

# All change?

**Lisa James**

*The new government's approach to constitutional reform*

Labour came to power in the 2024 general election promising constitutional reform in various arenas. Its manifesto laid out ambitions to restore trust in politics, improve behaviour and decision-making and “deepen our democracy by reforming Parliament”. In pursuit of these goals, it pledged numerous reforms to UK-level institutions.<sup>1</sup>

Progressive constitutional reform tends to suggest a wider sharing of power, and the strengthening of checks and balances on the executive. But the government that has newly taken office, with an ambitious policy agenda to deliver and supported by a large majority, faces clear incentives that push in the other direction.

**“the government that has newly taken office ... faces clear incentives that push in the other direction”**

This article briefly surveys the new government’s pledges on the constitution and the tension between a policy agenda that promises to strengthen checks and balances, and the incentives of delivery in government. It then considers how this tension might play out, and what other challenges the government might face, in three key constitutional areas: reform of the House of Lords, change in the House of Commons and changes to the standards system.

## THE GOVERNMENT’S CONSTITUTIONAL REFORM AGENDA

Labour’s manifesto proposals included ambitious changes to UK-level institutions, including reform of the House of Lords and ‘modernisation’ in the House of Commons. The party also pledged changes to the standards system and more powers for the Office for Budget Responsibility.

There were also proposals to reform devolution and elections – both topics in their own right, which will not be covered in detail here. In brief, the manifesto pledged a reset in the relationship between the UK and devolved governments, and an extension of devolution in England, broadly following the existing model but with the devolution of additional powers.<sup>2</sup> On elections, the key pledge was to extend the franchise to 16- and 17-year-olds. Since Labour took office, ministers have also pledged a review of voter ID rules and hinted that the controversial strategy and policy statement for the Electoral Commission introduced in 2022 – which allows the government to set high-level priorities for the regulator – could be scrapped.<sup>3</sup> Reforms to devolution are planned for this parliamentary session; electoral policy is likely to follow in later sessions, allowing time for consultation.

1 Labour party (2024) *Change: Labour party manifesto*, Labour party. <https://labour.org.uk/change>.

2 Thomas P (2024) ‘Devolution in the 2024 party manifestos’, The Constitution Unit blog, 25 June 2024. <https://constitution-unit.com/2024/06/25/devolution-in-the-2024-party-manifestos>.

3 Lord Khan of Burnley, *House of Lords Hansard*, 23 July 2024, col 486.

These proposals for structural change were complemented, before and after the general election, by promises to abide by constitutional norms. Now leader of the House of Commons Lucy Powell pledged from opposition to facilitate better parliamentary scrutiny of legislation and deliver higher legislative standards. In his speech upon becoming attorney general, Lord (Richard) Hermer pledged to end the abuse of delegated legislation and to respect the rule of law. An early statement by Keir Starmer as prime minister to the civil service was designed to reassure Whitehall that recent tensions between ministers and civil servants are a thing of the past.<sup>4</sup>

Following a period that has been marked by the breaking of constitutional norms, the promise to uphold them is notable in itself.<sup>5</sup> This is of course partly the point, with pledges intended to draw a clear dividing line between this Labour government and its Conservative predecessors. But these pledges and Labour's more concrete policy proposals together offer a vision for constitutional reform against which, by the end of this parliament, government success might be judged.

**“Following a period that has been marked by the breaking of constitutional norms, the promise to uphold them is notable in itself”**

## SHARING POWER VERSUS HOARDING POWER

Progressive constitutional reform often entails the dispersal of power, and acceptance of greater checks and balances in the system. Thus, the New Labour government introduced a number of constitutional reforms with the effect of distributing power more widely – including, for example, through the creation of the devolved institutions and the passage of the Human Rights Act 1998. These reforms sought to combine the greater sharing of power with the retention of parliamentary sovereignty (meaning that Westminster retained the power to overrule the devolved legislatures, and judges were given the power to rule primary legislation as incompatible with the Human Rights Act, but not strike it down). For this reason, some argued at the time that these reforms fell short of fundamental constitutional change.<sup>6</sup>

Progressive constitutional reform has long been a topic of contention within the Labour party. Would-be reformers tend to make the case for greater checks and balances on the executive and the greater dispersal of power. Constitutional conservatives, on the other hand, have traditionally viewed the UK's highly centralised system – and the executive's latitude to act – as a key enabler in delivering a progressive policy agenda. Greater checks and balances are seen instead as a risk to a Labour agenda, creating more opportunities for political opponents or vested interests to block necessary change. Such arguments may feel particularly germane when the party is in power and the delivery of progressive reform may clash with both policy ambition and political expediency.<sup>7</sup>

**“the delivery of progressive reform may clash with both policy ambition and political expediency”**

4 Powell L (2024) Keynote speech, Institute for Government, 14 May 2024. <https://www.instituteforgovernment.org.uk/event/lucy-powell-shadow-leader-commons>; Hermer R (2024) ‘Attorney general swearing-in speech: Rt Hon Richard Hermer KC’, GOV.UK, 16 July 2024. <https://www.gov.uk/government/speeches/attorney-general-swearing-in-speech-rt-hon-richard-hermer-kc>; Starmer K (2024) ‘A message from prime minister Keir Starmer to the civil service’, GOV.UK, 8 July 2024. <https://www.gov.uk/government/speeches/a-message-from-prime-minister-keir-starmer-to-the-civil-service>.

5 Russell M (2024) ‘Government, parliament and the constitution’ in Seldon A and Egerton T (eds) *The Conservative Effect: 14 wasted years?*, Cambridge University Press: 376–411.

6 Flinders M (2005) ‘Majoritarian democracy in Britain: New Labour and the constitution’, *West European Politics*, 28(1): 61–93.

7 Gordon M and Tucker A (2021) ‘The legacy of the New Labour constitution and the future of labour constitutionalism’ in Gordon M and Tucker A (eds) *The New Labour Constitution: Twenty years on*, Hart: 341–364.

Three key areas for constitutional reform – the House of Lords, the House of Commons and the standards system – suggest that these tensions are evident in the new government's approach.

## HOUSE OF LORDS REFORM

Labour's plans for House of Lords reform combine the incremental and the ambitious. Foremost among the short-term reforms planned for the chamber is the removal of the remaining hereditary peers. This represents unfinished business from the 1999 reforms, which removed all but 92 hereditary seats from the House of Lords (a compromise that allowed the reform to pass).<sup>8</sup> The legislation is expected in this parliamentary session and should pass easily with strong Commons backing, especially if – as in 1999 – the government offers a small number of life peerages to the most valued contributors to ease the transition.

Labour has also proposed to tackle the growing size of the House of Lords – a long-recognised problem, especially within the House itself.<sup>9</sup> Its preferred policy, announced in its general election manifesto, is for a new mandatory retirement age. This would see peers required to step down at the end of the parliament in which they turn 80 years old. Such a policy would likely face resistance if pursued; many older peers remain active and highly valued, including on the Labour benches (an obvious example is the campaigner for refugee children's rights, Alf Dubs). Ironically, one of Labour's most recent nominees to the House of Lords, Margaret Beckett, is already over 80.

More fundamentally, though, the topic perhaps demonstrates the tension between progressive constitutional reform and incentives for the government to retain its existing powers. There has long been recognition that permanently reducing the size of the House of Lords will require reforms to the appointment process, to remove the prime minister's unlimited power of patronage.<sup>10</sup> But such a power allows prime ministers to reward allies, and alter the arithmetic of the upper House (both key contributors to the rapid growth of the House of Lords over recent years). This creates powerful political incentives to duck necessary reform. Over the past 14 years, the Labour group in the House of Lords has shrunk from 29 per cent to 22 per cent of the total number, mostly as a result of Conservative appointments.<sup>11</sup> Labour's leader of the House of Lords, Angela Smith, pointed out that "it is not lost on these Benches that even the Cross-Benchers have had more appointments than we have had on the political list for this side of the House".<sup>12</sup>

### **"This creates powerful political incentives to duck necessary reform"**

The government can also point to the fact that such reforms are intended only to be a first stage – though as the New Labour government found in 1999, second-stage reforms are far from guaranteed.<sup>13</sup> Comprehensive reform of the House of Lords is notoriously difficult, and past Labour attempts to reform it have encountered significant intra-party disagreement. Constitutional conservatives have feared that a reformed, and more democratically legitimate, Lords could challenge the primacy of the House of Commons and obstruct a Labour government's agenda; reformers have struggled to reach agreement on a new model for the House's membership and powers; and others

8 Kelso A (2011) 'Stages and muddles: the House of Lords Act 1999', *Parliamentary History*, 30(1): 101–113.

9 Lord Speaker's Committee on the Size of the House (2023) *Fifth Report of the Lord Speaker's Committee on the Size of the House*, House of Lords. <https://committees.parliament.uk/publications/40909/documents/199241/default>.

10 *ibid*.

11 House of Lords Library (2023) 'House of Lords data dashboard: party and group strengths and voting', House of Lords Library website. <https://lordslibrary.parliament.uk/house-of-lords-data-dashboard-party-and-group-strengths-and-voting>.

12 Baroness Smith of Basildon, *House of Lords Hansard*, 25 July 2024, col 617.

13 Dorey P (2008) 'Stumbling through "stage two": New Labour and House of Lords reform', *British Politics*, 3: 22–44.

have considered the debate an unnecessary distraction from more obviously electorally appealing policy goals.<sup>14</sup>

Though Labour has indicated a general ambition for a reformed second chamber to be more representative of the nations and regions of the UK, this leaves unresolved difficult questions about, for example, how members should be chosen, or how geographical boundaries might be drawn – or whether and how far changes to membership should be mirrored by changes in the House of Lords' powers. The Commission on the UK's Future – a constitutional and economic reform group chaired by Gordon Brown – made some suggestions, but fell short of a detailed blueprint.<sup>15</sup> The government has committed only to consult in this parliament, and it is unclear at this stage what form that consultation might take and over what period of time. A minimalist version might, for example, entail a green paper (the standard form of government consultation document); a more expansive consultation could include more proactive forms of public engagement, such as a citizens' assembly.

## HOUSE OF COMMONS REFORM

Similar dynamics are evident in Labour's approach to House of Commons reform. A government's relationship with the Commons is a key area for the tension between accountability and efficiency to be played out. David Howarth conceptualises this as the distinction between 'Westminster' and 'Whitehall' views of the political system.<sup>16</sup> Under the first, parliament is the supreme democratic institution, and should be placed at the centre of decision-making. Under the second, government's efficiency, flexibility and ability to enact its manifesto are paramount, with parliament's key role being to support the government in getting its legislation through. In addition, governments are more reliant on their own backbenchers than any other group, creating disincentives to give that group more power.<sup>17</sup>

### **“A government's relationship with the Commons is a key area for the tension between accountability and efficiency to be played out”**

Labour's key manifesto pledge on the House of Commons was to create a Modernisation Committee – a successor to the New Labour committee of the same name. The new committee was established shortly before the summer recess, with its remit intended to cover the procedure, working practices and standards of the Commons (members are expected to be appointed in the autumn). The only precise topic confirmed in the manifesto was that of MPs' second jobs; existing rules have already been tightened, with the committee likely to consider more comprehensive changes once it has been set up.

Beyond this, the committee will face a broad choice of topics to consider. On the procedural side alone, the deterioration of parliamentary scrutiny in recent years has prompted various reform proposals, including changes to the distribution and control of Commons time, the scrutiny of

14 Russell M (2022) *House of Lords Reform: Navigating the obstacles*, Institute for Government. <https://www.instituteforgovernment.org.uk/publication/house-lords-reform>; Dorey P (2006) '1994, 1969, 1999: the Labour party and House of Lords reform', *Parliamentary Affairs*, 59(4): 599–620.

15 Commission on the UK's Future (2023) *A New Britain: Renewing our democracy and rebuilding our economy*, Labour party. <https://labour.org.uk/updates/stories/a-new-britain-renewing-our-democracy-and-rebuilding-our-economy>; Russell M (2023) 'The Brown Commission's proposals on reform of the House of Lords', The Constitution Unit blog, 1 March 2023. <https://constitution-unit.com/2023/03/01/the-brown-commissions-proposals-on-reform-of-the-house-of-lords>.

16 Howarth D (2021) 'Westminster versus Whitehall: what the Brexit debate revealed about an unresolved conflict at the heart of the British constitution' in Doyle O, McHarg A and Murkens J (eds) *The Brexit Challenge for Ireland and the United Kingdom: Constitutions Under Pressure*, Cambridge University Press: 217–238.

17 Russell M and Cowley P (2018) 'Modes of UK executive–legislative relations revisited', *Political Quarterly*, 89(1): 18–28.

delegated legislation, and the legislative process more broadly.<sup>18</sup> These concerns were also addressed by Powell in her pre-election speech. Here, she criticised recent Conservative governments for, among other things, rushing legislation, misusing the Committee of the Whole House procedure and poor legislative standards, promising different behaviour from a Labour government.<sup>19</sup>

It remains to be seen whether the Modernisation Committee will be keen to address such topics, and consider the overall balance of power in the chamber between the government and backbenchers. Like its predecessor, the committee will be chaired by a government minister (that is, the leader of the House). This is not necessarily a cause for concern – among other things, it guarantees the committee's proposals time for debate, and did not prevent the original committee from putting forward reforms that benefitted backbenchers.<sup>20</sup> More depended on the personality of the chair, with Robin Cook for example proving a more ambitious and energetic reformer than his predecessors, and driving the agenda accordingly.<sup>21</sup>

However, it is less encouraging that the Modernisation Committee's members seem likely to be chosen by the whips within each party rather than elected, as is now the norm for most Commons select committees. Powell has indicated that a key aim of the committee is to “maximise the time available” for debate on government legislation – a comment that seems to suggest a Whitehall viewpoint. There are early signs, too, that the government's good intentions on legislative behaviour may bow to expediency. The government has already proposed to pass two bills (on rail franchising and the role of the Office for Budget Responsibility) through the Commons in just two days apiece – hardly a repudiation of rushed legislation.

### **“the government's good intentions on legislative behaviour may bow to expediency”**

## **STANDARDS**

While the Modernisation Committee is set to consider ethics in the House of Commons, the Labour party also came to power promising reforms to the system for ministerial standards. The current system takes the form of a network of regulatory bodies, established at different times and with inconsistent powers.

The politics surrounding Labour's proposed reforms of the standards system seem clear: the government is keen to distance itself from its predecessor, and to be seen to put an end to a period marked by scandal. Decisive action seems likely when the first ministerial scandal arises (as it inevitably will).

18 White H (2022) *Held in Contempt: What's wrong with the House of Commons?*, Manchester University Press; Hansard Society (2021) *Delegated Legislation: The problems with the process*, Hansard Society. <https://www.hansardsociety.org.uk/publications/reports/delegated-legislation-the-problems-with-the-process>; Russell M and Gover D (2021) *Taking Back Control: Why the House of Commons should govern its own time*, Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/research-areas/uk-and-europe/brexit-parliament-and-constitution/taking-back-control-why-house>; Sargeant J and Pannell J (2021) *The Legislative Process: How to empower parliament*, Institute for Government. <https://www.instituteforgovernment.org.uk/publication/legislative-process-empower-parliament>.

19 Committee of the Whole House means that a bill's committee stage takes place in the chamber, with all MPs able to participate, rather than in a bill committee formed of a subgroup of MPs. A crucial difference is that, while bill committees can call experts to give evidence on a bill, the Committee of the Whole House cannot. It is usually reserved for constitutionally or ethically significant bills, and finance legislation.

20 Fleming T and Kelly H (2024) *Delivering House of Commons Reform: What works?*, The Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/news/2024/jun/new-constitution-unit-report-delivering-house-commons-reform>.

21 Cowley P and Stuart M (2006) 'Parliament' in Seldon A and Kavanagh D (eds) *The Blair Effect, 2001-5*, Cambridge University Press.

## **“Decisive action seems likely when the first ministerial scandal arises (as it inevitably will)”**

However, the government’s approach to reforming the system more generally is far more mixed, again suggesting a tension between a desire to strengthen checks and balances and a reluctance to limit government power. Labour has made some welcome commitments to strengthen individual regulators, such as the Independent Adviser on Ministers’ Interests – removing the prime minister’s veto over investigations. But the party’s flagship proposal for a new Ethics and Integrity Commission currently lacks a clear purpose and remit, especially given the coordinating role already played by the Committee on Standards in Public Life.<sup>22</sup> In contrast, the key change to the system recommended in a series of reviews was to address the uneven statutory footing of the various ethics regulators – a legacy of piecemeal development, which has left some vulnerable to having their remits altered at the discretion of the prime minister of the day.<sup>23</sup> Such measures did not appear in the party’s manifesto, and at the time of writing it remains to be seen whether the government will adopt them.

## **CONCLUSION**

A close look at three key areas for constitutional reform suggests that the tension between a progressive constitutional vision that prioritises checks and balances, and the incentives of government, may play out in the new government’s constitutional agenda. While the government has ambitions to limit the size of the House of Lords, the clearest method to achieve lasting change would be to reduce the prime minister’s power to appoint. The Modernisation Committee has the scope and potential to enhance House of Commons procedure and working practices, and address some of the shortcomings identified by Labour when in opposition, but early signs suggest a tight grip by the government, and other frontbenches. And while individual elements of the standards system may be strengthened, the government must now decide whether to commit to one of the most obvious routes to strengthen the system overall.

These dilemmas reflect both the incentives of government and a long-running tension within Labour thought that pits an impulse to disperse power and strengthen checks and balances against a desire to preserve a strong, centralised government with a relatively unconstrained ability to deliver its agenda. How the Starmer government will resolve this tension remains to be seen.

**Lisa James is a senior research fellow at The Constitution Unit, based at University College London. She is the co-author, with Meg Russell, of *The Parliamentary Battle over Brexit* (Oxford University Press, 2023).**

22 Hazell R and Riddell P (2024) *Trust in Public Life: Restoring the role of constitutional watchdogs*, Constitution Unit. <https://www.ucl.ac.uk/constitution-unit/news/2024/mar/new-report-trust-public-life>; Constitution Unit, Institute for Government and UK Governance Project (2024) ‘Seven steps to restore trust in government ethics’, Institute for Government blog, 24 June 2024. <https://www.instituteforgovernment.org.uk/press-release/seven-steps-restore-trust-government-ethics>.

23 Committee on Standards in Public Life (2021) *Upholding Standards in Public Life: Final report of the standards matter 2 review*, Committee on Standards in Public Life. <https://www.gov.uk/government/publications/upholding-standards-in-public-life-published-report>; House of Commons Public Administration and Constitutional Affairs Committee (2022) *Propriety of Governance in Light of Greensill*, HC 888, House of Commons. <https://publications.parliament.uk/pa/cm5803/cmselect/cmpubadm/888/summary.html>.