PARLIAMENTARY HISTORY

A Century of Constitutional Reform

Edited by Philip Norton

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Introduction: A Century of Change

PHILIP NORTON

With the United Kingdom lacking a codified constitution, there has been no extraordinary formal mechanism for amending the provisions of the constitution. Change has been achieved through parliament. The century since the passage of the Parliament Act 1911 has witnessed significant constitutional change. The measures enacted have affected basic relationships at the heart of the nation's constitutional arrangements: those between the two chambers of parliament, between parliament and the people, between the state and the individual, between the UK and the rest of the world, and between the centre and the rest of the UK. The measures enacted prior to 1997 were essentially individual statutes produced in response to particular challenges. The period since 1997 has seen proactive and extensive legislation, changing substantially the contours of the constitution. Despite the scale of the change, the measures have been disparate and discrete and not generated within a coherent philosophical framework. Although achieving their principal goals, not all have had the effects intended. This volume treats some of the key measures enacted in this period.

Keywords: constitution; European Union; house of commons; house of lords; human rights; legislation; parliament; referendums

Constitutions, as John Stuart Mill observed: 'are the work of men . . . Men did not wake up on a summer morning and find them sprung up.'[1] Though constitutions do not emerge from the ether, most – since the writing of the constitution of the United States in 1787 – are consciously crafted as specific and codified documents, establishing the institutions of the state and the relationship between those institutions and between those institutions and the people.[2]

The British constitution is distinctive, though not unique, for lacking such codification and is unique in having no particular moment when it came into being. It has evolved over centuries.[3] That evolution has sometimes been traumatic and its development has been uncertain. There is little to sustain a whig interpretation of history. The constitution has changed, at times dramatically, because of the desires of, and conflicts between, particular individuals; the path of constitutional history could conceivably have been very different had Charles I and his son James II been more willing to compromise or if Charles I's military commanders had been more effective. Despite upheavals, including an attempt to craft a republic and a form of written constitution, 'England's political development displayed a remarkable continuity from its medieval roots'[4] and has been

[1] J.S. Mill, *Representative Government* (1968), 177 (first published 1861).

[2] Philip Norton, *The Constitution in Flux* (Oxford, 1982), 3.

[3] On critical junctures in that evolution, see Elizabeth Wicks, *The Evolution of a Constitution* (Oxford, 2006).

[4] Kenneth Dyson, *The State Tradition in Western Europe* (Oxford, 1980), 38.

adapted to meet the demands of a changing, and growing, kingdom. The United Kingdom has emerged with a distinctive form of parliamentary government, albeit one premised essentially on English dominance and norms.[5]

The very nature of the constitution that has emerged, both in terms of its longevity and its form, has created the conditions for its amenability to change. It lacks codification and concomitantly any extraordinary mechanism for amendment. There is no clear or formal dividing line between what constitutes a core component of the constitution and what does not. The constitution has endured in large part because of a supportive political culture and in part because of what Michael Foley has termed 'constitutional abeyances', a tacit condoning of constitutional ambiguity as a means of resolving conflict.[6] Some degree of ambiguity allows a constitution to adapt to the demands of the time and to the evolving wisdom.[7] Change has also been facilitated without the need for formal enactment through the use of conventions of the constitution, rules of behaviour that have no legal force but which are adhered to by those at whom they are directed in order to make the system work.[8] They constitute the oil in the constitutional machinery. Only when the machine malfunctions or clogs up is a formal change brought about.

The constitution has endured but it has done so because of its capacity for change. The absence of any extraordinary formal means for its amendment has meant that change has been enacted through the same legislative process as that employed for enacting minor changes to the criminal and civil law of the land. The constitution stipulates a parliamentary system of government and that system makes possible change desired by any body able to command a majority in parliament, be it the crown or a political party. The principal, though not exclusive, constitutional history of the United Kingdom is to be found in the proceedings of parliament.

Through parliament, significant changes to the constitution have been achieved. In the 19th century, these included measures that fundamentally altered the relationship between the crown, parliament and the people, notably the three reform acts – the Representation of the People Acts 1832, 1867 and 1884 – and other measures covering the membership of the house of commons and outlawing corrupt practices. The century opened with a political system still heavily dominated by the crown, the ministry relying on the confidence of the monarch, and ended with a system dominated by the political party able to command a majority in the house of commons. The ministry was no longer the product of the choice of one person but the product of votes cast by several million. The 1832 act, in effect, opened the door to a democratic system.[9]

The doctrine of parliamentary supremacy – the courts being bound by the outputs of the queen-in-parliament – had been confirmed by the Glorious Revolution of 1688–9 but found its most celebrated expression through A.V. Dicey in 1885.[10] Judicial obedience to the doctrine constitutes, as H.W.R. Wade put it, 'the ultimate political fact upon

[5] Philip Norton, 'The Englishness of Westminster', in *These Englands*, ed. Arthur Aughey and Christine Berberich (2011).

[6] Michael Foley, *The Silence of Constitutions* (1989).

[7] See Philip Norton, 'Speaking for the People: A Conservative Narrative of Democracy', *Policy Studies* (2011).

[8] See Geoffrey Marshall, *Constitutional Conventions* (Oxford, 1984).

[9] Wicks, *The Evolution of a Constitution*, 79–80.

[10] A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (10th edn, 1959), 39–40.

which the whole system of legislation hangs'.[11] This ultimate political fact provided the basis for the now party-dominated government of the day to bring about changes to the constitutional framework of the United Kingdom, often in the face of consistent and vocal opposition. The parliamentary system has enabled the opposition to be heard but the government (usually, if determined) to get its way.

One of the most significant changes achieved by government at the beginning of the 20th century was, in many ways, the culmination of a struggle that had become marked during the closing decades of the 19th century (though predating the period, arguably by centuries), the struggle between the two Houses. The constitutional changes of the 19th century made it difficult for the house of lords to maintain a claim to be on an equal footing with the house of commons. As the earl of Shaftesbury noted during the second reading in the Lords of the 1867 Reform Bill:

> So long as the other House of Parliament was elected upon a restricted principle, I can understand that it would submit to a check from such a House as this. But in the presence of this great democratic power and the advance of this great democratic wave . . . it passes my comprehension to understand how an hereditary House like this can hold its own.[12]

The house of lords held out for another four decades before finally succumbing to the democratic wave and accepting the legislative supremacy of the elected House. The passage of the Parliament Act 1911 was a major constitutional change. By the time of its enactment, the political process in the United Kingdom was markedly different from that which had existed a century before. A century on from the 1911 act, a similar observation can be made. The British constitution in 2011 has been transformed from that which existed in 1911. This volume explores this century of change.

There is a number of generalizations that can be drawn about the nature of change that has occurred since the passage of the original Parliament Act. These encompass the extent of change, the governing party's approach to change, the contestability of change, and the form of change. A number of these challenge the accepted wisdom regarding constitutional change in the UK.

1. *The Extent of Change*

The century has seen the enactment of measures of constitutional significance which in combination have brought about change on a scale comparable to that achieved in the 19th century, if not more so. This volume examines acts of parliament which have proved to be critical in producing a shift in the relationships at the heart of the constitution. They are selected from a large number of statutes enacted. The extent of these measures can be considered by addressing them under the relationships that have been affected by their enactment.

[11] H.W.R. Wade, 'The Basis of Legal Sovereignty', *Cambridge Law Journal*, xiii (1955), 172–87, cited by E.C.S. Wade, 'Introduction', in Dicey, *An Introduction to the Study of the Law of the Constitution*, p. lvi.

[12] Hansard, *Parl. Debs*, 3rd ser., clxxxviii, cols 1925–6: 23 July 1867, quoted in Philip Norton, *The Commons in Perspective* (Oxford, 1981), 21.

1.1. *Relationship between the Two Chambers*

At the heart of the British political system is parliament. Until the passage of the Parliament Act 1911, the two chambers were formally co-equal, though the privilege of the Commons in financial matters had been conceded. The position of the Commons as the exclusive originator of taxation had been affirmed by Henry IV in 1407 and reasserted after the Restoration when a number of Lords' bills to impose taxes were denied first readings. The Commons also refused to accept the right of the Lords to amend money bills, something the Lords eventually conceded.[13] However, the Lords retained the right to reject bills, a right that was variously employed. The rejection of the budget in 1909 'until it had been submitted to the judgment of the people' triggered the assertion by the Commons of its position as the elected, and hence dominant, chamber, a dominance that the Lords formally conceded with the passage of the Parliament Bill, though as Chris Ballinger shows, it was keenly resisted and was only achieved by the willingness of the king to create new peers to ensure its passage. As Chris Ballinger also shows, the nature of the change could have been very different.

The 1911 act was the first of several measures changing the relationship between the two Houses through redefining the powers and composition of the second chamber. The first half of the century saw changes in the powers and the second half changes in the composition. In order to ensure passage of their legislation to nationalise the iron and steel industries, the Labour government of Clement Attlee achieved passage in 1949 of a second Parliament Bill to reduce the delaying power of the House over non-money bills from two sessions to one session; a measure that was itself passed under the provisions of the 1911 act.

Attention then switched from powers to composition. In order to revitalise a largely moribund House, the Conservative government of Harold Macmillan achieved passage, despite Labour opposition, of the Life Peerages Act 1958, enabling peerages to be conferred only for the lifetime of the holder (as well as permitting women to sit). The act provided the basis for a more active House, life peers proving disproportionately active in the work of the House.[14] The Peerages Act 1963, prompted by Tony Benn's campaign to disclaim his peerage (having succeeded his father as Viscount Stansgate), enabled hereditary peers to renounce their titles (and hence their place in the Lords), thus facilitating the selection that year of the earl of Home as prime minister in succession to Harold Macmillan.

An attempt to reform the composition of the House through the Parliament (No. 2) Bill in 1969 failed because of determined opposition from some Labour and Conservative back benchers, but another attempt 30 years later proved successful with the passage of the House of Lords Act 1999, removing over 600 hereditary peers from membership. The 1999 act is examined in this volume by Alexandra Kelso. The combination of the 1958 and 1999 acts served to transform the house of lords from a House dominated by Conservative hereditary peers to one comprised principally of members

[13] Kenneth Mackenzie, *The English Parliament* (1968), 70.

[14] Donald Shell, *The House of Lords* (Manchester, 2007), 32.

appointed on individual merit and with no one party enjoying an absolute majority. The House enjoyed, effectively, a new lease of life and demonstrated a new assertiveness.[15]

The act, however, was – like the 1911 act – seen as a temporary expedient, with later change to be enacted providing for a predominantly elected House. The period since 1999 has seen a royal commission,[16] a number of government white papers and different bodies meeting to agree proposals for reform.[17] No bill, though, was introduced by the Labour government subsequent to the 1999 act. In 2010, with the formation of a coalition government, part of the coalition agreement was to appoint a committee to draft a bill.[18] The bill was to provide – a century after the passage of the 1911 act – for a wholly, or largely elected, second chamber. The process adopted bore similarities to previous attempts to achieve reform.

1.2. *Relationship between Parliament and the People*

The 19th century saw a fundamental transformation of the relationship of parliament to the people, the demands of a burgeoning middle class – and later of artisans and workers – proving impossible to deny. The house of commons moved from being a body selected by a political elite, controlled largely by royal and aristocratic patronage, to a body elected by a majority of working men. The expansion of the franchise prompted political parties to move from being cadre to mass-membership bodies, organised in order to reach a new mass, and a new class, of electors, now too large in number to be swayed by personal contact and bribery. As Richard Crossman observed: 'organised corruption was gradually replaced by party organisation'.[19] In terms of electoral arrangements, single-member constituencies, employing the first-past-the-post method of election, became the norm.

Inequalities, though, still marked the system. There were gross disparities in the size of constituencies, the criteria for exercising the vote complex, and women were excluded from the franchise. Pressure for change, especially in the first two decades of the 20th century, resulted in further legislative change. The most prominent, but by no means the only, major measure was the Representation of the People Act 1918, discussed in this volume by Robert Blackburn. This created the basis for the electoral system that has endured since. It not only reformed the electoral system and simplified the franchise, but also extended the vote to women aged 30 years and over. The same year another act enabled women aged 21 years and over to stand for election to parliament.

As Robert Blackburn explains, the act created the framework for the electoral system but failed to resolve the question of the system of election to be employed. The issue of electoral reform has remained on the agenda ever since, with various attempts to introduce the alternative vote (AV) or a system of proportional representation (PR). An

[15] See Meg Russell, 'A Stronger Second Chamber? Assessing the Impact of House of Lords Reform in 1999 and the Lessons for Bicameralism', *Political Studies*, lviii (2010).

[16] Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm. 4534 (2000).

[17] For a summary, see Philip Norton, 'The House of Lords', in *Politics UK*, ed. Bill Jones and Philip Norton (7th edn, 2010), 368–70.

[18] HM Government, *The Coalition: Our Programme for Government* (2010), 27. It was subsequently announced that the bill would be subject to pre-legislative scrutiny.

[19] Richard Crossman, 'Introduction', in Walter Bagehot, *The English Constitution* (1963), 39.

attempt to introduce the AV in 1931 floundered because of opposition in the house of lords. In 1998 a report from the Independent Commission on the Electoral System (the Jenkins Commission) recommended the use of the alternative vote plus (AV+) for parliamentary elections. In 2010 the coalition government agreed to introduce a bill providing for a referendum on whether the AV should replace the first-past-the-post system. The issue throughout the century has been divisive between, as well as within, political parties. While the method of electing MPs has been that of first past the post (exclusively so following the abolition of university seats in 1950, some of which employed the single transferable vote), other methods have been introduced for electing members of other bodies in the period since 1997. The European parliament, the devolved assemblies, the mayor and members of the Greater London Assembly and Scottish local government utilise different electoral systems.[20]

The 1918 act has been supplemented by later measures.[21] The People (Equal Franchise) Act 1928 equalised the voting age for men and women. Later acts in 1944, 1945 and 1947 resulted in the creation of a permanent Boundary Commission, assimilated local government and parliamentary franchises, and made changes to the rules governing boundary reviews. The Representation of the People Act 1948 made further significant changes, including abolishing plural voting, university seats and two-member seats. Other measures since have included the Representation of the People Act 1969, the Representation of the People Act 1983, the Political Parties, Elections and Referendums Act 2000, the Electoral Administration Act 2006 and the Political Parties and Elections Act 2009. The 1969 act lowered the voting age to 18 years and the 2006 act lowered the age at which one could stand for election to public office similarly to 18 years.

In 2010 the coalition government also sought further major change by introducing a measure, the Parliamentary Voting System and Constituencies Bill, to reduce the size of the house of commons and equalise constituency boundaries (as well as hold a referendum on AV). Though the number of seats in the House had been reduced following the loss of Irish seats in 1922, only one significant reduction in the number of seats has been legislated for during the century since 1911. Following devolution, there was a reduction in the number of seats in Scotland from 72 to 59. The coalition also introduced a Fixed-term Parliaments Bill, a major constitutional innovation limiting the prerogative as to when an election could be called. The Parliament Act 1911 had amended the Septennial Act 1716 to reduce the maximum length of a parliament from seven to five years, but within that period a prime minister could request the sovereign to grant a dissolution. The bill introduced by the coalition provided that a premature election could take place only if voted for by a two-thirds majority of all MPs or if a new ministry could not be formed within 14 days of a government losing a vote of confidence.

One other aspect of the relationship between parliament and people that changed was the willingness of parliament to refer matters to the people through the medium of a referendum. Calls for the use of referendums had variously been made in the first half of the 20th century and indeed earlier. Liberal Unionists had advocated one in the 1890s

[20] See Ministry of Justice, *Review of Voting Systems: The Experience of New Voting Systems in the United Kingdom Since 1997*, Cm. 7304 (2008).

[21] See Robert Blackburn, *The Electoral System in Britain* (Basingstoke, 1995), *passim*.

on the issue of Irish home rule. Joseph Chamberlain, early in the new century, advocated one on tariff reform and in 1910 the Conservative (then known as the Unionist) Party committed itself to referendums for resolving major constitutional disputes. Later Conservative leaders, Stanley Baldwin and Winston Churchill, raised the possibility of referendums on protection and the continuation of the wartime coalition respectively. Although referendums were variously sanctioned at local or sub-national level (as in Northern Ireland in 1973), it was not until 1975 that the first UK-wide referendum, on continued membership of the European Community (EC), was held.

Referendums at sub-UK level have since been held in respect of devolution to Scotland, Wales, Northern Ireland and London (that in Northern Ireland having a broader constitutional reach) and UK-wide referendums promised in the event of government agreeing particular measures (as on a single European currency). In 2010, as already noted, the coalition government introduced a bill to provide for a referendum on the introduction of the AV. The referendums have been advisory (though it would be perverse for parliament to authorise one and then ignore the result), but none the less raise questions about the legitimacy of outcomes not authorised by referendum, especially salient in the context of an uncodified constitution.[22]

1.3. *Relationship between the State and the Individual*

The rights of the individual in relation to the state have historically been viewed as negative, or residual, that is, an individual has the right to do whatever he or she wishes so long as it is not in violation of the law of the land. Individual liberty has been secured by judicial decisions determining the rights of individuals in cases brought before the courts.[23] As F.A. Mann observed in 1978: 'Such human rights as the law of this country recognises are almost entirely judge-made and in many instances involve no more than a rebuttal presumption to the effect that Parliament is unlikely to have intended to interfere with or destroy them.'[24] Such assumptions about parliament largely dominated for much of the century. Parliament was seen as part of the solution, standing ready to protect the individual against the state, rather than as part of the problem, being willing to enact measures that eroded the rights of the individual.[25]

However, such attitudes were challenged in the latter half of the 20th century. War-time demonstrated the capacity of parliament to enact major measures imposing state control over citizens. Many of these powers were ended in peacetime, but a number of politicians and jurists queried the extent to which parliament was able to protect (either by positive action or by refusing to limit) the liberties of the individual. As government extended its legislative reach more and more into the public sphere, with parliament willingly enacting its measures, some began to advocate a bill of rights, enumerating in legislative form a code of human rights. An entrenched bill of rights

[22] On the arguments for and against referendums, see House of Lords Select Committee on the Constitution, *Referendums in the United Kingdom*, 12th Report of Session 2009–10, HL Paper 99 (2010).

[23] Eric Barendt, *An Introduction to Constitutional Law* (Oxford, 1998), 46–7.

[24] F.A. Mann, 'Britain's Bill of Rights', *Law Quarterly Review*, xciv (1978), 514.

[25] See, e.g., Ronald Butt, *The Power of Parliament* (1967), 437.

would put the rights of the individual beyond the control of a transient majority in the house of commons; even without entrenchment, enumerating the rights in statute would enable the courts to provide greater protection than possible under the common law.

Demands for such a bill of rights became prominent in the 1960s – Anthony Lester's Fabian Society Tract, *Democracy and Individual Rights*, was published in 1968 and was followed by other campaigning pamphlets. In the 1976 Dimbleby Lecture, Lord Hailsham attacked what he termed the 'elective dictatorship' that now characterised British government and advocated a written constitution and a bill of rights.[26] Though Labour politicians were initially wary of such demands – fearing a bill of rights could limit the radical policies of a Labour government – the party leadership came round to the view that some form of statutory protection was justified. Under the leadership of Neil Kinnock, it moved to favour a charter of rights but later under the leadership of John Smith embraced the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms – commonly referred to as the European Convention on Human Rights (ECHR)[27] – into UK law, a commitment maintained by Tony Blair.

The promulgation in 1950 of the ECHR, to which Britain had contributed and was to be an early signatory, was seen initially as for other countries – for 'lesser breeds without the law'[28] – but, as Peter Mandelson and Roger Liddle wrote in 1996, in *The Blair Revolution*: 'Infringements of basic rights in Britain now force a rethink.'[29] The Labour manifesto in the 1997 general election declared: 'Citizens should have statutory rights to enforce their human rights in the UK courts. We will by statute incorporate the European Convention on Human Rights into UK law to bring these rights home and allow our people access to them in their national courts.'[30] The result was the Human Rights Bill introduced in the first session of the new parliament.

The Human Rights Act 1998 is discussed in detail in this volume by David Feldman. The act was crafted in order not to challenge the doctrine of parliamentary sovereignty, but added fundamentally to the new juridical dimension to the British constitution. It created a challenge both for courts and the executive, the former in being trained in the interpretation of such a document and the latter in being willing to accept declarations of incompatibility by the courts. Though ministers have accepted such declarations, it has not always been with a good grace.[31] Parliament for its part has sought to ensure that government complies with the act and established a joint committee on human rights.[32] David Feldman served as the first legal adviser to the committee.

[26] Lord Hailsham, *Elective Dictatorship* (1976).

[27] On the convention, see A.H. Robertson and J.G. Merrills, *Human Rights in Europe* (3rd edn, Manchester, 1993).

[28] Peter Mandelson and Roger Liddle, *The Blair Revolution: Can New Labour Deliver?* (1996), 193.

[29] Mandelson and Liddle, *The Blair Revolution*, 194.

[30] The Labour Party, *New Labour: Because Britain Deserves Better* (1997), 35.

[31] See Philip Norton, 'The Constitution: Selective Incrementalism Continues', in *The Palgrave Review of British Politics 2005*, ed. M. Rush and P. Giddings (Basingstoke, 2006), 16–18.

[32] Philip Norton, 'Parliament and Human Rights', in *An Era of Human Rights*, ed. D. Ryland (Patrington, 2006), 375–94.

1.4. *Relationship between the UK and the Rest of the World*

The 20th century began with the British empire being a major, if not the major, world force. The writ of the queen empress covered approximately one-fifth of the globe. Parliament could, and did, legislate for countries other than those within the British Isles. The first half of the century saw the transition from empire to a much looser (but still significant) Commonwealth of Nations and the end of the century witnessed Britain seeking to regain a role on the world stage through membership of the EC.

The transition was not always peaceful, including within the British Isles. Irish home rule bedevilled British politics at the end of the 19th century and the beginning of the 20th. What was later to be known as the West Lothian, or English, question in the debates on devolution in the 1970s and since – how to cope with the asymmetrical relationship between members from the central and the devolved parliaments – was a feature of that debate.[33] The Irish uprising forced the UK government to recognize Irish demands for self-determination. The Government of Ireland Act 1920 granted home rule and divided the country into two. The provisions governing the south proved stillborn with the continuing conflict leading to the Treaty of Ireland in 1922. The writ of parliament ceased to run in Eire.

Its writ also later ceased to run in much of the empire. The Statute of Westminster 1931 removed limitations on the competence of dominion parliaments and provided that no act of parliament passed subsequent to the act should be part of the law of a dominion: 'unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof'.[34] Later measures were enacted to give greater powers of self-determination and later still to transfer sovereign authority to countries that had been granted independence. Some of these measures were hotly contested, Winston Churchill being to the fore in opposing the Government of India Bill in 1935, but they made it to the statute book, essentially as a means of enacting what governments recognized as inevitable, even if that was not the view taken by all their back benchers.

The loss of empire created a conundrum for British governments in determining what role the United Kingdom could and should play on the world stage. Dean Acheson's observation that Britain had lost an empire but had yet to find a role has been much quoted. The failure of the Commonwealth to provide the political base, and trading partner, that the UK may have hoped for, and the failure of the Suez expedition in 1956, exacerbated the conundrum. In the event, another medium for British engagement on the international stage was found. Having initially resisted calls to be involved in the process of their formation, the UK government decided to apply for membership of the EC. The decision was made by the Conservative government of Harold Macmillan, though it was not until 1972, under the premiership of Edward Heath, that the terms of membership were agreed. The United Kingdom became a member of the EC on 1 January 1973. The constitutional implications were profound, requiring a major adaptation of existing constitutional norms. The European Communities Act 1972, providing the basis in UK law for membership, is treated in this volume. Membership entailed a

[33] See Norton, 'The Englishness of Westminster'.

[34] Statute of Westminster 1931, section 4.

supranational body being able to craft law that was to apply within the United Kingdom, the assent of parliament having been given in advance under the terms of the 1972 act; UK law was to be construed as far as possible to be compatible with EC law, and in the event of a perceived conflict the issue was to be resolved by the courts and EC law was to take precedence. It was seen by critics as undermining the doctrine of parliamentary sovereignty. The courts could strike down provisions of UK law if contrary to the treaties or EC law. The act thus created a new juridical dimension to the British constitution, conferring on the courts a role they had not performed since before the Glorious Revolution of 1688.

The 1972 act was to be complemented by others, giving effect to new treaties that further altered the relationship between member states and the institutions of the EC, later (under the Maastricht Treaty) the European Union (EU). The treaties were contested, the government having particular difficulty in achieving passage of the European Communities Bill in 1972 and the European Communities (Amendment) Bill in 1992–3, on each occasion having to resort to votes of confidence in order to ensure their passage.[35]

1.5. *Relationship between the Centre and the Rest of the United Kingdom*

The British government, during the course of the century, not only had to adjust to new relationships with other nations beyond the UK's shores, it also had to adjust to new relationships within the British Isles. Demands for home rule for Scotland and Wales were made by the Scottish National Party (SNP) and Plaid Cymru (PC) respectively but their principal success until the 1960s was simply to survive. In the 1960s they began to make some political gains. In Northern Ireland, the Nationalist Party, Sinn Fein, pressed for unification with Eire and in the late 1960s demands for civil rights for Roman catholics in the province led to conflict. In 1971 a shooting war broke out between the Irish Republican Army (IRA), the military wing of Sinn Fein, and the British army.

A royal commission on the constitution in 1973 recommended devolution to Scotland and Wales.[36] Recognizing the political threat from the SNP in its own political power-base of Scotland, the Labour Party came to embrace devolution and in the 1974–9 parliament achieved passage of the Scotland Act 1978 and the Wales Act 1978; however, MPs had insisted on referendums in both cases as well as imposing a threshold for a 'yes' vote to take effect. The electorate in Wales voted 'no' and in Scotland the threshold was (narrowly) missed. Successive governments sought to resolve the troubles in Northern Ireland.

The return of a Labour government in 1997 heralded another attempt to achieve devolution, this time successfully. Referendums were held in Scotland and Wales, achieving a clear 'yes' vote in Scotland and a narrow 'yes' vote in Wales. Parliament enacted the Scotland Act 1998 and the Government of Wales Act 1998, devolving executive and

[35] Though on the Treaty of Lisbon, see Philip Cowley and Mark Stuart, 'Where has all the Trouble Gone? British Intra-party Parliamentary Divisions during the Lisbon Ratification', *British Politics*, v (2010), 136.

[36] *Royal Commission on the Constitution 1969–1973, Vol. 1: Report*, Cmnd. 5460 (1973).

legislative powers to a Scottish parliament and executive powers to a National Assembly for Wales. Barry Winetrobe examines the Scotland Act in this volume.

Separately, attempts to achieve peace in Northern Ireland resulted in the Good Friday agreement, the endorsement of that agreement in referendums in Northern Ireland and the Republic of Ireland, and the creation of a Northern Ireland Assembly. After the Assembly was twice suspended, agreement was reached in 2007 and, following new elections, a power-sharing government was formed between the parties on the two extremes of the political spectrum, the Democratic Unionists and Sinn Fein. Despite some continuing tensions, the unique political arrangement in the province – ministerial posts allocated according to party strength, no use of the concept of collective responsibility, and the posts of first minister and deputy first minister essentially constituting conjoined posts – has endured.

The United Kingdom has thus acquired a significant level of government between the national and local level. Three of the four parts of the union have an elected legislature. The absence of an English parliament has led to calls for such a parliament and, in the absence of such a body, for the West Lothian, or English, question to be addressed.[37] There have also been calls for a further strengthening of the devolved bodies. The Government of Wales Act 2006 provided the basis for the transfer of certain legislative powers and the holding of a referendum for a more comprehensive transfer. In 2009, the Commission on Scottish Devolution (the Calman Commission) made various recommendations, especially in respect of strengthening communication and co-operation between Westminster and Holyrood.[38] The issue of devolution, and its consequences for the UK parliament, remain politically salient.

What is clear from this brief overview is the sheer extent of constitutional change to have taken place during the century since the passage of the Parliament Act in 1911. The overview is far from comprehensive and does not exhaust the relationships that exist at the heart of the British constitution. Over the century, the relationship between crown and people has changed substantially, the most traumatic dislocation – the decision of Edward VIII to give up the throne – requiring legislative authority (His Majesty's Declaration of Abdication Act 1936); other acts have dealt with royal titles and the provisions governing a regency. There have also been some changes in the relationship between Church and state in respect of the established Church, the Church of England. The Church of England Assembly (Powers) Act 1919 provided the process for parliamentary approval of Church of England measures. Over the century, the significance of crown and Church as political actors declined in the face of the other developments enhancing the power of the executive.

The extent of change has, thus, been substantial. That is clear from the foregoing. What is less obvious from the foregoing, but may be gleaned from the specific measures selected for inclusion in this volume, is the difference between those measures enacted prior to 1997 and those enacted since. There has been a notable difference in approach taken by governments to constitutional change, affecting both the nature and extent of change.

[37] Norton, 'The Englishness of Westminster'.

[38] Commission on Scottish Devolution, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*, Final Report (Edinburgh, 2009).