

Modernisation The British Disease

Britain is living in the past, unable to conceive of a future. Neither Labour nor Conservative has yet grasped the problem. In the first of a series of articles on modernisation, **Will Hutton** argues for wholesale political reform

Mikhail Gorbachev once argued, struggling to find ways of legitimising the Communist Party in its last hours, that social democracy and communism were branches of the same tree. It was the last throw of a desperate man. Despite his claims these were always separate trees - and what separated them was their approach to democracy.

For social democracy never claimed like communism that the interest of party, class and state were one, so that constitutional democracy together with private property were simply transient phases on the way to a higher communist nirvana. Social democrats would compete for power, garner consent and attempt to win arguments within a constitutional framework; communism could simply claim power and keep it.

Of the many wrong turnings made by communist theorists and practitioners this was perhaps among the most serious; the notion of a dictatorship of the proletariat absolved the Communist Party from having to think creatively about how to build a democratic constitution - or even to concede that such a construct was necessary - and certainly not to worry about what place it might play in this scheme of things. Absolutely powerful and with no legal constraint, it became absolutely corrupt.

An interesting dichotomy has opened up between Yeltsin and Gorbachev. It is Yeltsin who, while invoking democracy, governs by decree; and it is Gorbachev who continually stresses the necessity for the constitutionality of conduct, the need to respect the rule of law and the imperative of placing the practice of democratic government within a framework of agreed rules. It was Yeltsin on the tank outside the White House, but it is Gorbachev who has travelled the greater intellectual distance from his communist past and learned the most lessons.

It may be that political weakness is the father of his new conviction that states need constitutions that en-

trench their democratic systems; but it is a conviction that is being trumpeted round the world.

But will Gorbachev's discovery of the urgent need for democracy to bound itself by clearly articulated and legally binding principles travel to Britain? While the British parliamentary act - itself revokable by a simple parliamentary majority at any time - may require the members to submit themselves to quinquennial elections, we live in a polity in which anything goes. Yeltsin's resort to decrees may strike us as offensive - but that is de facto the way Britain has been governed between elections all this century, never more explicitly than by Thatcher.

Prime ministerial whims can be translated into law by the simple process of being endorsed by a parliamentary majority - assured by the preponderance of Conservative MPs in the House of Commons, the desire for preferment and the advancement of party. There is nothing unusual in these instincts by themselves; it is what drives parties and as such is the very lifeblood of democracy.

But parties should never be allowed to confuse themselves with the state. And they should be absolutely forbidden from having an unqualified and unlimited lien on the executive branch of government. Nobody in any state is ever so perfectly correct that they should not be subjected to checks and balances on the extent of their power; it is an elementary democratic principle.

The malodorous whiff of unbounded executive privilege should be the occasion of national scandal; but in the complacency that infects British reflections on these matters the deputy leader of the Labour Party almost outdoes the flounders of Lord St John Stevas, self-appointed guardian of British constitutional mysteries. The consensus is that we live under the benign rule of the mother of parliaments, which while plainly reformable is in its essence

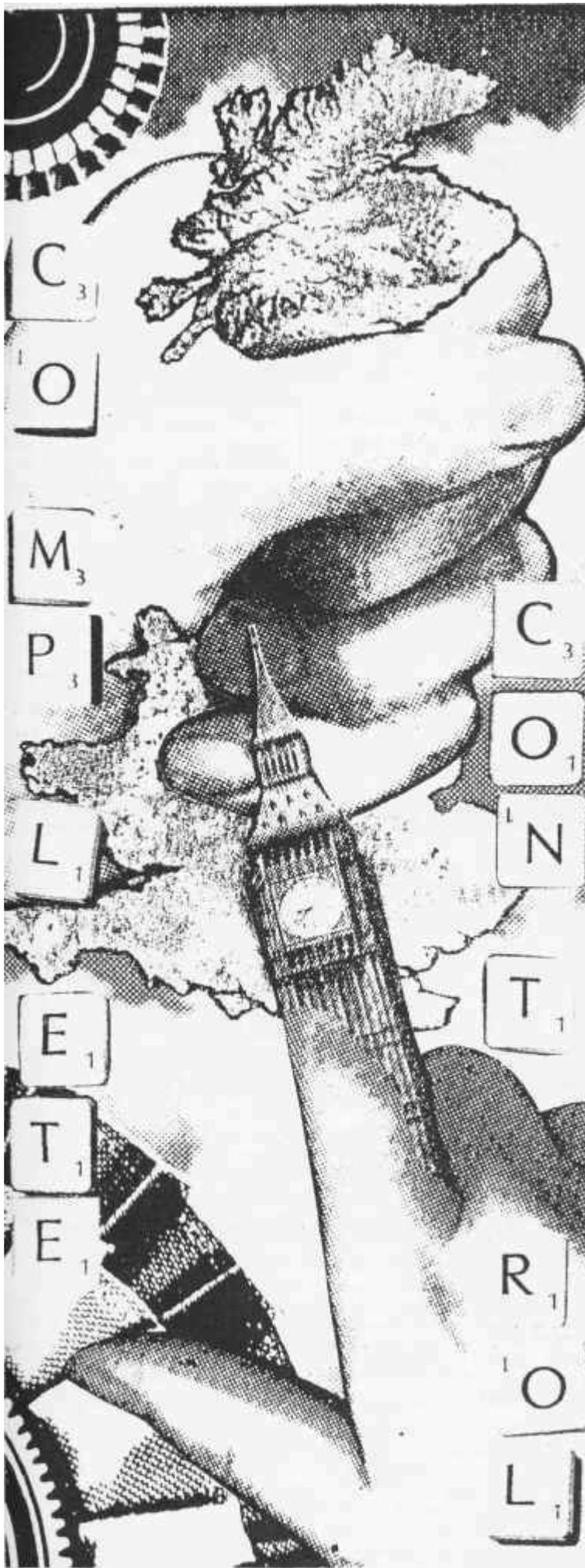
most nearly democratic. Don't let foreigners, with their ideas of written constitutions, ruin it.

Yet it is that very unrestricted, undefined sovereignty which is at the heart of our political and economic problems - and there is scarcely a nook or cranny of our national life which is not infected. Consider, for example, the tricky question of public appointments. Within a few weeks the new chairman of the BBC, English Heritage and the Schools Examinations and Assessment Board have been appointed and, notwithstanding the national importance of each institution, not one appointment is anything other than partisan.

Duke Hussey's job is to make the BBC safe for the Conservative Party and to ensure that programme makers continue to observe strict self-censorship; Jocelyn Steven's task is to guarantee that England's cultural treasures are as commercialised as much as possible and little claim made upon the public purse; and the job of Lord Griffiths, former head of Thatcher's policy unit, and not an educationalist, is to ensure that we do not lose A levels - despite the weight of evidence that they skew the entire educational system so that it gives advantage to the elite rather than the average. What protest was there? And what mechanisms would there be for redress even if the protest was made? Dulled into acquiescence, the country - our country - is governed with us its native subjects, and our rulers assuming an unquestioned control.

The very quiescence is itself part of the constitutional structure. We have learned over decades, even centuries that it serves nothing to agitate against these commonplace offences against democracy. To campaign outside parliament is to invite the charge of not obeying the 'rule of law', which is correctly regarded as the cement of a democracy but in the British case is one of the buttresses of maintaining the inadequate status quo. Campaign inside parliament and you confront the doctrine of 'parliamentary sovereignty' - that, as each appointment and legal act was made by those politicians commanding a parliamentary majority, they are both lawful and unchallengeable. You don't like it? Well win a parliamentary majority and change it.

Which means that parties other than the Conservatives have to win a simple majority of votes cast in a minimum of 326 of the 651 parliamentary constituencies. And who, pray, sets the boundaries of these constituencies? None other than the home secretary acting on the recommendations of the Boundary Commission; and in the next few years there will be another Boundary Commission review, and so to a party politician will fall the decisions that will make or break the political fortunes of hundreds of parliamentary candidates. Is there any force other than convention and 'public opinion' for the decisions not to be highly partisan? There is none.



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In other countries there would be a Constitutional Court to act as an ultimate guarantor of objectivity. Not in Britain. This is dismissed as 'legalistic', and worse, an infringement of parliamentary sovereignty. It is this concept above any other that is the coping stone of the Great Corruption - that binds a modern industrial state to a medieval past.

For while parliamentary sovereignty might seem to mean the sovereignty of a democratically elected assembly, in a British context it means more. Parliament is sovereign in the same way a monarch is sovereign, for it is precisely the monarch's absolute power that parliament has assumed. When a home secretary bans a peace demonstration in Hyde Park with an order in council, that is the same prerogative decree that a medieval king used to raise an army or appoint a judge; a regal order made in the privy council. Its constitutional legitimacy is that a king has a divine prerogative to do what he will; and now that right falls to Kenneth Baker and his successors when it comes to making public appointments or even establishing public order.

And only parliament can challenge any executive act - the very same parliament that is under the control of the majority party. It is a recipe for untrammelled rule by decree, in which all power is focused on the party leadership. Wonderful for those to whom such capacity falls - not so good if you view democracy requiring more active participation by civil society and its agencies in the process of law making and government. Is democracy really about ceding such power to one political party at regular five year intervals? Do the parties themselves respect the complexities of civil society when they exert the legal power that has befallen them? The answer surely is no.

Nor are these arguments confined to the realms of constitutionalists and what many Labour and Conservative politicians regard as the 'faddists' of Charter 88. Even Francis Maude and John Redwood, the ministers working on the Citizens' Charter and hardly noted for their criticism of the British constitution, found themselves vexed by its contours as they tried to construct an enhanced role for the ombudsman.

Clearly one of the best means of entrenching a new charter of citizens' rights is to give access as of right to an ombudsman to act as the citizen's champion against the overmighty state. For Conservatives the idea of a check against bureaucracy and second-rate officials was particularly attractive - until they discovered that such a body is a constitutional impossibility.

For if the ombudsman is to have real power to redress grievances on the citizen's behalf, then that by definition is power that parliament does not possess; and parliament is sovereign so there is no power it can devolve because to do so is to deny its sovereignty. In other

words, a real extra-parliamentary champion of the British citizen is a constitutional impossibility. We can have an ombudsman who can petition state organisations to agree to an ombudsman investigation and then to make recommendations, as we have at the moment; but we cannot have an ombudsman with real teeth, because only a sovereign parliament can exercise that kind of competence.

The consequences in terms of justice and for the whole system of governance are pervasive. It is the reason for the excessive centralisation of power in Westminster and lack of capacity for elected regional assemblies. Similarly the doctrine of confidentiality in advice of official to minister has its roots in the notion that ministers exert their functions on behalf of the crown rather than the people - and the crown requires advice to be confidential. Hence the secrecy that defines British public life.

The list goes on. It is the ease with which government advertising becomes party advertising. The weakness of the select committee system. The secrecy of the British budget. The lack of independence of the central bank, the competition authorities, the schools inspectorate, the BBC, the CSO and so on. Look no further than the British constitution and the doctrine of parliamentary sovereignty for the explanation.

If this were merely a matter of justice and natural rights it would be grave enough - but the virus infects everything so that even a large part of Britain's poor economic performance can be explained in terms of our political organisation. Modern industrial states need to be governed by cleverer and more sensitive instruments than medieval assemblies, courts and the hand-me-down practices of centuries.

Consider the notion of the social market economy - not the new Right conception of unrestrained competition and a minimum safety-net, but the central European idea of a competitive market where property rights are qualified and social solidarity is underwritten by the state. The central feature of this idea is that social partners take the responsibility for running private firms - sharing in the risks and rewards, and responding not to the injunctions of central planners but of price signals in a market place. But the market is regulated, a strong system of social insurance guarantees pensions and unemployment benefits, and workers sit on company boards. The values are inclusive, universal and participative - in the political system as much as the economic.

The point is that participation, sharing and partnership are indivisible values; they do not stop in the private sphere while a public sphere exerts sovereignty over it. In fact the contrary is true. It is because these values are constitutionally entrenched in the public domain that they spill over into the private; the citizenry which in Germany

participates in local and regional government also expects to participate in the life of the companies in which it works. *Mitbestimmung*, or worker participation, is part and parcel of a wider approach to democracy.

So it is that the German idea of the social market is very difficult to translate into British terms - and as it is the social market which has been the fountainhead of German prosperity, so the incomprehension has the penalty of meaning that a workable economic and social model cannot even be tried. Britain's political subjects are also workers without rights and mendicants dependent upon the welfare state; subordination in the economic, welfare and political domains are not the building blocks upon which to construct a social system in which shared rights and reciprocal obligations are central.

For the social market has proven to be a very much more successful model of economic development than our own. There is both more competition and less unchecked tendency to monopoly - and company law, compelled to take account of stakeholders other than institutional shareholders interested in only short-term dividend performance, has constructed a legal and financial context in which companies can plan and think for the long term. The British transfer of the parliamentary model to company governance has been disastrous; annual parliaments of shareholders examining the stewardship of their management and voting them in or out of office has proved to be a futile way of running companies - and opened the door to short-termism and financial engineering of the worst type. Control the votes by taking over the shares, and you control the company; there are no checks and balances like workers on boards or independent regulators.

Time and again the British constitutional structure gets in the way of emulating more sensible ways of managing an economy. Suppose the annual national budget, whose spending allocations must assume certain levels of wage growth, should be rationally negotiated as part of a larger economic settlement (ie, if the workforce accepts, say, a 5% pay increase, then public spending can be higher - lower if wage bargains are higher). Anti-corporatists and the anti-incomes policy lobbies alike might argue that no such initiative should be attempted - but that is not the issue. In Britain you cannot attempt it, because it is constitutionally forbidden for the budget to be discussed outside parliament. If the British state has a long history of failure in attempting such economic concertation that may be less because the concertation was a poor idea - and more because of the inadequacy of the tools.

But perhaps the most serious economic handicap is the inability to devolve power away from Westminster - whether to a central bank or an elected regional assembly. Where decisions

over interest rates and monetary policy are vested in an independent central bank, as in Germany or the US, inflation in the long run has been lower; and if the central bank misbehaves its president can always be sacked by the parliament and its charter changed. An independent central bank does not mean a reduction in democracy, as some on both Left and Right argue; rather it implies the construction of a different kind of democracy in which pluralism and devolution of power are pivotal, instead of concentrating every aspect of national life into one sovereign parliament. Democracy is not about pouring every decision into the House of Commons; it is about continual process.

And as for regional assemblies becoming important focuses for regional development and the regrouping of decisions in the area where the impact may be most keenly felt, the case is very strong - but again it is stillborn. It is surely correct that public spending should be higher in areas where activity is depressed; and lower where it is booming so that the spending acts as a regional leveller - but any such attempt at breaking down spending into regional blocs is stillborn once again by the constitution. In Britain, if the south-east has a boom that requires cooling-off through deflation, then the whole economy is deflated; there is no framework of regional government which might differentiate reflation and deflation between regions, because none is possible. The result is the overblown south-east and the underdeveloped north.

If Labour is now a party of social democracy then it needs to better understand the role of democracy in its philosophy; if Gorbachev can see it so should the Labour leadership. But a call for democratising the British state comes ill from a party and trade union structure which themselves hardly demonstrate much faith in the concept. A one-person one-vote party, and trade unions where the leaders are more regularly subject to election seem to be a precondition for any plausible Labour Party campaign to modernise and overhaul the British constitution.

For modernised it must be. De-industrialisation and social disintegration are not apart from the House of Lords, the honours system and all the rest - they are part of a continuum. There is a radical project for a British party of social democracy; it is to write a constitution for the British state and so to construct a functioning social market. This is much more dangerous than nationalisation ever was; it goes to the heart of our conservative state. But then it was not only communists who neglected democracy and the constitution, but the British labour movement; perhaps it, too, is on the point of remedying a century of neglect. The conversion is long overdue.

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