. There shall be no rules for the internal conduct of political parties. However, the leaders of the major parties shall retain control of policy-making and restrict the participation of their members to avoid alarming the media with any manifestation of internal democracy.

12.3. In order to ensure transparency in the funding of political parties, they shall all be bound to make regular financial returns about donations, income and expenditure to the Electoral Commission. This shall comprise a game in which political parties shall continually seek to exploit any loopholes in existing regulations and the Electoral Commission makes threats to instigate legal action.

12.4. There shall be generous spending limits on the parties during general elections, as well as the long-standing caps on spending in constituencies. But this gesture towards equity between parties shall have less effect by allowing them to invest considerable funds between elections in constituencies that they hope to win; and to receive huge donations with no caps.

12.5. Political parties shall not be state funded. However, the largest two political parties, in particular, shall receive large forms of funding from the state in a variety of ways.

12.6. There shall be a legal prohibition on people abroad making donations to political parties, except that they may do so through private companies based in the UK.

12.7. In addition to the various forms of state funding, the advantages of incumbency for sitting MPs shall be increased by awarding them funds for their constituency offices and services that can readily be utilised, properly or improperly, to attract the loyalty of voters.

13

The Rights of Subjects

13.1. Subjects and other inhabitants of the United Kingdom are free from interference by the state, subject to the right of the state

to over-ride, suspend or ignore the liberty of the subject.

13.2. Personal freedom as set out in the European Convention on Human Rights shall be protected to a limited extent by the Human Rights Act, but the courts shall have no power to annul legislation that violates the rights of the subject.

13.3. Economic, social and cultural rights as set out in the Social Charter of the Council of Europe constitute a threat to the free market and (although ratified by the United Kingdom) are not recognised; they may not be enforced by the courts.

Legal Rights

13.4. The *right to life* is recognised, except in the case of anyone suspected (rightly or wrongly) to be a terrorist or may be carrying arms.

13.5. The *right to freedom from torture and inhumane treatment* is recognised, subject to the rendition of terrorist suspects or sympathisers to nations that may torture them with the complicity as necessary of the British intelligence services.

13.6. The *right to liberty* is recognised, but

- a) subjects and others may be stopped and searched by the police in circumstances defined by law;
- b) subjects and others may be arrested and detained in custody without charge for up to four days;
- c) subjects and others suspected of terrorist activity or sympathies may be detained without charge for up to a month;
- d) subjects and others suspected of

terrorism may be held indefinitely under house arrest by control orders; and

e) the police and local authorities may impose anti-social behaviour orders on chosen people, restricting their movement and conduct, without proof that they have committed any offence.

13.7. The *right to a fair trial and due process* is recognised, except in the case of those suspected of terrorist offences, who may be tried in special courts without them or their lawyers being fully informed of the evidence against them; and subject to the gradual erosion of the ancient right to trial by jury;

Personal and Political Rights

13.8. The *rights to privacy and respect for family life* are recognised, but

- a) subjects and others may be exposed to extensive surveillance by a mass of public and private CCTV cameras, subject to minimal regulation;
- b) subjects and others may be exposed to targeted surveillance of various kinds for undefined purposes, by a wide range of public authorities, including the security and intelligence services, the police, and central and local government departments;
- c) subjects and others may have their DNA retained on police databases, provided that they have been arrested or charged with an offence;
- d) subjects and others may be required to have personal details registered on a central government database, and to possess an ID card;
- e) subjects and others may be harassed

and besieged at home by broadcasting and other media corporations, which may publish information that is incorrect without genuine opportunity for rebuttal or redress.

13.9. The *right to freedom of expression* is recognised, except in the case of speech or expression which is subject to restrictions. Restrictions may include the following, but are not limited to the following, and may be imposed for any other purpose deemed necessary by the exigencies of the circumstances:

- a) bringing the monarch and the government into hatred or contempt, and threatening the alteration of any matter of Church or state, otherwise than by lawful means;
- b) advocating the use of violence to overthrow foreign governments, whether benign or malign;
- c) publishing information deemed to be officially secret, even if publication reveals official wrong-doing;
- d) publishing information that has been disclosed without authority, even where the user of the information is protected by parliamentary privilege;
- e) publishing political opinions, poems or publications that may be construed as encouraging extremism;
- f) threatening, abusing or insulting others in circumstances where it is reasonably anticipated that a breach of the peace may occur, or with a view to stir up racial hatred;
- g) defaming the rich and celebrated, other subjects of note and distinction, or

multinational corporations;

h) violating the privacy (in circumstances to be determined by the courts) of the rich and celebrated, or other subjects of note and distinction;

i) publishing material which is deemed by the courts to be obscene, or to outrage public decency;

j) publishing personal, commercial or government information which is confidential.

13.10. The *right to freedom of assembly* is recognised, but with the approval of the police. Those who exercise the right to protest, however, or who find themselves in the midst of a protest, shall be liable to be detained by the police for an unspecified amount of time, and may be subject to assault by the police that may result in injury or death.

13.11. The *right to freedom of association*, including the right to form and join trade unions for the protection of one's interests is recognised, but the state may proscribe any organisation that it deems to encourage extremism, with limited rights of appeal; and the rights of trade unions shall be subordinate to the interests of employers and the free market.

Exceptions and Public Safety

13.12. There shall be no right to participate in public policy-making, except by way of parliamentary and other election.

13.13. The activities of the security and intelligence services are vital to national security and shall therefore be free of effective democratic supervision.

13.14. In the case of their external operations, the security and intelligence services may break international and domestic laws on the authority of UK ministers.

13.15. In the event of a national emergency, emergency regulations may be introduced without parliamentary approval to take steps to deal with the emergency.

14

Local Government

14.1. Local authorities shall be beyond the pale of the constitution. They shall be creatures of central government and shall be abolished or reorganised by the Prime Minister for political party advantage or should they make the Prime Minister cross.

14.2. In reorganising local government, central government shall observe the constitutional practice of progressively reducing the total number of local authorities and maintaining their position as the largest local authorities in Europe.

14.3. Local authorities in England shall provide such services and carry out only such tasks as central government requires or allows and shall be kept short of funds to ensure that they obey themselves. To minimise the risk of local elections varying the way in which they deliver government policy, the government shall impose centrally-defined expenditure controls and civil servants shall issue strict criteria for service delivery.

14.4. In honour of the ancient practice of local self-government, it shall be traditional to hold elections to local authorities in spring or early summer of most calendar years. These elections shall be purely ritualistic and unrepresentative so that the compo-

sition of the authorities shall be arbitrary and need not reflect the wishes of those who vote.

14.5. To encourage participation in the annual ritual of local elections, and to enable subjects to discuss their voting intentions with family, friends or candidates while casting a ballot, ministers may instruct the Electoral Commission to offer citizens the opportunity to vote by post, Internet or text.

14.6. The government shall create unelected executive bodies, known as quangos, and committees to take over services and functions of local authorities, both generally and in particular cases, in view of the fact that local authorities may be unpredictable or reluctant to observe government instructions. These bodies will follow government instructions.

14.7. In deference to the City of London's economic and political power, the City of London Corporation shall be principally elected by a business franchise to ensure that local governance in the City is fully responsive to the needs of international finance capital.

14.8. The City of London Corporation shall be exempt from certain central controls on its finances and shall be permitted to accumulate vast sums of money in a fund called 'City's Cash'. The Corporation shall allocate its considerable cash as it sees fit, and with exemption from the Freedom of Information Act, providing only that it pays for the upkeep of parks and token social housing outside its boundaries and expresses a degree of concern about the extent of poverty on the City's medieval borders.

EPILOGUE

We know from long experience how to manage the public and withstand both popular agitations and the blandishments of democratic reformers and civil liberties lobbies alike. We are able generally to ride out popular storms, such as the unfortunate revelations about Parliament's expenses regime which was after all only put in place to make up for MPs' low salaries.

We understand that governing is a matter of give and take; and the flexible nature of our arrangements is especially useful at moments when we come under pressure to reform. Then we are able to parade an intention to share power with the people and discuss unimaginable changes, such as a new electoral system for parliamentary elections, fixed-term parliaments or even a written constitution. We are skilled in promising or making piecemeal changes to the constitution that leave the substance of our power substantially unaltered. Public anger over MPs expenses will doubtless bring about a very large exodus of MPs at the next election – although we should still be able to find ways of looking after many of our people. There will be safe seats once more at future elections, and meanwhile others will be found places in the Lords or on the boards of private companies or of our far-reaching network of quangos.

We have maintained the writ of central government throughout the United Kingdom, though we have been obliged to make

concessions to the Celtic fringe in Scotland and Wales and were unable ultimately to deny London an elected authority. We have kept their respective powers to a decent minimum though we continue to be under pressure for more autonomy or even independence for Scotland. We were obliged to pass a Human Rights Act to bring the European Convention of Human Rights into UK law, but we manage to avoid its rules on detention without charge, house arrest and due process and we have outsourced torture to allies overseas. We have been pushed to the brink on reform to make the House of Lords an elected chamber, but we are confident that we can keep it at bay for at least two or more parliaments.

The United Kingdom is a member of the European Union and remains subject to the uncertain and changing terms of membership, though we have opted-out of some of its laws and ignore a few others. On security, we find that the EU bolsters our own instincts to control and spy on our subjects, but we cannot be sure that we will be able to hold the line against the continental tendency to press for rights associated with the social and economic well-being of those outside the managerial and professional classes.

Naturally, we do not broadcast the comfortable arrangements set out above. If the realities of how we govern were made known, our subjects may become restive. And restive subjects have no place in our constitution.



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**DEMOCRATIC
AUDIT**

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the British blog of open Democracy

THE UNSPOKEN CONSTITUTION

“Democratic Audit’s spoof constitution is very funny on the way we are governed until you realise with a shiver just how real it all is. Those of us who wish to improve and deepen our democracy must find ways of doing so in the face of the major obstacles that this satirical document all too clearly identifies.”

Hilary Wainwright, editor of *Red Pepper*

“This is a brilliant document — and a searing lampoon of the ridiculous state of our political arrangements. It exposes all the glaring faults and the silent assumptions that deform our system, preventing it from ever functioning in a way that we, the people, deserve.”

Helena Kennedy QC, member of the unreformed House of Lords

“It is difficult not to read this brilliant exposé of the traditions of cant, deception and arrogance that serve as Britain’s constitution without feeling admiration for the authors and a profound anger for the self-perpetuating political classes that continue to rule.”

Henry Porter, political columnist and novelist

“For centuries, the UK state simultaneously ran a despotic empire overseas and a liberal constitutional polity at home. Democratic Audit’s spoof constitution brilliantly captures how the constitutional schizophrenia this induced in our governing elite continues to shape the fabric of modern British politics and to undermine the lives and liberty of every citizen.”

Professor Patrick Dunleavy, London School of Economics



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