Blair, the reluctant reformer: the anatomy of constitutional reform

It is the fate of prime ministers not to be remembered by their achievements, but for their failings and shortcomings. Think of Eden and the Suez crisis come to mind; Macmillan conjures the Profumo scandal; Callaghan, the Winter of Discontent; Heath, the miners’ strike; Thatcher, the Poll Tax; Major, sleaze; and so on. But among those most castigated for their failings, Tony Blair must surely rank high above the others. Tom Bowler’s recent biography, ‘*Broken Vows’*, attests to this. In particular, the war in Iraq casts a dark shadow over Blair’s premiership, summoning the Grim Reaper to scythe flat any achievements for which he might otherwise be recognised. So are there any redeeming features of Blair’s premiership?

Simon Jenkins (*New Statesman,* March 2016) points towards three successive electoral victories for Labour after eighteen years in the wilderness. But these are achievements for the party and not, in themselves, transformative of society. His wider social and economic achievements are hotly disputed. Child poverty was something he publicly sought to diminish, but it actually increased in the Blair years. A strong economy allowed him to invest in public services, and under Blair the UK economy grew. But arguably this was handed to him on a plate by Major’s outgoing Conservative government who eventually built the strongest post-war economy Britain has enjoyed (although this went largely unrecognised). Never truly acknowledged, it is the contribution of the Blair government to constitutional change that is perhaps most striking.

On the face of it, the constitutional reforms of Blair’s government are immense. There was the creation of devolved assemblies in Scotland and Wales, the establishment of power-sharing in Northern Ireland in a revived Northern Ireland Assembly, the rebirth of the Greater London Authority and an elected London Mayor (the first of many elected mayors), the implementation of the Human Rights Act and the Freedom of Information Act, the reform of the House of Lords (removing all but 92 hereditary peers), a move towards greater separation of powers in the UK through the Constitutional Reform Act, an attempt to make political party donations and registration more transparent through the Political Parties, Elections and Referendums Act, and proposals for a North East Assembly. New electoral systems were introduced in regional elections in Scotland, and in regional and local elections in Wales and Northern Ireland, as well as in elections to the European Parliament (although the Jenkins Commission’s proposal to change the voting system for general elections was quietly ignored). Astonishing though these changes are, Blair’s commitment to and enthusiasm for constitutional reform is surprisingly questionable.

The constitutional reforms of Blair’s government fall into three categories. The first are those reforms which had been proposed before Blair became party leader and to which the party was already publically committed. Many of these had been proposed by Blair’s predecessor, John Smith, an enthusiast of constitutional reform. They would have been implemented whoever had been leader. They include the party’s commitment to establishing devolved assembles in Scotland and Wales.

After the debacle of the 1979 Scottish devolution referendum the Labour Party threw its support behind the campaign for a Scottish Parliament. It played a significant part in the Scottish Constitutional Convention, established in 1989, which examined proposals for devolved powers to Scotland. Labour depended on its Scottish and Welsh voters for seats in Westminster and the party’s association with devolution can be seen in this context as a pragmatic imperative. In 1992 the Party’s manifesto stated: “The Scottish Parliament will have a vital role in building the competitive strength of the Scottish economy. Our new Welsh Assembly will also have important economic responsibilities.” Blair had little choice but to include the proposal to establish a Scottish Parliament and a Welsh Assembly in the 1997 manifesto. With a clear mandate for a Scottish Parliament and a slender majority in favour of a Welsh Assembly in the 1997 referendums, Blair established the new assemblies in 1998. His commitment to these changes cannot be questioned. Fearing the House of Lords might attempt to scupper the devolution proposals he initiated the referendums to secure a mandate for reform from the people of Wales and Scotland. He undoubtedly believed devolution was the right way forward, but in essence he was honouring pre-existing policies which the party had proposed before he became leader.

Similarly, the negotiation of power sharing in Northern Ireland and the revival of the Northern Ireland Assembly at Stormont had its origins in the years before Blair became party leader. Peace talks began under Margret Thatcher and were pursued with vigour in the Major years. In effect, in signing the Good Friday Agreement Blair was simply completing a process begun by his predecessors. Labour had also been committed to restoring a Greater London Authority since Thatcher abolished the Greater London Council in the 1980s. Though supportive of the idea, Blair was committed to creating the Authority by existing Labour policy.

The House of Lords reform is another case in point. Blair himself had little interest in the Lords reform, but it had been party policy under Smith. What ultimately convinced him about the need for reform was that the Lords had challenged his government no fewer than 38 times in its first year. Blair stated that the Conservatives were using the hereditary peers to "frustrate" and "overturn the will of the democratically elected House of Commons”. The measure, limiting hereditary peers to 92, was to be the first stage in a much more radical overhaul, but the second stage never happened.

This first category also includes the abandoned proposals for electoral reform put forward by the Jenkins Commission. Labour had been in opposition for eighteen long years and prior to the 1997 general election had been in negotiation with the Liberal Democrats about possible a coalition and electoral reform.. The party’s landslide victory in 1997 came as much of a surprise to Tony Blair as it did to many of the pundits, but having secured such a victory under the first-past-the-post system the appeal of electoral reform diminished. Blair quietly dropped the Jenkins Commission recommendations.

The second category of reforms includes those which Blair initially considered a good idea, but which he later regretted. They were intended to demonstrate New Labour’s credentials as a party of radical reform and were developed in their first days in office. The Human Rights Act (1998) and the Freedom of Information Act (2000) fall into this category and were laudable policies. The first was proposed to stem the growing unease from pressure groups such as Charter 88, which fought against the erosion of civil liberties in the UK. The Human Rights Act was also a pragmatic proposal: since the 1980s British citizens were pursuing embarrassing litigation against UK governments on issues of civil rights through the European Courts. Signing Britain up to the European Convention on Human Rights seemed a sensible, practical step, given that governments were already being held to account by the convention. The second reform, the Freedom of Information Act, was an attempt to increase the openness, and therefore the accountability, of government to the people.

But Blair later felt that the Human Rights Act constrained his fight against terrorism, routinely railing against it (Rawsley, *The End of the Party*), and that the Freedom of Information Act was used more by mischievous journalists than by members of the public seeking government accountability. On the FOI Blair later wrote: “Its consequences would be revolutionary; the power it handed to the…media was gigantic.” And later: “Freedom of Information. Three harmless words. I look at those words as I write them, and feel like shaking my head till it drops off my shoulders. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it….We had legislated in the throes of power…The truth is that the FOI isn’t used, for the most part by the people. It’s used by journalists…as a weapon….Governments, like any other organisations, need to be able to discuss and decide issues with a reasonable level of confidentiality” (Blair, *My Journey*). Indeed, journalists used the FOI to compel Blair to publish details of dinner guests at Chequers (the Prime Minister’s country retreat), including Michael Winner and Joan Collins. Blair later described it as his worst mistake as Prime Minister

Other changes arose because Blair was persuaded by others that they were worthwhile, often because they looked radical but required little additional public spending (Hennessy et al, *Developments in British Politics*, Vol 9). This third category includes the ill-fated North East Assembly, an idea linked to efficiency gains and cost-savings in creating unitary authorities. This had been proposed by the Electoral Commission and taken up with alacrity by Blair’s pugilist Deputy Prime Minister, John Prescott. But the referendum on such an assembly saw 78% of voters reject the idea on a 49% turnout and the proposal was scrapped along with the hopes of a wider roll-out of the scheme across the country.

Finally there was the Constitutional Reform Act (2005) which created a separate Supreme Court. Prior to 2005 the Lord Chancellor wore ‘three hats’ in the system of government: he was the lead figure of the law lords (judiciary); he presided over meetings of the Lords (legislature); and he attended Cabinet meetings (executive) All three branches of government were therefore embraced in the role of Lord Chancellor, which Montesquieu argued was wrong.

Andrew Adonis (Head of the No.10 Policy Unit) and Andrew Turnbull (Cabinet Secretary) urged Blair to reform this post, but Blair was reluctant. This was because Derry Irvine was the Lord Chancellor and, as a barrister he had been Blair’s Head of Chambers (mentor) when Blair was first accepted to the Bar. Under pressure, Blair eventually accepted the need for reform, and faced Irvine’s fury.

Initially Blair accepted that the post of Lord Chancellor should disappear altogether. There would be a new president of the Supreme Court, a new Lord Speaker, and the Secretary of State for Constitutional Affairs would assume the executive functions in Cabinet (the role was replaced by the Secretary of State for Justice in 2007). But it was soon realised that the office of the Lord Chancellor was mentioned in over 5000 pieces of legislation. It could not be abolished without rewriting the legislation. So the title was retained in Cabinet and eventually became part of the role of the Justice Secretary. The Constitutional Reform Act was passed in 2005, including provision for a new independent Judicial Appointments Commission, and the Supreme Court was finally opened in 2009

On the face of it, therefore, the Blair government enacted major constitutional reform. But delve deeper and the motives behind the reform are more complex than simple radical zeal. Blair was many things: on domestic policy he was opportunistic, on foreign affairs he was reactionary, but instinctively on constitutional matters he was, as Andrew Rawsley suggests, ‘instinctively a constitutional conservative’. Yes, there were sweeping constitutional reforms introduced by Blair’s government. But, in the end, these were often achieved not because of, but despite, Tony Blair.