

## The Westminster System “Model” or “Muddle”?

Laurence Whitehead

### Abstract

In Lijphart’s conceptual schema, the Westminster Model constitutes the prototypical instance of majoritarianism. Historically, the United Kingdom system has indeed provided a “model,” in the sense that it has influenced various other democracies (albeit imperfectly). Even in its prime, it possessed *sui generis* features that could not be generalized. This essay focuses on the many constitutional modifications introduced since 1997. The U. K. system has recently diverged ever further from the Model, owing both to devolution and also to a range of other measures that were loosely justified by the intention to make it more consensual. In its current state, it may still be majoritarian in spirit, but it also contains features of coalition politics; direct democracy; some judicialization of rights; and a proliferation of delegated authorities. All mingle in an uncomfortable combination. The present system is also unstable, with an uncertain and underdetermined future trajectory. The essay concludes with some implications of this case study for Lijphart’s broader comparative enterprise.

**Keywords:** Constitutionalism, conceptual mapping, majoritarianism, power hoarding, Westminster Model.

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“Majoritarian democracy” has become one of the most carefully specified and precisely calibrated classifications in comparative politics, mainly thanks to Arend Lijphart. The “Westminster Model” is believed to constitute the canonical example. No doubt there must always be some slippage between any abstract social category and the specific, usually complex and often shifting, features of any single historical case. In consequence, critics of a deconstructive cast of mind repeatedly challenge the validity of such standardized classificatory

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schemas, which they fault for being static, ahistorical, oversimplified, and, indeed, inherently reductionist to the point of falsification.

This essay investigates the current status of British majoritarian democracy with these considerations in mind. It explores the extent of the mismatch between the case and the model, and draws attention to the contested nature of various crucial indicators and judgments that are needed in order to place a country on Lijphart's conceptual map. In particular, in the case of the United Kingdom, it highlights the extent of recent constitutional change and the confused and open-ended nature of its outcomes so far. The current "rules of the game" regulating democratic politics in twenty-first century Britain are subject to increasing variability as well as considerable elusiveness. Consequently, even the most well-regarded experts are deeply divided over both the underlying principles structuring British democracy, and its present logic and direction of change.

The British evidence thus reveals a severe tension between the need to classify and the requirements of an adequate case description. It therefore raises larger issues briefly addressed in the conclusion under two distinct rubrics—methodological and substantive. The aim of the essay is only to draw attention to these issues; it cannot be expected to resolve them. On the one hand, Lijphart's project is valuable and well-executed. But, on the other, political scientists can explain only how truly existing democratic regimes actually function, develop, and differ among themselves if they also take fully on board the complexity and fluidity of each national system. In the absence of sufficient attention to these facets of their subject matter, they would risk obscuring more than they can illuminate.

### **The Westminster System: Comparative Theory versus Improvised Practice**

This essay examines the evolving "rules of the political game" that regulate the politics of the United Kingdom of Great Britain and Northern Ireland, using the comparative lens provided by Arend Lijphart's majoritarian/consensualism framework, according to which the Westminster System (WS) of parliamentary democracy is pictured as the Westminster Model (WM) of classic majoritarianism.<sup>1</sup> However, at least in its early twenty-first century version, the British Constitution looks to this analyst more like a muddle than a model. The essay therefore contrasts comparative theory with contemporary practice, and ends with reflections about the implications for both of the apparent disconnect between the two.

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<sup>1</sup> For an up-to-date restatement of his position, see chapter 2, "The Westminster Model of Democracy," in Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, 2<sup>nd</sup> ed. (New Haven, CT: Yale University Press, 2012), 9-29.

At the core of Arend Lijphart's contributions to the study of comparative politics, is a theoretical dichotomy between what may be thought of as "power-hoarding" versus "power-sharing" models of democratic constitutionalism. In practice, of course, his conceptual map of democracy recognized that empirically existing democracies were multidimensional, and that instead of a dichotomy, one would need to place the cases along a continuum (or, indeed, in a two-by-two matrix). At one end of that continuum, he identified an interrelated cluster of rules and practices that owed their coherence to "majoritarianism," while at the other pole, he pictured an equally coherent constellation of features that could be summed up under the label of "consensualism." Lijphart also acknowledged that his conceptual map was a general model, and not necessarily a precise description of all the critical features of each individual democracy. So, "occasional deviations" from the model and "various other qualifications" were only to be expected.<sup>2</sup>

The key institutional features he associated with majoritarianism included: constitutional flexibility around a centralized government under executive dominance; the concentration of power in one-party executives; disproportional electoral rules underpinning a two-party system; an associated winner-takes-all approach to government formation and maintenance; and stability between elections, all contributing to an adversarial political culture. Those familiar with the British House of Commons will recognize some highly stylized embodiments of these features, including the prime minister's question time, and the separation of government and opposition benches by a distance calculated to impede the crossing of swords in the aisle. Not surprisingly, therefore, Lijphart sometimes switched from the more academic language of "majoritarianism" to the more vividly specific use of the term "the Westminster Model," without distinguishing between them.

The conference and special issue of the *Taiwan Journal of Democracy* for which this essay was prepared will deal more broadly with majoritarianism and consensualism, but the discussion here focuses only on a single (albeit exemplary) institutional example. Although at an idealized level the political arrangements governing the United Kingdom of Great Britain and Northern Ireland may have inspired generalizations about a model (WM), closer examination of how the system (WS) has operated in practice, even in its prime, points to serious discrepancies between mythology and reality.

The core doctrines of constitutional orthodoxy are the sovereignty of parliament, and collective cabinet responsibility to that legislative body, giving rise to "cabinet government"—the specifically English way of conjoining executive and legislative authority, which can be traced back to such Victorian authorities as Walter Bagehot and Albert Venn Dicey. These doctrines may have become sanctified over time, but they were not without skeptics and

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<sup>2</sup> Ibid., 10.

challengers, either in the nineteenth century or subsequently.<sup>3</sup> Even at the height of its prestige in the middle of the last century, the WS was the object of a variety of criticisms and proposals for reform. Liberals and pluralists, for instance, advocated what Lijphart might regard as “consensual” alternatives, including proportional representation and devolution. From the left, more corporatist possibilities were also canvassed.

Although constitutional orthodoxy prevailed in the postwar decades, the idealized account of how Britain was governed soon ran into increasing criticism from a variety of academic analysts. To start with, although parliament was supposed to be legally sovereign, it was also subject to certain imprecisely defined “customary constraints.” Other more empirical studies indicated that it was the executive, rather than parliament, that effectively exercised most of the sovereign authority. Party discipline meant that ministers could usually escape parliamentary sanction, provided they retained the backing of party leaders—a feature leading from Dicey’s parliamentarism to Lijphart’s majoritarianism. The ideal of ministerial responsibility was all very well, but it ignored the increasingly long chains of delegated authority through which so many twentieth-century policy decisions were crafted and implemented. This further undermined the ostensible supremacy of parliament. Then, since the 1970s, the model of two-party accountability to the electorate began to crumble as a rising proportion of the electorate opted for various third parties. In any case, on many issues, it was the influence of interest groups or policy networks based on expertise, rather than party platforms, that determined legislative outcomes. Moreover, international commitments became ever more important for determining policy choices, especially once the U. K. joined the European Community. Then, in the 1980s, the Thatcherite assault on the “command and control” feature of the Whitehall administrative machine gave rise to further academic questioning, and the promotion of an alternative “policy networks” model of what became known as “governance.”

All in all, the legitimizing myths of the WM—always somewhat mythical—became ever less tenable as the century advanced.<sup>4</sup> Then came the further improvisations of New Labour, about which more will be said below. As for the current state of the British constitution (characterized as a “mess” in the words of one of its leading analysts),<sup>5</sup> the most recent attempt to assess it applying a version of Lijphart’s ten indicators, updated to include the period under “New Labour” (1997-2007), “points to a potential weakness in Lijphart’s framework because the debate in the UK has become polarized around a binary distinction

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<sup>3</sup> See, for example, Richard Crossman’s 1963 introduction to a reprint of Walter Bagehot’s *The English Constitution*, first published 1867; for a fierce attack on Dicey’s interpretation, see Iain McLean, *What’s Wrong with the British Constitution?* (Oxford: Oxford University Press, 2010).

<sup>4</sup> For a thorough account up to the point where Lijphart operationalized his ten indicators, see R. A. W. Rhodes, *Understanding Governance* (Maidenhead: Open University Press, 1997).

<sup>5</sup> Anthony King, *The British Constitution* (Oxford: Oxford University Press, 2007), 345.

between consensual and majoritarian meta-constitutional orientations, when in fact the contemporary reality is far more complex.”<sup>6</sup>

Britain is therefore of some interest when undertaking a closer examination of democratic constitutionalism and its problematic trajectory in the twenty-first century, both on its own terms, and for its bearing on the Lijphart classification. This is particularly the case because, for many comparativists with limited exposure to the oddities of U. K. politics, the WS is seen as more than a national case: it is regarded as a global model. Indeed, as Lijphart’s WM terminology indicates, the U. K. experience is of more than local significance, not just one reporting unit in a standardized large N database. For that reason, he identified three of his thirty-six democracies as exemplars of the WM—the United Kingdom, New Zealand, and Barbados—and added that many of its features appeared in others, such as Australia, Canada, and Jamaica.

If representative democracy has a global history, then Britain’s parliamentary system belongs among the forebears. It may not be the oldest democracy (universal suffrage was achieved only in 1928, and plural voting was not abolished until 1948) or the purest (there still are unelected members in the House of Lords at the time of writing, and this situation seems likely to persist), but it stretches back over several centuries. The “glorious revolution” of 1688 may have been the product of a Dutch invasion and military occupation, but it is also widely viewed as a fulcrum of parliamentary sovereignty and a cornerstone of rule-of-law government and the balanced separation of powers. It established constitutional principles of government that were subsequently taken up in many other jurisdictions, especially in the English-speaking world, which were then progressively “democratized” (a term of art that merits careful scrutiny), in particular through successive reform acts between 1832 and 1948.

British parliamentarism partially inspired (both positively, and by reaction) the pristine United States Constitution of 1787. Later, it generated such notable “spin-off” representative democracies as Australia, Canada, and India. During the decolonization wave that followed the Second World War, London drafted or negotiated constitutions intended to regulate the political life of the scores of nations to which it ceded sovereignty. This standard template was derived from what the mid-century British believed to be their own unique and successful form of democratic governance, the idealized version of the WS (the Houses of Parliament occupy pride of place in that central London borough). Quite a few of those new nations (notably in the Anglophone Caribbean) still operate by the rules of the political game established according to that template.<sup>7</sup> So,

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<sup>6</sup> Matthew Flinders, *Democratic Drift: Majoritarian Modification and Democratic Anomie in the United Kingdom* (Oxford: Oxford University Press, 2010), 273. As we shall see, “far more complex” is the least one can say.

<sup>7</sup> In the upper-right unitary majoritarian quadrant of Lijphart’s 1999 two-dimensional map of democracy, the U. K. is in the company of Barbados, the Bahamas, Botswana, Jamaica, Malawi, New Zealand, and Trinidad, together with four others. Ireland is “almost in” as well. None of the other quadrants contains any postwar decolonized ex-British states.

in broad terms, we can trace a large family of Westminster-type majoritarian democracies back to their U. K. origins or sources of inspiration, although New Zealand switched sharply away from majoritarianism in October 1996.<sup>8</sup>

However, this essay does not attempt to generalize about Westminster-type democracies, since, in reality, there were always major variations on the common theme, and over the past half-century, each of these political regimes has followed its own idiosyncratic evolutionary path, thus generating a wide array of fairly divergent outcomes. Instead, the focus here is much narrower and more contemporary. Whatever one thinks about the way postwar British politics were structured, in the twenty-first century, the United Kingdom has evolved, or even deviated, from the model with which it was associated quite as drastically as most other members of the original “Westminster family.” And these shifts from classical parliamentary majoritarianism are continuing at a high and possibly accelerating rate. So, a country-specific exploration of what has become of the WS in its place of origin has implications not only for that one exemplary case but also for the temporal dynamics and spatial placement of all the regimes that appear on Lijphart’s conceptual map.

Despite the democratic idealization of the WM, in reality, Westminster’s parliamentary government always was and still remains a “mixed”—in today’s jargon perhaps even a somewhat “hybrid”—political system. This remains the case, even though the islands of Britain have been undergoing a long-term continuous (albeit at times jerky and even partially reversible) “democratization” process for centuries. The model’s aristocratic, clerical, and monarchical residues have not yet been entirely eliminated. So, it can still be faulted on various fronts when compared to a standard checklist of democracy indicators (persisting anomalies in Northern Ireland; a royal who marries a Catholic is debarred from inheriting the throne; war-making remains an executive prerogative; and many other oddities, some described more fully below).

Despite such anomalies, the British remain generally convinced that they benefit from one of the oldest and best democracies in existence,<sup>9</sup> one with the moral authority to champion the cause of democracy in other, less fortunate, lands. On this basis, the United Kingdom belongs among the subset of democratic regimes for which I have proposed the label “immanent.”<sup>10</sup>

This term was coined from the observation that, while not all democracies

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<sup>8</sup> Lijphart, *Patterns of Democracy*, 10.

<sup>9</sup> Beyond the U. K., it is possible that some other WM-originated democracies, such as Australia and Canada, also fit within the “immanence” framework, but most (in particular, the Caribbean ex-British colonies) would not.

<sup>10</sup> Laurence Whitehead, “‘Immanence’ as a Comparative Category,” in *Democratization in America: A Comparative Historical Analysis*, ed. Desmond King, Robert Lieberman, Gretchen Ritter, and Laurence Whitehead (Baltimore, MD: Johns Hopkins University Press, 2009), 37–39.

are as evangelical as the United States about exporting their domestic political values to the rest of the world, the U. S. is part of a cluster to which the U. K. also belongs.<sup>11</sup> To avoid misunderstanding, the criterion for immanence

does not require any demonstration that, as a matter of objective fact, the country in question can always be relied upon to “outshine” others in its commitment to democratic values and procedures. What is required above all is good evidence that both its leaders and its citizens generally agree on that assessment. ... It may also be very important to the domestic consensus that influential observers in the rest of the world share the same assessment. ... Moreover, one might expect leaders of immanent democracies to view the promotion of democracy overseas more one-sidedly than would politicians contemplating action that might, at some time, be thought applicable to their own country.<sup>12</sup>

Readers schooled in traditional British history will have a little difficulty in recognizing the widely disseminated “Whig interpretation” that propagated such a national self-understanding. It operates on broadly similar lines to what Samuel Huntington called “America’s creedal passion,” although present and future generations of British and American citizens may not be taught to share quite the same unifying orthodoxies. In both these English-speaking majoritarian democracies, there are grounds for thinking that shared allegiance to a patriotically democratic self-understanding may persist, and indeed flourish, even after the ending of an orchestrated inculcation of a selective historical narrative. In contemporary Britain, a particular gloss on the Second World War has displaced the earlier emphasis on the Magna Carta and the Reform Acts, but it still underpins the same basic message about British democratic qualities and their inherent rootedness.

Since the rest of this essay focuses on contemporary British politics, the intricacies of this tradition of historical understanding must be set aside. But it is crucial to what follows to understand that the British historical consciousness contains very limited capacity for doubt about the nation’s “immanent” democratic status, or the virtues of its “Westminster” model. Unquestionably, Irish and to some extent Scottish and Welsh narratives are sharply at variance with the English mainstream, and post-colonial and pan-European currents also decenter it. But even so, the “myths” of the British

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<sup>11</sup> “A regime so confident of its inherently democratic status that external comparison can be treated as superfluous, and other contenders need only be assessed by the extent to which they either match or fall short of the standard there achieved.” *Ibid.*, 36.

<sup>12</sup> *Ibid.*, 39.

system of parliamentary sovereignty persist, and, in political terms, they still seem to absorb all challengers, as the 2010 coalition government would seem to confirm.<sup>13</sup>

The rest of this essay provides an overview of the recent and present state of British constitutional democracy, as it currently exists (i.e., the WS), in contrast to the idealized WM. Despite the evident problems and tensions now confronting the British parliamentary system, there is no more than a very partial and fragmentary sense that this democracy could be under serious threat, and remarkably little domestic questioning of its entitlement to instruct others in “good government.” However, if judged by the criteria deployed for the construction of Lijphart’s conceptual map, or by the standards associated with other ranking and rating exercises practiced by the political science community, the current British constitutional situation seems complex, confusing, and even somewhat unstable.

In my terminology, it could be assessed as more of a muddle than a model, but there is no consensus on this, and Lijphart himself considers that “recent changes in British politics do not change the overall character of Britain as a prime example of majoritarian democracy.”<sup>14</sup> However, as we shall see, there are

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<sup>13</sup> This English sense of “immanence” and pride in the Westminster parliamentary tradition, including its relevance as a model for export, has a very long pedigree. An obscure Latin American example deserves mention here. Following its victory at Trafalgar, for eight months during 1807, the Royal Navy occupied the port of Montevideo, seized from Spain in an operation costing eight hundred lives. The occupying forces published the future Uruguay’s first-ever printed newsheet, a bi-lingual publication that ran to only nine issues. Here is an extract from *The Southern Star/Estrella del Sur* of mid-1807: “Will you seek support from that nation where ambitions have drained your treasures, who have plundered your churches, and insulted your religion?—Who has overturned your altars, and trampled on all divine and human institutions—No recourse, no refuge remains but to throw yourselves into the arms of England. The basis of the English constitution is liberty. Her laws are founded on justice and equity. The rights of her sons are sacred. No despot can sacrifice to his caprice the lives of his subjects....” Transcribed from Elizabeth Cowley, *The Making of Montevideo* (Montevideo: Real English Tours, 2010), 16. This was written almost two centuries before the British contributed to the reconquest of Baghdad in 2003. In 1807, parliament had just abolished the slave trade, but British ships were still transporting their cargo of Africans to South America, and the occupiers did not free the large slave population of Montevideo. The quote is of interest not because it accurately conveys what the British occupation would mean for those subjected to it (any more than the British occupation of Iraq delivered on its idealistic rhetoric); the key point is that this is how the invaders presented themselves—a recurring self-definition with deep historical roots. Another early nineteenth-century view shows that there is also a long history of expert skepticism concerning such self-understandings. Here is a British intelligence warning, which preceded the first of London’s four military incursions into Afghanistan (in 1839): “There is nothing more to be dreaded...than the overweening confidence with which we are too often accustomed to regard the excellence of our own institutions, and the anxiety that we display to introduce them in new and untried soils. Such interference will always lead to acrimonious disputes, if not to a violent reaction” (Sir Claude Wade, quoted in William Dalrymple, *Return of a King: The Battle for Afghanistan* [London: Bloomsbury Publishing, 2012]).

<sup>14</sup> Lijphart, *Patterns of Democracy*, 20.



qualified authorities who would go beyond “muddle” to characterize the current British constitution as a “mess,” perhaps even as an increasingly incoherent mess, one ever further removed from the old legitimizing myths of the WM. It is also a form of democratic government almost calculated to perplex many of its citizens and to mystify most foreign observers. Recent survey evidence indicates a cumulative decline in citizen trust in their democratic institutions, and lack of enthusiasm for most of the recent reforms introduced with the aim of restoring such trust. However, certain forms of direct democracy, going beyond what the authorities have so far been willing to offer—for example, the power to recall elected representatives on the grounds of incompetence, and not just wrong doing—attract a much broader base of support.<sup>15</sup>

### **Some Historically Unique Features of the Westminster System**

The United Kingdom differs from nearly all other modern democracies in that it possesses no single unified and legally binding constitutional charter. If a key feature of the “majoritarian pole” in a conceptual map of democracy is constitutional flexibility, then at least in formal terms, Britain is off the map on this dimension. The contrast between this case and the mainstream of thinking about processes of democratization is particularly striking. Democratization often is conceptualized as a brief interlude of step-change between a nondemocratic precursor regime and a full-fledged democratic replacement, where all the stipulated conditions for a modern democracy are quickly assembled and then routinized (or “consolidated”). Some political scientists make these two assumptions and then typically characterize the interlude as a period of constitutionalization during which all the fundamental “rules” of a democratic political game are abruptly enacted, and subsequently enforced to the exclusion of any alternative possibilities.

But there is no way this model can be made to apply to the United Kingdom, which lacks a comprehensive written constitution to this day. There is, it is true, a long-established, very stable, and only slowly changing structure of institutions and procedures that regulate political competition for office. Parliament, with its privileges, statutes, treaties, and prerogatives, has provided the essential venue and arena continuously for over three hundred years. Perhaps the 1707 Act of Union, which set out the terms for the unification of the English and Scottish parliaments under a single dynamic head of state, can be regarded as the foundational pact on which this very durable structure of political control, alternation, and representation was grounded. But, however “constitutionalized”

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<sup>15</sup> See the chapters by John Curtice and Ben Seyd on constitutional reform, and by John Curtice and Rachel Ormston on Scottish independence, in *British Social Attitudes* 29, ed. Alison Park, Elizabeth Clery, John Curtice, Miranda Phillips, and David Utting (London: NatCen Social Research, 2012).

one considers eighteenth- and nineteenth-century Britain to have been, there is no way that it can be classified as a modern representative democracy. Until the early twentieth century, the dominant principle of representation was as much hereditary (with the monarchy and House of Lords) as electoral. Even at the turn of the twenty-first century, the formal structure of government is “the Queen in Parliament.” “Sovereignty of Parliament” should not be conflated with “sovereignty of the people.”

Even so, any broad comparative analysis of democratization processes would need to incorporate the British case. Fortunately, the “step change” model is not the only available option—indeed, despite its continuing popularity, it has turned out to be a simplified special case rather than the standard pattern. At a minimum, any national “democratization” must encompass the regime trajectory (or multiple trajectories), linking a clearly predemocratic starting point with a well-articulated and preponderantly democratic eventual outcome, or, indeed, end-state. But there is no reason to assume that this must happen all at once and equally on all dimensions. Instead, democratization could be a trajectory with multiple dimensions, long and uneven gestation periods, episodes of rapid advance, perhaps followed by at least partial reversals, and an eventual outcome that may be far from pure, in no way preordained, and even in some sense perpetually incomplete.

On this much wider and more encompassing view, the democratization of the U. K. can after all be accommodated. Even so, the slowness and step-by-step gradualism of the British route to the extension of the franchise, the rebalancing of class interests in the power structure, and the diminution of aristocratic, clerical, and monarchical privilege is unusual, if not unique. This has long-running implications for the structure, legitimacy, and hybridity of the British constitutional system, all of which conditions the nature of its “majoritarianism.” For example, while Britain lives under a regime that is increasingly convergent with international ideas about the “democratic rule of law,” it remains an essential feature of the U. K. system that the judiciary is an agent of the Crown. In the absence of a written constitution, there can be no full separation of judicial power, even though the U. K. has very recently acquired what it chooses to call a “Supreme Court.”<sup>16</sup> Returning for a moment to the comparative side, protracted trajectories such as those of Britain, France, Switzerland, Australia, and the Scandinavian nations can all be invoked to demonstrate that, even if democratization is understood as a complex and extended historical process, it may nevertheless refer to something highly distinctive, structured, and of great political consequence (as with embryology, it is not necessary for the causal connections between the start and end of a process to be clear, short, and direct for them to be powerful, consistent, and

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<sup>16</sup> This point is developed in the essay’s third section, “New Labour and the Growing Gap between the Westminster Model and the Westminster System.”

highly explanatory).<sup>17</sup>

The historical background was evidently most distinctive, but from a comparative perspective, by the postwar period, in very broad terms, British political institutions more or less conformed to the basic requirements prescribed by today's standard democratic analysis. But the WS displayed a constellation of distinctive structures and practices that were also woven into constitutional fabric, and that differentiated British democracy from all the rest. From the standpoint of public opinion, it was not obvious that these two elements could be separated, or why they might need to be.

Consider for illustrative purposes the following features of the British system and how they may be contrasted with contemporary democratic norms in general: the judiciary and the "rule of law"; state prerogatives; minority rights; and civil rights. This is not a comprehensive inventory of the entire system,<sup>18</sup> but a brief review of some major respects in which current British democratic practices and assumptions do not fully conform to a standard comparative democratic template. One view is that an ancient and mixed political regime should be expected to display various eccentricities and deviations, which may be of no great significance provided that other "core" democratic principles are secure.<sup>19</sup> The alternative hypothesis would be that, until such omissions are corrected and the complete checklist of modern democratic practices is entrenched, Britain's "democratization" trajectory remains unfinished, and indeed inadequate.<sup>20</sup>

The late former Lord Chief Justice Tom Bingham noted of the U. K. that Britons broadly share their commitment to the rule of law "with other liberal democracies around the world. Our acceptance of parliamentary sovereignty, by contrast, distinguishes us from all other members of the European Union, the United States, almost all the former Dominions and those former colonies to which this country granted independent constitutions."<sup>21</sup> How does that

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<sup>17</sup> A point I develop in Laurence Whitehead, "Enlivening the Concept of Democratization: The Biological Metaphor," *Perspectives on Politics* 9, no. 2 (June 2011): 291-299.

<sup>18</sup> David Beetham's Democracy Audit can be consulted at <http://www.democraticaudit.com> (accessed April 7, 2013).

<sup>19</sup> Examples include both the conservative Leo Amery, for whom the essence of the constitution lay in two elements, each of independent and original authority, the Crown and the Nation, and the more progressive Sir Ivor Jennings, who differed from Amery in believing that the original power lay with the people, although it was only through strong and disciplined parties that the electorate could exercise its mandate. See Amery, *Thoughts on the Constitution* (Oxford: Oxford University Press, 1953), and Jennings, *Cabinet Government* (Cambridge, England: Cambridge University Press, 1959).

<sup>20</sup> One hallmark of an "immanent" democracy is that its opinion-formers may have no difficulty applying the second type of judgment to the performance of *other* democratic regimes, while refusing to accept reciprocal assessments of what might be considered their domestic deficiencies. See, for example, McLean, *What's Wrong with the British Constitution?*

<sup>21</sup> Tom Bingham, *The Rule of Law* (London: Allen Lane, 2010), 160.

historical distinctiveness interact with the British self-understanding as a key source of inspiration to the world's democracies? In the U. K., unlike nearly all the other "old" democracies, "the courts have no inherent powers to invalidate, strike down, supersede, or disregard the provisions of an unambiguous statute duly enacted by the Queen in Parliament, and, indeed, an extremely limited power to enquire whether a statute has been duly enacted."<sup>22</sup> This extends to the power of parliament to abrogate or infringe any human right, and, indeed, to break treaties.

Thus, in principle, the Westminster Parliament even has the power to revoke the European Community Act of 1972 (which incorporates European legislation into British law) or to repudiate the devolution of some powers to the Scottish, Welsh, and Northern Ireland Assemblies or in the Constitutional Reform Act of 2005, which created a "Supreme Court" that started operation in 2009. Bingham concluded his overview of this issue by pointing out that, during the twentieth century, both the Crown and the House of Lords saw their ability to counterbalance the House of Commons progressively whittled away:

This is the "elective dictatorship" to which Lord Hailsham... famously referred [in 1976]. ...Thus our constituted settlement has become unbalanced, and the power to restrain legislation favoured by a clear majority of the Commons has become much weakened, even if, exceptionally, such legislation were to infringe the rule of law as I have defined it. ...The last ten or twelve years have seen a degree of constitutional change not experienced for centuries. Important questions (such as the composition and role of the House of Lords and the system used to elect members of the House of Commons) remain unresolved.<sup>23</sup>

From a comparative democratization perspective, the unwritten constitution and unbalanced formal "rules of the game" of the British system would seem almost as reminiscent of O'Donnell's "delegative democracy" as of Lijphart's "majoritarianism."<sup>24</sup>

British history amply demonstrates that it is possible to have a strong parliamentary rule-of-law system without applying modern ideas about political and civil rights, or equality before the law, let alone democracy or minority rights. All these could be added on later, but they are not automatically

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<sup>22</sup> Ibid., 162.

<sup>23</sup> Ibid., 169.

<sup>24</sup> Guillermo O'Donnell, "Delegative Democracy," *Journal of Democracy* 5, no.1 (January 1994): 55-69. The third section of the essay returns to this theme in the context of the outcome of the 2010 election.

interconnected—any more than they were under U. S. constitutionalism. Moreover, these old and “immanent” constitutional regimes have been perfectly capable of transmitting their legal and judicial ideas and practices to other nations that would eventually acquire independence and perhaps become modern democracies, but that would quite possibly continue to operate according to inherited antidemocratic and rights-suppressing examples learned from their former rulers.<sup>25</sup> In the postwar period, the Westminster Parliament authorized a wide range of “emergency powers” and related law-and-order measures intended to suppress anticolonial protests in such jurisdictions as Cyprus, Kenya, and Singapore. Leaders of such protests were (of course) not entitled to representation in Westminster, but in due course they emerged from their colonial prisons to take over executive authority as their respective nations obtained their independence by act of parliament. In all these cases, the emergency powers that the Westminster Parliament had deployed against them remained at their disposal for the newly elected governments to deploy against their own dissidents. Thus, the WM of decolonization from London transmitted British legal traditions, with courts at the service of sovereign power, rather than courts as the independent constitutional guarantors of democratic rights.

This connects with a closely related and distinctive feature of Britain’s unwritten constitution—what used to be called the “royal prerogative” and has now morphed into executive discretion. For example, it is the cabinet (and therefore, in practice, the prime minister) that technically possesses the authority to wage war, at its sole discretion. Historically, in Britain, the powers to enter into international obligations (treaties) and to wage war have been exercised by ministers but “are not conferred by Parliament, and there is no codified Parliamentary procedure which prescribes how Parliament should have a say in how they are exercised...it has been rare in the past for Parliament to have a substantive vote on a proposed deployment before the troops are committed... .”<sup>26</sup> Notwithstanding the near mythical status of British parliamentary sovereignty, this venerable executive prerogative is also a foundational principle of Westminster government. Yet, it is now also so clearly at variance with what standard democratic theory would presume, and what countries with written constitutions require, that even the insular British establishment has concluded (in the wake of the Iraq invasion)<sup>27</sup> that something

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<sup>25</sup> The anti-Catholic Irish Penal Laws of the eighteenth century provide the classic example of how parliamentary sovereignty could produce extreme discrimination and repression, upheld by the courts and not subject to electoral redress. Even today, in Belfast and elsewhere, the consequences of such legislation cast a long shadow and limit the scope for democratic co-existence.

<sup>26</sup> “The Governance of Britain, War Powers and Treaties: Limiting Executive Powers” (London: HMSO, October 2007), 7-9.

<sup>27</sup> In fact, Prime Minister Blair committed British troops to combat in Sierra Leone, Kosovo, Iraq, and Afghanistan, four wars in a decade, none of them the product of any normal democratic pre-authorization.

must be done about it—although there seems little hurry to decide what. (From a comparative democratization perspective, one might wonder how easily this feature of British democracy would fit into the standard version of “democratic peace” theory).

Then there is the issue of human rights. Clearly, at times of perceived danger, the protection of human rights can present a severe test for all democracies, whether old or new, whether majoritarian or consensual. But, at least in theory, when a government draws on support from across the whole of the political spectrum, and is subject to strong written internal rule-of-law constraints that are also reinforced by authoritative international monitoring under “community of democracy” club rules, it would be reasonable to anticipate that its observance of basic human rights should be relatively robust. So, how well does British democracy perform in this regard in the absence of a written constitution, and under a system of royal courts traditionally expected to uphold the peace of the realm rather than to enforce a codified set of fundamental human rights? The Blair government sought to address this issue by incorporating the European Convention on Human Rights into U. K. law, a measure enacted in the Human Rights Act of 1998. But it then went on to seek derogation from the European Court of Human Rights in order to pass the Anti-Terrorism, Crime and Security Act of 2001, although the House of Lords found this to be unlawful. The ensuing tangle of actions and reactions has yet to stabilize, and, indeed, the latest signs are that the Conservative Party will now try to reclaim the powers ceded to the European Union under the rubric of human rights. To do so, it would need only a bare majority in the House of Commons.

One more direct way to investigate this large subject empirically would be to focus in particular on the issue of torture. When Argentine or Chilean military governments tortured their opponents, there was no hesitation or division of opinion within the British elite. These were clear violations of international law and fundamental human rights. There could be no exceptions, and no democratic government could condone (let alone become complicit with) the torture of its own citizens—or, indeed, of any others. But in practice, complicity in the torture of U. K. nationals is not so unthinkable after all.

Thus, for example, in September 2010, a British court was shown a memo from the Foreign Office, which contained a hand-written annotation by Prime Minister Blair, dated January 18, 2002.<sup>28</sup> The memo, marked for Blair’s personal attention, explains that an MI5 team had been sent to the United States naval base in Cuba to establish how many detainees being held there were British, and what they knew about terror plots against the U. K. Blair’s annotation reads in part: “Though I was initially skeptical about claims of torture, we must make it clear to the US that any such action will (or would) be totally

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<sup>28</sup> BBC Web site, September 28, 2010, contains wording of the PM’s annotation.

unacceptable and v. quickly establish that it isn't happening." Almost nine years after this instruction was issued, six claimants from among the detainees are still awaiting a High Court deadline for a release of material which explains when various parts of the U. K. government knew that the former suspects were being mistreated (to the point where their fundamental human rights were being violated). The fact that this case is finally reaching the courts and the press could be cited as evidence that British democracy does uphold this basic principle. But before celebrating, one would need to consider the many obstacles that had to be overcome, the uncertainty and cost of the discovery process, the extent of the suffering occasioned in the interim, and the probable scale of the violations not revealed (so called "extraordinary renditions" for torture by other friendly regimes, for instance) through this legal process.

Of course, there are explanations and excuses that can account for this. Perhaps a small number of exceptions to the rule might be regarded as not invalidating the general principle. But the U. K. parliament has such a long history of uneven performance in the realm of human rights that any more recent upgrading of the record might be attributable to the gradual encroachment of international standards and obligations that could not have been reliably generated from Westminster alone. And what parliament disposes it can also retrieve. So, are consensual democracies better guarantors of the fundamental rights of their citizens than British- or American-style majoritarian democracies, no matter how "immanent" they believe themselves to be? If so, a key question for London would be on what moral or legal authority is the U. K. government entitled to pass judgment on comparable human rights abuses in other countries? Are the exculpatory factors to be considered in the British case not also applicable elsewhere?

This section has only scratched the surface of the U. K.'s uniqueness in terms of constitutional history and governmental structure. The aim has been merely to illustrate the great contrast between the idealizations of the WM and the historical specificities of the constantly evolving WS. A fuller account of the constitutional issues than is possible here would need to analyze the place of the referendum; the decline of two-party dominance and its replacement by a more fragmented multiparty system; the power abuses of an increasingly lawless "fourth estate" (as highlighted by the Leveson Report on press misconduct); and various other postwar features that seem at variance with the WM mythology.

But before moving on to more contemporary developments, it is necessary to underscore the foundational aspects of Britain's unique constitutional inheritance. Picture a truly centralized and sovereign majoritarian parliamentarism not constrained by the checks and balances of a written constitution and an independent judiciary. Under this extreme version of the WM, no given parliament would have the power to bind its successors. Thus, at any time, a simple majority vote would suffice, for example, to exit from the European Union, to restore the death penalty, or, indeed, to abolish the

monarchy. The WS has always operated rather differently, of course, holding back from the full application of this abstract logic, legitimizing EU membership through a referendum, heading off the death penalty through tacit cross-party collusion, and treating the royal prerogative with metaconstitutional deference. So, the appearance of unfettered majoritarianism always has been tempered by powerful conventions that are not only unwritten, but also in many cases unstated and certainly untested. This was true even before the various recent and untidy efforts at codification and convergence around international norms and standards.

However, there is also another most peculiar feature of the WM, which reveals its foundational oddity. At least until the Coalition Agreement of 2010, successive British premiers possessed a highly distinctive power that epitomized the centralized and adversarial nature of the system. Within the limits set by the Parliament Act (requiring a new election at least once every five years), there was no fixed term, and it was entirely a matter for the prime minister to determine the date of the next election. (Here, too, some conventions grew up about the best openings in the annual calendar, but these were a matter of convenience rather than of binding necessity.) A striking example of the strange logic of that inherited provision arose in 2007, when Gordon Brown finally succeeded in forcing Tony Blair to stand down, but then proceeded to govern (in a highly personal manner), as if the mandate of the 2005 election had been conferred on him rather than on his predecessor. Since he was not obliged to seek a mandate for his government, Brown used his seized prerogative to avoid an election for three full years, facing the voters only when the Blair mandate was finally exhausted. Such are the foundational peculiarities of the WS.

So, referring back to Lijphart's "majoritarianism," we should now recall that its theoretical rationale is to depict a "power-hoarding" constitutional order. Postwar British politics have been interpreted through this prism, for example, under the rubric of "elective dictatorship," and more recently, in the light of the strong prime-ministerial leadership projects associated with Thatcherism (1979-1990) and Blairism (1997-2007).<sup>29</sup> But from a broader historical perspective, it seems very strange to portray the postwar WS as a great exemplar of power hoarding. Since 1945, Westminster has decolonized (in power-hoarding terms, "relinquished control over") the world's largest ever empire; it has joined first the European Community and then the EU, thus transferring substantial powers to the Brussels Commission, the Strasbourg Parliament, and the Luxemburg Court. Indeed, the *acquis communautaire* now regulates a remarkably wide range of matters that were previously the

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<sup>29</sup> Note, however, that neither of these decade-long majoritarian premiers ever obtained a majority of the popular vote. Mrs. Thatcher's best score was 43.9 percent, attained in 1979; and Mr. Blair's was 43.2 percent, won in 1997.



domain of Westminster legislators. It also has scaled back the welfare state and privatized much of the state-owned public sector. Moreover, it has ceded a mixed array of devolved powers to directly elected assemblies in Belfast, Edinburgh, and Cardiff. There is now also a directly elected London mayor, and even—the most recent and least demanded of all these power dispersals—directly elected local police commissioners as of 2012. Consequently, in an attempt to reconcile the Lijphart concept of power hoarding with this recurrent Westminster practice of power shedding, Flinders has proposed the somewhat unconvincing idea of assessing the WM on quite disconnected dimensions, under the doubtful rubric of “bi-constitutionalism.”<sup>30</sup> Whichever the case, it is safe to say that this power-shedding trajectory has not yet reached its end point, and may reach a crisis point in the near future, as discussed below.

### **New Labour and the Growing Gap between the Westminster Model and the Westminster System**

This section focuses on the years of New Labour government (1997–2010), first reviewing Matthew Flinders’s assessment of New Labour, using the criteria laid out by Lijphart, and then, on a rather wider canvas, commenting on various aspects of the messy and unfinished constitutional experimentation that took place under New Labour.

Flinders carried out an extensive and detailed updating of Lijphart’s second comparative rating of the U. K.’s majoritarian political system,<sup>31</sup> systematically applying the ten indicators that Lijphart used in his earlier evaluation to understand how far New Labour’s constitutional innovations between 1997 and 2007 might have altered the patterns detected by Lijphart on the basis of his pre-1997 data.

A key aspect of his analysis is devoted to central bank independence, a flagship achievement of the Blair administration. The so-called tripartite agreement on monetary policy making constituted yet another example of the “power dispersal” proclivities of the WS. Interest rate decisions were ceded to the independent Bank of England under a delegated authority to be exercised by its new Monetary Policy Committee. The Treasury’s policy remit was accordingly constrained, and the bank also yielded an important power, in that its responsibility for financial market oversight was transferred to a new independent agency, the Financial Stability Board. This was not a “power-hoarding” reform, but rather a further initiative to reduce state intervention and to limit the discretionary power of public officials. The idea was for the City of

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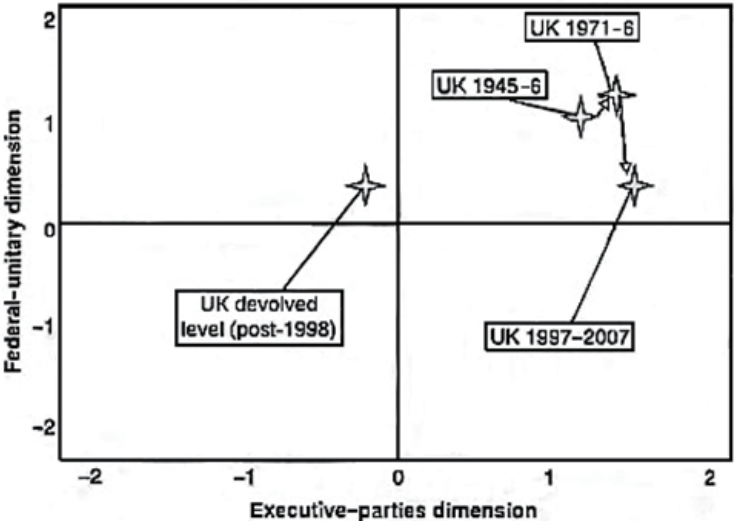
<sup>30</sup> Matthew Flinders, *Democratic Drift: Majoritarian Modification and Democratic Anomie in the United Kingdom* (Oxford: Oxford University Press, 2009), chap. 15.

<sup>31</sup> Arend Lijphart, *Patterns of Democracy: Government Performance in Thirty-Six Countries*, revised and expanded ed. (New Haven, CT: Yale University Press, 1999).

London to enhance its competitive strength in the international market place, by establishing a “light touch” system of regulation that would maximize the freedom of private financial institutions. In the event, the tripartite regime created regulatory gaps that were readily exploited by bonus-seeking bankers. It proved a spectacular failure of governance derived not from power hoarding but from a doctrinaire decision to abdicate a core political responsibility of the state. What might be said in defense of the majoritarian interpretation of British politics was that, although the outcome of this reform was power-dispersing, its manner of implementation was centralized, top down, adversarial, and nonconsensual.<sup>32</sup>

Two main points emerge from the diagram summarizing the overall results of Flinders’s analysis.<sup>33</sup> First, although the U. K. remains firmly wedged in the northeast “majoritarian” quadrant (centralized and executive-dominant), the indicators record a significant shift in location at the national level, as devolution reduced the centralization score. There was no net change on executive dominance over the parties, since, on balance, the other two significant national constitutional developments (electoral disproportionality

Figure 1. Two-Dimensional Conceptual Map of Democracy in the United Kingdom (national and devolved)



Source: Flinders, *Democratic Drift*, figure 15.1, 276.

<sup>32</sup> This is more my gloss on that topic than the verdict provided by Flinders.

<sup>33</sup> Flinders, *Democratic Drift*, figure 15.1, 276.

and central bank independence) left the overall positioning on that dimension unchanged. Second, however, the establishment of three regional assemblies elected by proportional representation and operating with devolved powers gave rise to a second level of constitutional government that generated a separate set of indicators. Flinders, therefore, concludes that, after 1998, the previously unitary WS had become “bi-constitutional,” and instead of receiving a single placement on the Lijphart grid, it now requires two separate entries. As can be seen, the devolved level of U. K. government is located in the northwest quadrant of the diagram, reflecting the more consensual features of party coalition formation in these new assemblies. (Anyone observing a debate in the Scottish Assembly would be struck by the hemispherical rather bipolar arrangement of the seats, and by the more dialogical dynamic, which contrasts with the “pitched battle” features of the prime minister’s question time). In his one sentence summation of the diagram, Flinders states that it “reveals that democracy in the UK did change under New Labour, but that this change has been one-sided.”<sup>34</sup>

In fairness to Flinders, it must be added that his study does not merely replicate Lijphart. He also reflects thoughtfully on some troubling features of his research design. Originally, there were eight indicators, including referendums, but in the second version there were ten, and the referendum element was dropped. As we shall argue below, this omitted variable turns out to be of major importance when seeking to understand the current and prospective functioning (or dysfunctionality) of the U. K. constitution. Flinders also wonders whether, even with the ten indicators, some crucial features may be overlooked. For example, as I argue below, both in 1984 and in 1999, Lijphart left out what turned out to be a rather important (and nonreplicable) aspect of the WS: the role of the monarchy. There is also the question of whether these ten dimensions are all independent of each other, and of equal weight, as the summative exercise requires.

More broadly, the New Labour decade raises rather fundamental questions, namely about the rationale for the “one-sidedness” of its reforms, whether these reforms were founded on a serious analysis, whether they produced the intended results, whether the outcome has been a stable and coherent new settlement, or whether they opened the way to a chaotic process of further improvisations and reversals. In short, did Blair, either by accident or design, produce a modernized WS that can pass into history as our new WM, or did he leave Westminster democracy in a “mess”? Flinders is too cautious an academic to endorse Anthony King’s use of that four-letter Anglo-Saxon label, but he essentially endorses the King verdict, merely redescribing it more elegantly, but also more opaquely as “constitutional anomie,” and more colloquially as “drift.”

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<sup>34</sup> *Ibid.*, 274.

Anthony King was careful to state that, although “the word ‘mess’ is usually understood pejoratively...in this context it is meant to be understood purely descriptively, to denote an actually existing state of affairs and neither to condemn it nor to cast aspersions. After all, some people like messes.”<sup>35</sup> King also made the point that, while much of the present confusion could be traced to New Labour, the Blair government was dealing with a build-up of constitutional issues dating back at least as far as accession to the European Community in the early 1970s. However, he is less inclined than Flinders to entertain the New Labour claim that there was any depth or coherence to the reforms it initiated:

The British people still imagine they know who the rascals are: the government of the day. And they still imagine that they know how to throw the rascals out: by means of a general election. But, whereas under the old constitution the alleged rascals really were responsible for most of what they were held accountable for, under the new constitution power is far more widely dispersed. The fit between rascals and responsibilities was, needless to say, never perfect; the single come-at-able sovereign never reigned over every thing and every one. But the fit, admittedly never entirely perfect, is now exceedingly imperfect. The power of the democratically elected government at Westminster is now hedged about and circumscribed in all the ways we have described. If accountability once lay at the heart of the British constitution, it does so no longer. As must be evident, it has not been replaced by anything else.<sup>36</sup>

Iain McLean offers another recent and equally iconoclastic take on the current British constitution. He questions a core assumption of the WM, namely that parliament is the supreme lawgiver and derives its authority from the people, because the people elect parliament. His line of criticism not only points to the current prominence of other sources of law in Britain, but also to the principle in British constitutional law that parliament comprises three houses—Monarch, Lords, and Commons—only a third of which is elected by the people. For McLean, although there is no single written constitution, there is a foundational document, the Act of Union of 1707, that united the kingdoms of England and Scotland under one parliament, which underpins the WS. Since the new Coalition agreed to a referendum on the possible independence of Scotland in the autumn of 2014, that *fons et origo* of the British constitution is now up for reconsideration.

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<sup>35</sup> King, *The British Constitution*, 345.

<sup>36</sup> *Ibid.*, 362.

Beyond the Lijphart comparative framework, therefore, serious scholars are posing fundamental questions about the nature and prospects of the WS in the wake of the New Labour reforms. Before moving on to more speculative comments about the Coalition and the future, three specific points about 1997-2010 require further comment: the monarchy; referendums; and the question of coherence.

### ***The Monarchy***

The monarchy is much more than a quaint relic or a purely “decorative” part of the U. K. constitution, as will be more apparent in the event of a renewed independence for Scotland. The Crown and its courts help to explain why Britain has never been an “elective dictatorship,” and why the theoretical problems arising from a sovereign assembly’s inability to bind its successors was not such an issue for the WS. In addition, recent evidence released by order of the Information Commissioner lists thirty-nine bills that were subject to a hidden veto by the Queen or Prince Charles.<sup>37</sup> Most notably, in 1999, the Queen vetoed the Military Actions against Iraq Bill, a private members bill that sought to transfer the power to authorize military strikes against Iraq from the monarch to parliament. Royal consent is needed for laws affecting hereditary revenues, personal property, and the personal interests of the Crown and the Duchies of Lancaster and Cornwall; and these provisions have been interpreted widely (they affected the Civil Partnership Act of 2004, because the latter contained a declaration about the validity of a civil partnership that would bind the monarch). Even in the absence of a royal veto, this prerogative has caused delay to legislation, and is likely to induce ministerial restraint, and could serve to elicit legislative amendments. So, the Crown’s role in legislation is not, as the WM mythology tends to assert, purely ceremonial.

### ***Referendums***

The first national referendum in Britain was held in June 1975, as the main parties were divided over membership in the European Community, and it was decided that the issue should be put directly to the British people, bypassing parliament and the cabinet. On a 64.5 percent turnout, the “yes” prevailed with 64.5 percent of the valid votes. A second national referendum was called by the Coalition in May 2011, and resulted in the rejection of an electoral reform to establish the Alternative Vote, by a majority of 69.7 percent of the votes cast. In addition, there have been eight subnational referendums: two each in Northern Ireland, Scotland, and Wales; one establishing a Greater London Authority; and one rejecting an elected Regional Assembly for the North East of England. A referendum of Scottish independence has been promised for autumn 2014. In

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<sup>37</sup> Over the resistance of the Cabinet Office, which appealed the decision to the Information Tribunal, but was overruled.

January 2013, Premier Cameron promised that, if his party secured a majority in the May 2015 election, during his second term in office, he would convene a national “in-out” referendum on membership in the European Union. Taken together, these national and subnational consultations add up to a formidable challenge to the centralized two-party parliamentary model envisaged in the WM, and create a major series of unpredictable effects for the WS.

### *Coherence*

So what, if anything, is left of the coherence of the British constitution? Was there a governing principle or unifying rationale for the sequence of innovations that have gathered pace over the past generation? Expert opinions differ on this point, and a final verdict must await a more settled outcome. One view is that, after eighteen years in opposition, when New Labour took office in 1997, it articulated a vigorous and elaborated critique of the centralization of the WM under Mrs. Thatcher. The “Third Way” supposedly provided a blueprint for democratizing British democracy. Subsequent changes to the WS, including devolution and Bank of England independence, are said to flow from that reasoning.

Another view holds that Blair pursued a Thatcher-style centralized leadership strategy, benefiting from overwhelming single-party majorities in the Commons (even though his party gained only 43.2 percent of the popular vote in 1997, falling to 40.7 percent in 2001, and to 35.2 percent in 2005). Early on, New Labour dropped the idea of allying with the Liberal Democrats to create a solidly “reformist” front against the return of the Conservatives, and therefore Blair also retreated from the more consensual constitutional approach (including proportional representation) associated with the third traditional party. The resulting “anomie,” “drift,” or incoherence in the U. K.’s constitutional evolution might therefore be attributable to the abandonment or partial reversal of an intellectually coherent initial project for reform.

However, there are also serious analysts who regard the New Labour record as one of frivolous improvisation and sound-bite policy making that reflects lack of foresight or deep thought. Certainly, the Blair team undertook some extraordinary pivots when the unintended consequences of some of their *bien pensant* measures became apparent. Blair’s arbitrary order to suspend the Serious Fraud Squad investigation into corruption in arms sales to Saudi Arabia could be cited as a particularly egregious example, but Freedom of Information reversals probably provide more representative illustrations.

Whatever the conclusion on this question, the result was that by 2010 the WS was further than ever from the WM, as well as less stable and intelligible to the public. In King’s view, the U. K. constitution has become a mess, there is nothing much that can be done about it, the advocates of holistic reform have done more harm than good, and, if they got a constitutional convention, they would probably make a bad situation worse. In any case, there is no public demand for such change. The referendum on the Alternative Vote and

the continuing absence of House of Lords reform would seem to support this downbeat judgment, which runs counter to the analysis of another equally eminent authority.

Vernon Bogdanor (who was, incidentally, David Cameron's politics tutor at Oxford) still argues for the contrasting view that there is an underlying, necessary, and constructive direction of change for British democracy to follow. "There is so profound a conflict between the politics of parliamentarism and the politics of a democratic age" that in some form or other Britain will have to follow through on the changes initiated in 1997. In his view, "if a government is no longer able to claim a popular mandate for its policies because they are based on a coalition agreement drawn up after the election, they must seek to achieve that mandate in a different way."<sup>38</sup> He therefore proposes opening up the political system to increase participation, through primary elections, proportional representation, more use of referendums, and other forms of direct democracy, notwithstanding some short-term setbacks to his vision of radical constitutional innovation.

The Coalition Agreement of May 2010 assures the government's junior partner, the Liberal Democrats, of a defined share of ministerial office, and co-responsibility for implementing an agreed set of policies, symbolized by the appointment of its leader as deputy prime minister. The Fixed-Term Parliament Act of 2010 removes what had previously been a fundamental prime-ministerial prerogative—the power to determine the date of the next general election at will. Instead, the present House of Commons will serve out its full five-year term, except if there is a two-thirds majority vote for an early dissolution (i.e., an unlikely agreement by both government and opposition to go to the polls early), or if a vote of no confidence (a simple majority vote against the government) was not followed within fourteen days by the establishment of an alternative government with a positive majority. In principle, this constitutes a significant shift in the balance of power toward the possibility of reconstituting government through the realignment of coalition partners without consulting the electorate, although it remains to be seen how such an unfamiliar maneuver would be received in practice.

Barring such a realignment during a fixed parliamentary term, the provisions of the existing coalition agreement can largely be accommodated within the framework of the existing WS, so long as the two parties hold together and deliver a stable majority in votes of confidence and on budget questions in the House of Commons. But it is already apparent that there are other important issues where the two parties are not in agreement. Of constitutional importance is the fact that the Liberal Democrats have withdrawn their support for the redrawing of British constituency boundaries to reflect demographic changes. This is expected to cost the Conservatives around twenty seats in the 2015

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<sup>38</sup> Vernon Bogdanor, *The Coalition and the Constitution* (Oxford: Hart Publishing, 2011), 144.

general election. Although the two governing parties are postponing their differences over the proposed post-2015 referendum on EU membership (which refers to a matter that falls outside the scope of the Coalition Agreement), the fault line is clearly destined to widen as the time for decision approaches.

More generally, this is not a permanent switch to coalition government. It is a time-limited agreement said to reflect a very specific economic emergency. Traditional adversarial features of Westminster party conflict are due to resume as the 2015 election draws near. So, current constitutional improvisations will last only for a couple more years. Pending issues, including either the renegotiation of devolution or even the break-up of the United Kingdom, loom imminently ahead. The question of EU membership, either for the U. K. as a whole, or indeed for its constituent parts separately, also figures on the constitutional agenda. The coming challenges are almost upon us, and they raise existential questions for the U. K. and its *sui generis* parliamentary tradition.

In the mid-twentieth century, the WS was not only regarded domestically as a “model” version of parliamentary democracy, but also it was exported to the four corners of the globe. Its apparent effectiveness and acceptability abroad enhanced its prestige and legitimacy at home. In my parlance, it belonged to a small subset of “immanent” democracies whose standing was so self-evident that they were not subject to radical domestic contestation, and for that reason, there was also not much doubt that they were worthy for transmission to other nations. As we have seen recently both in the United Kingdom and the United States, such assumed political virtues can live on, and inspire far-reaching programs of “democracy promotion” long after their heyday. Indeed, it may be that the export of democracy to benighted lands constitutes a source of comfort—perhaps even of legitimation—when domestic enthusiasm for inherited constitutional arrangements begins to fray.

Certainly, the academic community began to question the merits of majoritarian models a generation ago. Lijphart was in the vanguard in this respect. Internal criticisms of the workings of both the U. K. and to a lesser extent the U. S. political systems have also mounted in recent years, especially after the turn of the millennium. In the Westminster case, the “model” no longer captures either actual functioning of the U. K. political system, or its theoretical rationale. Perhaps this may open the way to a more reflective consideration of how British democracy might benefit from the lessons of other models. Some half-hearted adjustments of this kind have taken place, but so far without a coherent outcome. The model has become a muddle, and its future evolution remains opaque.

### **“Model or Muddle”: Implications for Lijphart’s Conceptual Mapping**

Lijphart’s conceptual map and his associated standardized indicators for thirty-six democracies are of interest not only because of the empirical regularities



they seek to uncover. They also have attracted such attention because the findings address a much broader and more normative debate about good quality democracy—the advantages he associates with consensual, as opposed to majoritarian, variants of that regime type. Since this essay only deals with one country out of the thirty-six, it cannot directly confirm or contest Lijphart’s overall position. Nevertheless, the United Kingdom is sufficiently prominent, longstanding, influential, and perhaps even enough of an “exemplary” case that close examination of this instance has a significant, if indirect, bearing on the aggregate picture that Lijphart has constructed. So, reconstruction of the WM, the WS, and the current constitutional situation of the U. K. should at least be useful as a source of validation of (or to question) his mapping exercise. This conclusion deals with two aspects: the methodological doubts suggested by the U. K. case, and the substantive lessons it provides.

On the methodological side, there is a recurrent tension between the selectivity and simplification inherent in any comparative mapping exercise, and the richer and more elaborated portrayal required in a single in-depth case study. Like Flinders, other one-country assessments have also made use of the Lijphart continuum, while expressing doubts about the precise placement of their own case.<sup>39</sup> This brief overview of the current specialist debate about the state of the WS in the U. K. is sufficient to reveal a substantial degree of disagreement and controversy concerning not just secondary details but also core aspects of the system’s structure and stability.

A full characterization of the U. K.’s political regime, which goes beyond the partial and reductive indicators required for the Lijphart map, seems to open up a wide array of areas where the scholarly debate remains quite unresolved. Is it the legitimizing belief system that should have priority (the WM)? Or is it the perhaps substantially different and not necessarily fully transparent actual workings of the system (the WS)? Is there one unitary level of analysis, or do such differences exist along the majoritarian-consensualism continuum at different levels of government, so that “bi-constitutionalism” and a dual method of score keeping are required? How much change is taking place and how quickly, such that the placement of the case becomes time limited, or even unstable? Is there a coherent rationale for the existing order and its possible reform, or is it the product of successive incoherent and inconsistent improvisations (a “mess”)?

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<sup>39</sup> For example, Robert A. Dahl endorsed the broad conclusions of Lijphart’s 1999 comparisons, and even reinforced the point with specific illustrations of the merits of PR and consensualism in the Netherlands, Sweden, and Switzerland. But as concerned the United States, he concluded that it was not really a “majoritarian” system at all. Instead, on the basis of an in-depth review of U. S. constitutionalism that went beyond Lijphart’s indicators, he classified it as a “hybrid” system with a mediocre level of performance. See Robert A. Dahl, *How Democratic Is the American Constitution?* (New Haven, CT: Yale University Press, 2002), chap. 5.

The methodological doubts arising from these questions of conceptualization include: How should one take into account the perhaps weighty influence of a multicentury historical record of constitutional evolution? What consideration should one give to the ruling belief system (the mythology, or what Walter Bagehot referred to as the crucial stabilizing “decorative” part of the constitution) as opposed to its more empirically measurable formal features? At the empirical level, how is one to sum up actual behavior on each chosen dimension, when the practices involved are highly complex and partly hidden? And how is one to keep track of multidimensional change, especially when the interaction effects may be more powerful than those directly attributable to each variable? In view of all these doubts about the applicability of the coding process in a single case, there is a methodological question about the comparative exercise as well: Does it compare like with like?

Comparativists have well-known responses to such hesitation, of course. Without some orderly and well-specified procedure, the conduct of comparative inquiry would remain arbitrary and subjective, and underlying regularities such as the one established by Lijphart would remain hidden or purely speculative. With correct coding and good testing, the procedure can isolate important variables and screen out irrelevant background “noise.” There may be no single fully comprehensive and definitive comparative procedure, but the same conceptual issues can be empirically investigated from several distinct empirical standpoints, and, if the resulting findings support each other (through “triangulation”), then confidence in the validity of the results can be enhanced. These are all important arguments, but the underlying question that divides the single-case analyst from the comparativist is whether the regularities that may be uncovered are an end-in-themselves, or whether their value depends on what they contribute to the portrayal of the individual cases.

Students of British politics need both a comparative and a richly informed internal understanding of how their constitutional system works, and what scope it has for improvement. So from that standpoint, it is the substantive conclusions of this inquiry that matters most. Does the U. K. have a lower than necessary quality of democracy, because the WS is too majoritarian, and if so, what could be done to improve how it works? In other words, “triangulation” of interpretations should be pursued not only at the comparative mapping level, but also when examining a single case. Pluralist methods should also address both the empirical and the normative aspects of the case.

On the substantive side, the following key points emerge concerning the U. K.’s WS of prime-ministerial-led democracy:

1. The current WS is quite far removed from the standard WM. It is hardly a “model” to the rest of the world, given that so many of its features are *sui generis* and nontransferable and that the era of transmitting parts of this example in the course of decolonization is long past. It is

doubtful whether it should even be regarded as a “model” for internal consumption, given that its mythology is so out of date, and that so many citizens and professional politicians are engaged in trying to modify it in a variety of far-reaching respects.

2. The present WS has been characterized as complex, bi-constitutional, drifting, and even incoherent. To the purist, it can even be labeled a “mess.” That does not mean, however, that it is on the verge of a principled overhaul. To the contrary, it seems more likely to “muddle through” or “blunder on” rather than to reach a crisis that precipitates a resolution.
3. From a comparative perspective, it can still be classified as a strongly “majoritarian” system, at least as regards the formal discretionary powers still exercised by the incumbent prime minister, and the manner in which his cabinet formulates its decisions. That is not to say, however, that the decisions thus taken will necessarily be “power-hoarding,” or that the executive still enjoys as much freedom of action as it did in the past. On the contrary, both customary and statutory constraints on executive discretion have hedged in the cabinet’s margin of maneuver, and the prime minister is very far from an “elected dictator.” Many of the most constitutionally significant decisions that have been made over the past generation or more could be ranked as “power-dispersing” rather than power-hoarding.
4. According to Lijphart, a crucial benefit of more consensual politics is that they are perceived as “fairer.” In particular, losers in a specific electoral or coalition formation contest are more likely to assess the outcome as acceptable. Losers in the U. K.’s more adversarial contests are more likely to feel aggrieved and wrongly excluded. Obviously, there is a need for more empirical evidence on this point, especially since in several of the consensual democracies, such as Belgium and the Netherlands, new antisystem parties have risen to the fore and contested the fairness of the prevailing order. But, in any case, from a U. K. standpoint, the question of perceived fairness needs an update. Ever since 1922, it was the Liberals who were the main victims of an unfairly polarized two-party electoral system. But since 2010, that party is well represented both in the Commons and in the cabinet, and even holds the deputy premiership. If there are substantial currents of political opinion that feel unfairly discriminated against today, these are likely to be the United Kingdom Independence Party, the British National Party, and the Greens at the national level. There is also the question of perceived unfairness in the devolved assemblies. Here, the rules of the game are coalitional and consensual, as prescribed by

Lijphart. However, in Scotland, there is a strong sense that it is unfair to be governed from Westminster by a Conservative Party that no longer commands substantial support north of the English border. In Northern Ireland, the power-sharing agreement has greatly reduced the sense of unfairness felt by the Catholic electoral base of Sinn Fein. But it has stimulated a new set of grievances felt by Protestant Unionists, who see themselves as a local majority abandoned by London. In summary, Lijphart's crucial formula (fairness=consensualism) requires reassessment.

5. The other side of the normative case is the idea that majoritarianism might be vindicated due to its greater efficiency and decisiveness. Lijphart found the evidence for this to be weak, and even if the U. K. is still regarded as a majoritarian system, there is certainly scope to question the efficiency and decisiveness of many of its outputs. Premier Blair stretched this logic to its extreme with his Downing Street-led drive to force through British participation in the invasion of Iraq. Earlier, Thatcher took the same strong line on the Falklands and the Miners' Strike (with success), and on the Poll Tax (which destroyed her). In any case, it is not clear whether national emergencies of this type provide the most suitable evidence for judgments about the overall decisiveness and efficiency of a political system. What is clear from these four cases is that, in the absence of a broad and consensual basis of support for these forceful initiatives, prime ministerial majoritarianism can produce policy outcomes that are strongly contested, and that may therefore elicit heavy costs and unintended consequences.

The resulting portrait of the WS in its current state invites a concluding reflection about the relationship between diagnosis and prescription in the field of comparative democracy studies. Dahl offered only the most tentative of suggestions about how to improve on the U. S. constitutional system: "I am not entirely sure that we can redesign our present hybrid so that it facilitates either greater consensus or stronger majoritarianism."<sup>40</sup> Nothing that has happened in the United States in the decade since he wrote indicates that he was being too negative.

In the same vein, Anthony King diagnosed the U. K. constitution as a "mess," but added: "What then is to be done? The short answer is: nothing. ...Although it is a mess, and does look like a ruin, Britain's new constitutional edifice needs propping up, a few major repairs and skillful maintenance. Despite its unfortunate appearance, it does not yet need to be totally rebuilt."<sup>41</sup>

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<sup>40</sup> Ibid., 146.

<sup>41</sup> Ibid., 363 and 365.

It is a remarkable fact that, whereas since 1990 the Anglo-Saxon political science community has displayed the greatest of confidence that it knows how to prescribe optimal systems of institutional design for adoption by all the new democracies that have come into existence over the past generation, when it comes to reforming their own old and venerable constitutional systems, a quite different and much more self-denying ethos prevails.

Here is how Walter Bagehot evaluated counsels of the “rational choice” advocates of his day:

Doubtless, if all subjects of the same Government only thought of what was useful to them, and if they all thought the same thing useful, and all thought that the same thing could be attained in the same way, the efficient members of a constitution would suffice, and no impressive adjuncts would be needed. But the world in which we live is organized far otherwise.<sup>42</sup>

The dignified or decorative aspects of the constitution (which he considered central to explaining its legitimacy and durability) were not justified by their efficiency, or even their fairness, but rather by their theatricality. Bagehot drew the characteristically Victorian inference that, “Other things being equal, yesterday’s institutions are by far the best for to-day; they are the most ready, the most influential, the most easy to get obeyed, the most likely to retain the reverence which they alone inherit, and which every other must win.”<sup>43</sup> And his micro-foundation for this conclusion was that even “the most intellectual of men are moved quite as much by the circumstances which they are used to as by their own will. ...It is the dull traditional habit of mankind that guides most men’s actions, and is the steady frame in which each new artist must set the picture that he paints.”<sup>44</sup>

Bagehot’s observations bear repetition because of the clues they offer to why both the British and the American constitutions of the twenty-first century are so hard to reform, notwithstanding well-researched scholarly arguments for a comprehensive reform and overhaul. Perhaps parliamentarism would enable the United States to overcome the dysfunctions of its current polarized presidential regime; perhaps a unicameral Westminster assembly elected by proportional representation would steer the United Kingdom toward a fairer society. But even if these two propositions could be demonstrated with the highest degrees of confidence, is it credible to imagine that such changes could

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<sup>42</sup> Walter Bagehot, *The English Constitution* (London: Fontana, 1963), 62 (first edition published in 1867).

<sup>43</sup> *Ibid.*, 64-65.

<sup>44</sup> *Ibid.*, 64.

be rationally negotiated through existing democratic channels? If not, then the implications both for the Lijphart continuum, and for the future of the WS, should be factored in to our analyses.

But, finally, despite the constitutional inertia celebrated by Bagehot in the nineteenth century, and the low-key approach to reform articulated by Dahl and King 140 years later, the future of Anglo-Saxon majoritarian democracy in the twenty-first century is unlikely to prove just “more of the same.” One underlying premise, in particular, seems unlikely to hold for much longer. Most Western democracies used to be relatively self-sufficient, and their constitutional arrangements therefore addressed the internal decision making of presumably autonomous sovereign states. But under the pressures of liberalization and globalization, and in the new era of instant global communication and mass travel, these presuppositions of “in one country” majoritarian or consensual democracy are unlikely to hold as before. Both citizens and their elected representatives are likely to find themselves facing much more cosmopolitan variants of political choice. This prospect poses extensive new challenges to traditional ideas about democratic representation and participation. Neither in the palace of Westminster nor in the more consensual assemblies of the consociational democracies can the centrality of national sovereignty be indefinitely taken for granted. Indeed, like many other “master narratives” of the past century, the “democratic countries” framework, in which each nation is treated as a self-contained reporting unit, can no longer be regarded as a given.